

CenarioVR Terms and Conditions

TERMS AGREED

1. Definitions and interpretation

1.1 In this Terms and Conditions, the following terms have the following meanings:

"Adequacy Decision"	a finding under Article 25(2) of the Data Protection Directive that a country or territory ensures an adequate level of protection within the meaning of Article 25 of the Data Protection Directive, while such finding remains in force pursuant to Article 45(9) of the GDPR, or (as applicable) a finding under Article 45(1) of the GDPR or the UK GDPR that a country, a territory or one or more specified sectors within that country, or the international organisation in question ensures an adequate level of protection within the meaning of Article 45 of the GDPR or (as applicable) the UK GDPR;
"Additional Product Terms"	means an appendix to these Terms and Conditions in which product or service specific terms supplement these Terms and Conditions;
"Agreement"	shall mean the Order Form, these Terms and Conditions, any Additional Product Terms relevant to the specific product which the Customer is purchasing, any other appendix and (if applicable) any Statement of Work made pursuant to the Agreement;
"Applicable Law"	any and all laws, regulations and industry standards or guidance (including any applicable British Standard) and any applicable and binding judgment of a relevant court of law in each case which apply in England;
"Authorised Users"	means the Customer Personnel authorised by the Customer to receive the relevant Services. The number of the Authorised Users who shall receive the relevant Services is set out in the Order Form. For some Services, the definition of Authorised User will be different, and this will be apparent in the Additional Product Terms for particular Services;

"Background IPR"	any and all IPRs that are owned by or licensed to either party and which are or have been developed independently of this Agreement (whether prior to the Commencement Date or otherwise);
"Business Day"	09:00 to 17:00 Monday to Friday in the United Kingdom, excluding Bank Holidays in England and Wales;
"Charges"	the charges for the Services payable in accordance with clause 8 and the Order Form;
"Commencement Date"	the date the Order Form is signed;
"Confidential Information"	any and all know-how, documentation and information, whether commercial, financial, technical, operational or otherwise, relating to the business, affairs, customers, suppliers, employees, affiliates, products, software, relevant Third Party Software, Customer Materials, Customer Data, Customer Personal Data and/or methods of Traineasy or Customer and disclosed to or otherwise obtained by the other party in connection with this Agreement;
"Controller"	has the meaning given in the UK GDPR;
"Customer"	the person, firm or company who purchases Services from the Traineasy;
"Customer Data"	any data (including any Personal Data relating to the staff, customers or suppliers of the Customer and/or individuals who receive Deliverables as part of the Services), documents, text, drawings, diagrams, images, videos, sounds (together with any database made up of any of those) embodied in any media that are supplied to Traineasy by or on behalf of the Customer, or which Traineasy is required to process, store or transmit pursuant to this Agreement from time to time;
"Customer IT Systems"	the IT systems (including but not limited to devices, software and/or applications) used by the Customer from time to time;
"Customer Materials"	has the meaning given in the Additional Product Terms;
"Customer Personal Data"	The personal data specified as such in the Additional Product Terms and/or relevant Statement of Work;
"Customer Personnel"	the Customer, its employees, personnel, agents and contractors who are in receipt of the relevant Services and/or product;

"Customer Premises"	the premises from which the Customer operates from time to time;
"Data Processing Purpose"	the services described in the Additional Product Terms and/or relevant Statement of Work];
"Data Protection Directive"	Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
"Data Protection Laws"	the Data Protection Act 2018, the UK GDPR, GDPR and any relevant law implemented as a result of GDPR;
"Data Subject"	has the meaning given in the UK GDPR;
"Deliverables"	has the meaning given in the relevant Statement of Work;
"Delivery Date"	shall mean the relevant delivery dates as set out in the relevant Statement of Work;
"Documentation"	the documentation made available to the Customer by Traineasy from time to time which sets out a description of the Services, user instructions for the Services and/or the relevant Third Party Software;
"EEA"	the European Economic Area from time to time;
"End User Licence Agreement"	means the product or service specific end user licence terms which regulates end users' access to and use of the product or service, as referred to in the Additional Product Terms;
"GDPR"	Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;
"ICO"	the United Kingdom's Information Commissioner's Office (or any equivalent successor body that may be appointed from time to time);
"Initial Term"	has the meaning given to it in the Order Form;

"IPRs"	patents, rights to inventions, copyright and neighbouring and related rights, know-how, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
Liability	means all liability in contract, tort (including negligence), breach of statutory duty, misrepresentation (whether innocent or negligent), restitution or otherwise, arising under or in connection with this Agreement. "Liable" shall be construed accordingly;
Losses	means all damages, losses, liabilities, claims, actions, costs, expenses (including reasonable fees and disbursements for legal or professional services), proceedings, judgments, consensual settlements, penalties, fines, demands, interest and charges whether arising under statute, contract or at common law;
"Non-adequate Country"	a country or territory which is outside the UK and the EEA and in respect of which there has not been an Adequacy Decision;
"Traineasy"	Traineasy Limited, a company registered in England and Wales (Company number 04031916), whose registered office is at Studio D2, Witan Studios, 334 Witan Gate West, Milton Keynes, MK9 1EJ
"Traineasy Personnel"	the personnel including subcontractors engaged by Traineasy in the provision of the Services;
"Order Form"	the Order Form set out at the beginning of this Agreement;
"Party"	a party to the Contract;
"Personal Data"	has the meaning given in the UK GDPR;
"Personal Data Breach"	has the meaning given in the UK GDPR;
"Portable Copy"	a copy of Personal Data in a structured, commonly used and machine-readable format;

