

**FLORENCE ACADEMY
&
FLORENCE ROTA**

TERMS AND CONDITIONS OF SERVICE

Last Updated: 12 February 2024

These terms and conditions are intended to apply to access to and use of either or both products available on our website and our mobile apps; (i) Florence Academy; and (ii) Florence Rota.

Florence Academy is a learning portal and career development platform for health and social care. Florence Academy provides both online and offline solutions designed to offer health and social care workers access to the best continuing professional development and educational materials, with access to a range of courses and documentation.

Florence Rota refers to bespoke software applications and a platform developed by us and made available on a subscription basis for the purpose of the facilitating the administration of staff rotas via a convenient and easy to use software application. In addition, when using Florence Rota you may be able to access agency workers via the platform that come from Florence Flex or other agencies. By using Florence Rota you are under no obligation to do this but if you do then additional contractual terms will be applicable as stated below.

These terms and conditions (including any Schedules or Appendices) apply to the services provided by us, Digital Staff Solutions Limited (trading as "Florence Academy" or "Florence Rota" as applicable), in which users access and make use of the services referred to herein. Florence Academy and Florence Rota are both referred to as the "Supplier" where relevant for the purposes of these terms and conditions, further details of which can be found in the "Definitions and Interpretation" section below.

Please note that these terms and conditions do not apply to the separate platform services provided by our sister company, Florence Staffing Limited, which match health and social care professionals with employment opportunities, and are available at <https://www.florence.co.uk/legal>.

1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Active User	means any User who is not a Paused User or a Deactivated User;
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Affiliate	means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
Applicable Law	means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national or international in any relevant jurisdiction;
Bribery Laws	means the Bribery Act 2010 and all Applicable Laws in connection with bribery or anti-corruption;
Business Day	means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;
Conditions	means the Supplier's terms and conditions of supply set out in this document;
Confidential Information	means any commercial, financial or technical information, information relating to the Services, plans, course content, course structure, training techniques, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;
Contract	means the agreement between the Supplier and the Customer for the supply and purchase of Services incorporating these Conditions and including any other terms incorporated by reference of agreed between the Supplier and the Customer in writing;
Control	means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and Controls, Controlled and under common Control shall be construed accordingly;
Controller	shall have the meaning given to it in applicable Data Protection Laws from time to time;
Customer	means the healthcare provider who has agreed to purchase the Services from the Supplier in accordance with the terms and conditions set forth herein;

Data Protection Laws	<p>means, as binding on either party or the Services:</p> <ul style="list-style-type: none"> (a) the GDPR; (b) the UK GDPR; (c) the Data Protection Act 2018; (d) the Privacy and Electronic Communications (EC Directive) Regulations 2003, SI 2003/2426 and any laws or regulations implementing such directive; (e) the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019; and (f) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;
Data Protection Supervisory Authority	means any regulator, authority or body responsible for administering Data Protection Laws;
Data Subject	shall have the meaning given to it in applicable Data Protection Laws from time to time;
Deactivated User	means any User that is deactivated from