"Processing"	has the meaning given in the UK GDPR and "Process" and "Processed" have corresponding meanings;
"Processor"	has the meaning given in the UK GDPR; and
"Services"	means the services (including any Third Party Services) to be provided by Traineasy to the Customer as specified in the Order Form and/or as supplemented in a Statement of Work and/or Additional Product Terms;
"Service Go-Live Date"	means the same as Commencement Date unless otherwise specified in the Order Form;
"Service Specific IPRs"	IPRs in items, materials and/or software created by Traineasy specifically for the Customer for the purposes of this Agreement and any updates and amendments to the same but excluding any Background IPR and Customer Data;
"Statement of Work"	shall mean a statement of work entered into pursuant to these Terms and Conditions for the provision of Services;
"Support"	shall mean the support services as set out in an appendix or referred to in a link;
"Term"	shall mean collectively the Initial Term and any subsequent Renewal Terms;
"Terms and Conditions"	means these terms and conditions;
"Third Party Services"	shall mean the relevant Third Party Software and any associated services provided by the relevant Third Party Vendor to the Customer;
"Third Party Software" or "TPS"	shall mean the relevant third party software specified in the Order Form and/or Additional Product Terms;
"Third Party Vendor" or "TPV"	shall mean the relevant third party provider who is licensing and providing access to the relevant Third Party Software;
"VAT"	value added tax chargeable under the Value Added Tax Act 1994 (which is specific to the United Kingdom) and any similar replacement or additional tax;
"UK GDPR"	GDPR as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or a part of the United Kingdom from time to time);
"Year"	a period of 12 months from and including the Service Go- Live Date or an anniversary of the Service Go-Live Date provided that, where this Agreement is terminated part way through such a 12 month period, a reference to a Year shall include the period from the end of the last Year completed until the date of termination.

- 1.2 References to **"clauses"**, **"schedules"** and **"appendices"** are to the clauses, schedules and appendices of this Agreement all of which form part of this Agreement, and which shall have effect as if set out in full in the body of this Agreement. The headings shall not affect the interpretation of this Agreement.
- 1.3 A **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a **"company"** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and vice versa. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 A reference to a statute or statutory provision or to Applicable Law:
- 1.5.1 shall include all subordinate legislation made from time to time under the same; and
- 1.5.2 is a reference to the same as amended, extended, superseded or consolidated from time to time and including any other similar legislation in any other jurisdiction.
- 1.6 A reference to **"writing"** or **"written"** includes email (including all attachments).
- 1.7 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.8 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.
- 1.9 Any reference to a document within these Terms and Conditions shall be deemed to include such document as may be updated from time to time.
- 1.10 Any words following the terms **"including"**, **"include"**, **"in particular"**, **"for example"** or any similar expression shall be construed as illustrative and shall not limit the generality of the related general words.

2. **Basis of contract**

- 2.1 With effect from the Commencement Date, the Customer engages Traineasy and Traineasy accepts its engagement by the Customer to provide the Services on the terms of the Order Form, these Terms and Conditions, the Additional Product Terms and if applicable, a Statement of Work.
- 2.2 The relationship of Traineasy to the Customer shall be that of independent contractor and nothing contained in this Agreement shall create a relationship of employer and employee, principal and agent or partnership between the Customer and Traineasy.
- 2.3 Neither party shall pledge the credit of the other or sign any document, enter into any agreement or make any promise on behalf of the other or in any way indicate that it is entitled to do so without the prior written consent of the other party.
- 2.4 In the event that there is any conflict between the Order Form, these Terms and Conditions, the Additional Product Terms, and any applicable Statement of Work, the

order of precedence for resolution of such conflict shall be: the Order Form, the Additional Product Terms, these Terms and Conditions, the applicable Statement of Work and any applicable appendix.

3. Provision of the Services

- 3.1 Traineasy shall provide the relevant Services from the relevant Service Go-Live Date as set out in the Order Form and/or as agreed in writing with Traineasy.
- 3.2 The parties acknowledge and agree that during the Term the Customer may request additional Services to be provided from time to time and Traineasy may accept or reject such request.
- 3.3 Traineasy warrants that:
 - 3.3.1 it has full capacity and authority and all necessary consents to enter into and to perform its obligations under this Agreement;
 - 3.3.2 it shall, in providing the Services co-operate with the Customer in all matters relating to the Services to the extent reasonably required to fulfil the Services; and
 - 3.3.3 perform the Services with reasonable care and skill.
- 3.4 Any other warranties, clauses, obligations or implied terms which might otherwise be implied into this Agreement by statute, custom or at law (including, without limit, any warranties of fitness for purpose or relating to satisfactory quality) are excluded to the fullest extent permitted by law.
- 3.5 Traineasy shall be entitled to change the way any of the Services are delivered under this Agreement in order to comply with Applicable Law provided always that such change does not have a material detrimental effect on the Services' performance and functionality. Traineasy shall notify the Customer in writing of any changes to the Services as soon as reasonably practicable.

4. Support

- 4.1 Where Traineasy agrees to provide the Customer with Support, such Support shall be provided in accordance with the terms set out in an appendix or referred to in a link.

5. Third Party Services and product specific terms

General

- 5.1 Subject to the Customer entering into the Additional Product Terms, Traineasy shall procure the grant to the Customer of a licence from the relevant Third Party Vendor to use and access the Third Party Software subject to and on the relevant Additional Product Terms. Notwithstanding the foregoing, the Customer shall (and shall procure that the Customer Personnel) comply with and shall access and use the Third Party Software strictly in accordance with the relevant Additional Product Terms.
- 5.2 The Customer acknowledges and agrees that Traineasy shall have no Liability in respect of the Third Party Software (including but not limited to the functionality, availability or whether the Third Party Software meets the Customer's requirements).
- 5.3 The Customer shall indemnify Traineasy against all damages, losses, liabilities, claims, actions, costs, expenses (including reasonable fees and disbursements for legal or professional services), proceedings, judgments, consensual settlements, penalties,

finances, demands, interest and charges incurred or suffered, howsoever arising, by Traineasy as a result of or in connection with the Customer's (including the Customer Personnel's) breach of the terms of the Additional Product Terms.

6. **Customer's obligations**

6.1 The Customer shall:

- 6.1.1 co-operate with Traineasy in all matters relating to the Services;
- 6.1.2 provide such information to Traineasy as Traineasy may reasonably request for the purpose of providing the Services and ensure that such information is accurate in all material respects;
- 6.1.3 ensure that the Customer's IT Systems comply with the relevant specification and prerequisites provided by Traineasy to the Customer from time to time;
- 6.1.4 be responsible for procuring, maintaining and securing the Customer's IT systems, and all problems, delays, delivery failures and all other loss or damage arising from or relating to the Customers' network connections or telecommunications links or caused by the internet;
- 6.1.5 obtain and maintain all necessary licences, permissions and consents which may be required before the Commencement Date;
- 6.1.6 where appropriate, prepare the Customer premises for the supply of the Services;
- 6.1.7 comply with all Applicable Law with respect to its activities under this Agreement; and
- 6.1.8 comply with any additional licence terms applicable to Third Party Software forming part of the Services that we make you aware of in the Additional Product Terms and from time to time.

6.2 If Traineasy's performance of any of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**") then Traineasy shall notify the Customer of such Customer Default as soon as reasonably possible upon becoming aware of the same and:

- 6.2.1 Traineasy shall be granted an extension of time for the performance of the Services to reflect such delay and shall not be Liable for any Losses sustained or incurred by the Customer arising from Traineasy's failure or delay to perform any of its obligations as set out in this clause 6.2; and
- 6.2.2 the Customer shall reimburse Traineasy for any additional costs reasonably incurred by Traineasy arising from the Customer Default.

7. **Access and security**

- 7.1 Upon reasonable notice and subject to the remainder of this clause 7, the Customer shall provide Traineasy and Traineasy's Personnel with access to such Customer IT Systems as may be required for the purpose of providing the Services.
- 7.2 Traineasy shall procure that all Traineasy Personnel requiring access to Customer IT Systems use reasonable endeavours to comply with all reasonable instructions given by the Customer orally or in writing from time to time.

8. Charges and payment

- 8.1 The Customer shall pay the Charges in accordance with this clause and the Order Form.
- 8.2 Traineasy shall submit invoices upon receiving a Customer Order or at the intervals set out in the Order Form.
- 8.3 The Customer shall have ten (10) Business Days in which to raise a dispute with an invoice in accordance with clause 8.5 otherwise the invoice shall be deemed to have been approved.
- 8.4 Following the Initial Term, the relevant Service and/or Third Party Service shall automatically renew for successive periods of twelve (12) months (each a "**Renewal Term**"), unless either party provides no less than seventy (70) days written notice of its intention to terminate prior to the end of the Initial Term or the relevant Renewal Term. Prior to the commencement of any Renewal Term, Traineasy reserves the right to change the Charges. In the event of any changes to the Charges, Traineasy shall provide the Customer with written notice no later than eight five days (85) days before the end of the Initial Term or Renewal Term. If the changes to the Charges are not acceptable to the Customer, the Customer shall have the right to terminate the Agreement by written notice to Traineasy no later than seventy (70) days before the end of the Initial Term or Renewal Term. The Customer shall otherwise be deemed to have accepted the changes to the Charges and such changes shall apply to the relevant Services and/or Third Party Services for the relevant Renewal Term. The Customer may not submit a termination notice for the relevant Service and/or Third Party Service within the first ninety (90) days following the start of the Initial Term or Renewal Term.
- 8.5 If the Customer has a bona fide dispute with the whole or any part of an invoice, it shall advise Traineasy accordingly in writing. The Customer shall provide details of the invoice and the amounts in dispute and if Traineasy agrees, it shall re-submit the invoice within 10 Business Days of receiving the Customer's dispute notice. If the parties have not resolved the dispute within 30 days of the Customer giving notice to Traineasy, the dispute shall be resolved in accordance with clause 17. Where only part of an invoice is disputed, the Customer shall pay the undisputed amount on the due.
- 8.6 If the Customer fails to make any payment due to Traineasy by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of two (2)% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. In relation to payments disputed in good faith, interest under this clause is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.
- 8.7 The Customer shall pay all amounts due under this Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by Applicable Law). Traineasy may at any time, without limiting any other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Traineasy to the Customer.

9. IPRs

- 9.1 Unless otherwise agreed in writing and subject to 9.2 and 9.3:
- 9.1.1 the Customer shall not acquire any right, title or interest in or to the IPRs of

Traineasy, its licensors or any Third Party Vendor, including:

- 9.1.1.1 the IPR relating to the Third Party Software (including any improvements, updates or upgrades); and
- 9.1.1.2 Traineasy's Background IPR (including any enhancements, improvements, updates or upgrades); and
- 9.1.1.3 any Service Specific IPR (including any enhancements, improvements, updates or upgrades).

9.1.2 Traineasy shall not acquire any right, title or interest or to the IPRs of the Customer or its licensors, including:

- 9.1.2.1 the Customer's Background IPR; and
- 9.1.2.2 the IPRs relating to the Customer Data.

9.2 To the extent necessary for the Customer to receive the Services and to use and exploit Customer Data in accordance with this Agreement, Traineasy grants the Customer a non-exclusive, non-transferable, revocable licence to use Traineasy's Background IPR and any Service Specific IPRs ("**Traineasy Licence**"). For the avoidance of doubt, this Traineasy Licence does not grant the Customer any licence to use the Third Party Software. Such licence shall be set out in the Additional Product Terms.

9.3 The Customer hereby grants Traineasy a royalty-free, non-exclusive, global licence to use (including the right to grant sub-licences to its subcontractors):

- 9.3.1 the Customer Data; and
- 9.3.2 the Customer's Background IPRs,
(together, the "Customer Licensed IPR")

to the extent necessary to enable Traineasy to provide the Services and to fulfil its obligations under this Agreement.

9.4 Subject to clauses 9.5 and 9.6, Traineasy shall indemnify the Customer against the damages awarded or the sum of any settlement amounts agreed in respect of any claim against the Customer as a result of or in connection with any claim made by a third party ("**Customer Third Party Claim**") that the provision of the Services or receipt or use thereof by the Customer infringes the IPRs of a third party.

9.5 Clause 9.4 shall not apply where the Customer Third Party Claim in question is attributable to:

- 9.5.1 the Third Party Software and/or Third Party Services;
- 9.5.2 any use of the Services otherwise than strictly in accordance with the provisions of this Agreement;
- 9.5.3 the Customer Data; and/or
- 9.5.4 the Customer's Background IPR;

9.6 Clause 9.4 is subject to the Customer having complied with the following:

- 9.6.1 If any Customer Third Party Claim is made, or there is any notification of an intention by a third party to make a Customer Third Party Claim, the Customer shall:

- 9.6.1.1 give written notice of the Customer Third Party Claim to Traineasy as soon as reasonably practicable;
 - 9.6.1.2 not make any admission of Liability in relation to the Customer Third Party Claim without the prior written consent of Traineasy;
 - 9.6.1.3 at the request and expense of Traineasy, allow Traineasy to conduct the Customer's defence of the Customer Third Party Claim including settlement; and
 - 9.6.1.4 at the expense of Traineasy, co-operate and assist to a reasonable extent with Traineasy' defence of the Customer Third Party Claim.
- 9.7 Subject to clause 9.8, the Customer shall indemnify Traineasy against all Losses incurred or suffered, however arising, by Traineasy as a result of or in connection with any claim made by a third party ("**Traineasy Third Party Claim**") for:
 - 9.7.1 infringement of IPRs or otherwise, where such an Traineasy Third Party Claim arises due to the Customer's use of the Services in breach of this Agreement; and
 - 9.7.2 infringement of a third party's IPRs arising out of or in connection with the use by Traineasy of any of the Customer Materials or the Customer's branding in connection with the Services.
- 9.8 Clause 9.7 is subject to the following:
 - 9.8.1 If any Traineasy Third Party Claim is made, or there is any notification of an intention by a third party to make an Traineasy Third Party Claim, Traineasy shall:
 - 9.8.1.1 give written notice of the Traineasy Third Party Claim to the Customer as soon as reasonably practicable;
 - 9.8.1.2 not make any admission of Liability in relation to the Traineasy Third Party Claim without the Customer's prior written consent;
 - 9.8.1.3 at the Customer's request and expense, allow the Customer to conduct Traineasy defence of the Traineasy Third Party Claim including settlement; and
 - 9.8.1.4 at the Customer's expense, co-operate and assist to a reasonable extent with the Customer's defence of the Traineasy Third Party Claim.

10. **Liability**

- 10.1 Neither party limits its Liability for:
 - 10.1.1 death or personal injury caused by its negligence or that of its employees, agents or sub-contractors;
 - 10.1.2 fraud or fraudulent misrepresentation by it or its employees; or
 - 10.1.3 any other act or omission, Liability for which may not be limited under Applicable Law.
- 10.2 Subject to clause 10.1 Traineasy shall under no circumstances whatever be Liable to the Customer, for:
 - 10.2.1 any loss of profits, anticipated profits, business, reputation or goodwill;
 - 10.2.2 any loss or corruption of data or information;

- 10.2.3 loss of anticipated savings or wasted expenditure;
- 10.2.4 any loss or Liability under or in relation to any other contract;

(in each case whether direct or indirect), and/or
- 10.2.5 any indirect, special, consequential or pure economic loss or damage.

10.3 Subject to clause 10.1, Traineasy's aggregate Liability in connection with this Agreement for all Losses in connection with this Agreement, shall be one hundred and twenty five percent (125%) of the Charges paid in the Year in which the first act or omission giving rise to the Liability occurs.

11. Assignment and subcontracting

- 11.1 Traineasy may at any time assign, transfer, mortgage, charge, declare a trust over, subcontract, delegate or deal in any other manner with any or all of its rights or obligations under this Agreement without the Customer's consent.
- 11.2 The Customer shall not assign, transfer, mortgage, charge, declare a trust over, subcontract, delegate or deal in any other manner with any or all of its rights or obligations under this Agreement without Traineasy's written consent.

12. Confidentiality

- 12.1 Subject to clause 12.2, each party to this Agreement (the **Recipient**) shall:
 - 12.1.1 use the other party's (the **Disclosing Party's**) Confidential Information solely for the performance of this Agreement; and
 - 12.1.2 keep the Disclosing Party's Confidential Information strictly confidential and not, without the Disclosing Party's prior written consent, disclose it to any other person.
- 12.2 The Recipient may disclose the Disclosing Party's Confidential Information:
 - 12.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Recipient's rights or carrying out its obligations under or in connection with this Agreement and the Recipient shall ensure that such persons comply with this clause 12;
 - 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; and
 - 12.2.3 if such information is public knowledge or already known to the Recipient at the time of disclosure or subsequently becomes public knowledge other than by breach of any duty of confidentiality (contractual or otherwise).

13. Data Protection

- 13.1 The Customer acknowledges that any Personal Data collected by Traineasy pursuant to Services and/or products provided by Traineasy shall be collected in accordance with Traineasy's privacy policy at www.traineasy.com/privacy-policy ("**Traineasy's Privacy Policy**").
- 13.2 The Customer also acknowledges and agrees that where Traineasy is procuring and facilitating the grant of a licence from the relevant Third Party Vendor for the Customer to use and access the Third Party Software, Traineasy will provide such Third Party Vendor with the relevant Customer's Personal Data for the purpose of the Third Party

Vendor providing the Third Party Service but that any processing of personal data by the relevant Third Party Vendor shall be carried out pursuant to the relevant Third Party Vendor's privacy policy (a link to which is in the Additional Product Terms).

- 13.3 The parties acknowledge and agree that for the purposes of this Agreement: (i) the Customer is the Controller and Traineasy is a Processor in respect of all Customer Personal Data Processed pursuant to this Agreement; and (ii) any relevant Third Party Vendors are sub-processors of Customer Personal Data Processed pursuant to this Agreement.
- 13.4 The Customer shall comply with its obligations under Data Protection Laws in respect of all Personal Data Processed pursuant to this Agreement. The Customer acknowledges that Traineasy is not responsible for determining the requirements of all laws applicable to the Customer's business or that Traineasy's provision of the Services will meet the requirements of such laws. The Customer will ensure that Traineasy's Processing of Customer Personal Data, when done in accordance with the Customer's instructions, will not cause Traineasy to violate any applicable law, regulation, or rule, including without limitation Data Protection Laws.
- 13.5 The Customer warrants and represents that:
- 13.5.1 all Personal Data which it transmits to Traineasy and relevant Third Party Vendors is transmitted in accordance with Applicable Laws; and
- 13.5.2 it has and shall maintain throughout the term of this Agreement all appropriate, lawful bases to use such Personal Data in accordance with this Agreement, including ensuring the provision of Traineasy's Privacy Policy and/or any relevant Third Party Vendor privacy policy to any relevant Data Subjects covering the Processing of such Personal Data by Traineasy and/or any relevant Third Party Vendor pursuant to this Agreement.
- 13.6 Traineasy shall only Process Personal Data for the purpose of performing the Data Processing Services on reasonable written instructions that the Customer may give to Traineasy from time to time concerning such Processing. The Customer shall ensure that any such instructions comply with all Applicable Laws. Traineasy shall notify the Customer if, in Traineasy's opinion, any instruction given by or on behalf of the Customer breaches Data Protection Laws and may refuse to comply with any such instruction.
- 13.7 Notwithstanding any provision to the contrary within this clause 13, Traineasy may take any steps that Traineasy (acting reasonably and in good faith) determines are necessary in order for it to comply with Data Protection Laws. This shall include Traineasy having the right to notify the ICO and any relevant Supervisory Authority of any circumstance that has arisen in relation to the Processing of Personal Data under this Agreement to the extent that Traineasy (acting reasonably and in good faith) believes that this is necessary in order to comply with Data Protection Laws.

Security

- 13.8 Traineasy shall maintain appropriate technical and organisational security measures in accordance with Article 32 of the UK GDPR,
- 13.9 Traineasy shall ensure that the measures to be taken pursuant to clause 13.8 are appropriate having regard to:
- 13.9.1 the nature of the Personal Data and the scope, context and purposes of the Processing and the likelihood and severity of the risks to Data Subjects that are presented by the Processing of such Personal Data, in particular from

accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise Processed; and

13.9.2 the state of technological development and the cost of implementing such measures.

Record-Keeping & Audits

13.10 Traineasy shall:

13.10.1 maintain a record of its Processing activities which relate to this Agreement as required by Article 30(2) of the UK GDPR and make such record available upon request to the Customer, and the ICO; and

13.10.2 at any time upon request, and in any event upon termination or expiry of this Agreement, (unless the Customer agrees otherwise in writing in each case) deliver up all Personal Data Processed pursuant to this Agreement.

13.11 Following such delivery up and in the event of termination or expiry of this Agreement Traineasy shall promptly and securely delete or destroy all such Personal Data except for any Personal Data:

13.11.1 which is necessary to enable Traineasy to comply with any continuing obligations that Traineasy may have following termination or expiry of this Agreement; or

13.11.2 which Data Protection Laws require to be stored.

13.12 Each party shall provide the other with such information as such other party reasonably requests from time to time to enable such other party to satisfy itself that the party providing the information is complying with its obligations under this clause 13.

Data Transfers

13.13 Traineasy may cause or allow Personal Data to be transferred to and/or otherwise Processed in a Non-adequate Country, provided that such transfer or Processing complies with Data Protection Law.

13.14 The Customer acknowledges and agrees that Traineasy shall be entitled to use sub-processors to Process Personal Data on Traineasy's behalf and each of Traineasy's Third Party Vendors shall be entitled to use its own sub-processors to Process Customer Personal Data. A list of sub-processors is available on request.

13.15 Traineasy or its relevant Third Party Vendor where applicable shall have entered into and will maintain a written agreement with each of its sub-processors containing data protection obligations not less protective than those in these Terms and Conditions with respect to the protection of Customer Personal Data to the extent applicable to the nature of the services provided by such sub-processor. Traineasy shall be liable for all acts and omissions of such sub-processors to the same extent that Traineasy would be liable if performing the services of each sub-processor directly under the terms of these Terms and Conditions.

Data Subject Rights

13.16 Traineasy shall, to the extent reasonably practicable, provide the Customer at the Customer's expense with such assistance as the Customer reasonably requests in

order to comply with its obligations and fulfil Data Subjects' rights under Data Protection Laws, including:

13.16.1 responding to requests or queries from Data Subjects in respect of their Personal Data (including the provision of Portable Copies);

13.16.2 cooperating with a legal action in connection with the Personal Data or an investigation in connection with the Personal Data by a regulatory body; or

13.16.3 restoring access to and/or otherwise safeguarding the Personal Data,

within any reasonable timescales agreed with the Customer.

Personal Data Breach Notification

- 13.17 Traineasy shall notify the Customer without undue delay if Traineasy becomes aware of a Personal Data Breach which relates to the processing of Personal Data carried out by Traineasy pursuant to this Agreement.

Costs

- 13.18 The Customer shall reimburse Traineasy for all reasonable costs that Traineasy incurs in complying with clauses 13.16 and 13.20.

Controllers

- 13.19 To the extent that both Traineasy and the Customer are Controllers in relation to any Personal Data Processed in connection with this Agreement, then both parties shall perform their respective duties under Data Protection Laws and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties, including mutual cooperation in respect of providing a Privacy Notice and dealing with complaints.

Miscellaneous

- 13.20 Traineasy shall at the Customer's expense provide reasonable assistance, as requested by the Customer from time to time, in undertaking any data protection impact assessments and/or consultation with the ICO and/or a relevant Supervisory Authority that the Customer may reasonably undertake pursuant to Article 35 and/or 36 (as applicable) of the UK General Data Protection Regulation.
- 13.21 Traineasy shall ensure that its personnel, to the extent that they are involved in the Processing of Personal Data in connection with this Agreement, shall be subject to appropriate binding obligations to protect the confidentiality of such Personal Data.
- 13.22 Traineasy's obligations under this clause 13 exclude any Personal Data relating to its personnel engaged in the performance of Traineasy's obligations under this Agreement generated by Traineasy solely for the purposes of its internal human resources procedures and records.

14. Term and termination

- 14.1 This Agreement shall begin on the Commencement Date. Unless otherwise agreed in writing, each Service shall continue for the Initial Term until the later of: (a) the completion of all of the relevant Service; or (b) the expiry or termination of the Initial Term. Following the Initial Term, the relevant Service shall automatically renew for successive periods of twelve (12) months (each a "**Renewal Term**"), unless either

party provides no less than seventy (70) days written notice of its intention to terminate prior to the end of the Initial Term or the relevant Renewal Term. The Customer may not submit a termination notice for the relevant Service and/or Third Party Service within the first ninety (90) days following the start of the Initial Term or Renewal Term.

14.2 Without limiting its other rights or remedies, either party may terminate this Agreement with immediate effect by giving written notice to the other party if the other party:

14.2.1 commits a material breach of any term of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified in writing to do so;

14.2.2 is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, or takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application, the entering into of a board resolution or the giving of any notice) by it or by any other person in respect of any of these circumstances (an **"Insolvency Event"**);

14.2.3 suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

14.2.4 Without limiting its other rights or remedies, Traineasy may:

14.2.4.1 terminate this Agreement with immediate effect by giving written notice to the Customer if:

(a) the relevant Third Party Vendor terminates its agreement with Traineasy for the resale of the relevant Third Party Software;

(b) the Customer fails to pay any amount due under this Agreement on the due date for payment and fails to pay all outstanding amounts within thirty (30) days after being given written notice to do so.

14.2.4.2 suspend provision of the Services under this Agreement if Traineasy reasonably believes that the Customer is about to become subject to an Insolvency Event, or if the Customer fails to pay any amount due to Traineasy on the due date for payment until the Customer makes such payment.

14.3 Unless otherwise agreed in writing, if the Customer terminates this Agreement under this clause 14 the Customer shall not be entitled to a refund of any Charges.

15. **Consequences of termination**

Upon expiry or termination of this Agreement for any reason:

15.1 the Customer shall immediately pay to Traineasy all Traineasy's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Traineasy may submit an invoice, which the Customer shall pay immediately on receipt;

15.2 the Customer shall immediately stop using the Services;

- 15.2.1 the Customer shall return any Deliverables which have not been fully paid for. If the Customer fails to do so, Traineasy may enter the Customer Premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose;
- 15.3 each party shall promptly return or (at the other party's option) destroy all the other party's Confidential Information (which includes deletion of copies of software, owned by Traineasy or its licensors, from laptops or other equipment of the Customer) in its possession or control. Where such Confidential Information is stored electronically, each party agrees to destroy such information to the extent possible;
- 15.4 the parties' rights and remedies that have accrued as at termination shall be unaffected; and
- 15.5 clauses that expressly or by implication survive termination shall continue in full force and effect including clauses 8 (Charges and payment), 10 (Liability), 12 (Confidentiality), 13 (Data Protection), 15 (Consequences of Termination), 17 (Dispute Resolution), 18 (Notices), and 19.8 (Governing law and jurisdiction).

16. **Force majeure**

- 16.1 If a party (an "**Affected Party**") is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event, the Affected Party shall not be in breach of contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 16.2 A "**Force Majeure Event**" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure or interruption of energy sources, other utility service or transport network, acts of God, war, threat of or preparation for war, armed conflict, terrorism, riot, civil commotion, interference by civil or military authorities, sanctions, embargo, export or import restriction, quota or prohibition, breaking off of diplomatic relations, national or international calamity, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosion, collapse of building structures, fire, flood, drought, storm, earthquake, volcanic eruption, loss at sea, epidemic, pandemic, illness or sickness of a trainer, or similar events, natural disasters or extreme adverse weather clauses, or default of suppliers or subcontractors.
- 16.3 If the period of delay or non-performance continues for (three consecutive (3) months the party not affected may terminate this Agreement by giving thirty (30) Business Days' written notice to the Affected Party.

17. **Dispute resolution**

- 17.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (a "**Dispute**") then the parties shall follow the procedure set out in this clause:
- 17.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (a "**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the parties'

Representatives specified in the Order Form ("**Dispute Representatives**") shall attempt in good faith to resolve the Dispute;

17.1.2 if the Dispute Representatives are unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (an "**ADR notice**") to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than thirty (30) days after the date of the ADR notice.

17.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 19.6 which clause shall apply at all times.

18. Notices

18.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:

18.1.1 delivered by hand or by pre-paid first-class post or by a signed-for next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

18.1.2 sent by email to legal@Traineasylearning.com.

18.2 Any notice or communication shall be deemed to have been received:

18.2.1 if delivered by hand, on signature of a delivery receipt or, if not signed for, at the time the notice is left at the correct address;

18.2.2 if sent by pre-paid first-class post, at 09:00 on the second Business Day after posting; and

18.2.3 if sent by a signed-for next working day delivery service, at the time recorded by the delivery service; and

18.2.4 if sent by email, at 09:00 on the next Business Day after transmission.

18.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19. General

19.1 Unless the Customer notifies otherwise in writing, Traineasy may use the Customer's name as a reference or in any advertising or promotional materials, press release, tender, proposal, speech, article or other similar material in accordance with the Customer's instructions (if any) from time to time.

19.2 No amendment to or modification of this Agreement is effective unless it is in writing, identified as an amendment to or modification of this Agreement and signed by an authorised representative of each party. Notwithstanding the foregoing, Traineasy reserves the right, in its sole discretion, to make changes to the Services where it:

19.2.1 is instructed to do so by a Third Party Vendor; or

19.2.2 deems necessary or useful to:

19.2.2.1 maintain or enhance the quality or delivery of Services to its customers;

19.2.2.2 maintain or enhance the competitive strength of or market for the Services;

19.2.2.3 improve the Services' cost efficiency or performance; or

19.2.2.4 to comply with Applicable Law, provided that no such changes have the effect of materially degrading the functionality of the Services.

19.3 This Agreement is personal to the parties and no third parties shall be considered beneficiaries for any purposes, under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

19.4 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of or prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19.5 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Traineasy which is not set out in this Agreement.

19.6 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement.

19.7 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute a single agreement.

19.8 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England. The Customer irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit Traineasy's right to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdictions.

ADDITIONAL PRODUCT TERMS - APPENDIX – ARTICULATE 360

"Authorised Users"	means the Customer Personnel authorised by the Customer to use CenarioVR. A "Seat" is one licence for one Authorised User. The number of "Seats" purchased is set out in the Order Form;
"Customer Personal Data"	means the personal data collected and processed in the Service, as further described in ELB Learning's privacy policy;
"Data Processing Purpose"	means the data processing purpose as further described in ELB Learning's privacy policy;
"General Terms of Service"	means the CenarioVR General Terms of Service available at this link https://www.elblearning.com/legal/subscription-and-license-agreement
"Service"	means the CenarioVR service, which enables Authorised Users to create interactive online training for learning management systems;
"Software"	means all software within or comprising the Service, and/or distributed by ELB Learning, to enable the Customer's and its Authorised Users' use of the Service; and
"Support"	means the ELB Learning maintenance and support services.

1. **Licence to use CenarioVR**

- 1.1 The Customer's licence to use CenarioVR Personal is non-exclusive, non-transferable, non-sublicensable, revocable and subject to the limits on time, number of Seats and price agreed in the Terms and Conditions and/or Order Form.
- 1.2 The Customer's licence to use CenarioVR is non-exclusive, transferable up to two (2) times per Seat per 12 month term, non-sublicensable, revocable and subject to the limits on time, number of Seats and price agreed in the Terms and Conditions and/or Order Form.
- 1.3 The Customer's and its Authorised Users' use of CenarioVR must comply with the General Terms of Service. The Customer shall make its Authorised Users aware of the terms of the General Terms of Service.
- 1.4 The Customer shall not decompile, reverse engineer, disassemble, translate, make a derivative work, modify or adapt the Software. The Customer must not sell, sub-license, rent, lease or otherwise provide rights to the Software and/or Service free or for value.

2. **Co-terminous product**

- 2.1 CenarioVR is licensed on the basis of co-terminous Seat upgrades. For example, this means that if the Customer buys fifty Seats at the Commencement Date, and four months later it buys another ten Seats, Traineasy will charge the ten Seats for the remaining eight months of the Year, such that the second batch of Seats purchased

becomes co-terminous with the first batch of Seats purchased (i.e. all Seats will end together on the same date).

- 2.2 The Customer may upgrade (i.e. increase) its number of Seats during a Year, but cannot downgrade (i.e. decrease) its number of Seats during a Year.
- 2.3 Where the Customer increases its number of Seats, Traineasy will calculate the charges pro-rata on a monthly basis over the remaining Term and the Customer will be charged accordingly at its new level of Seats.

3. **Data protection terms applicable to use of CenarioVR**

- 3.1 The privacy policy applicable to the Service is here:
<https://www.elblearning.com/legal/privacy-policy>
- 3.2 The cookies policy applicable to the Service is here:
<https://www.elblearning.com/legal/cookie-policy>
- 3.3 The CenarioVR Security Program Overview is here: <https://5108583.fs1.hubspotusercontent-na1.net/hubfs/5108583/Legal%20Notices%20%E2%80%93%20DO%20NOT%20DELETE/Security%20Program%20Overview%20PDFs/CenarioVR%20Security%20Program%20Overview%20040123%20Final.pdf>

4. **Support applicable to CenarioVR**

- 4.1 Customers shall be entitled to a basic CenarioVR support package details of which can be found at <https://knowledgebase.elblearning.com>

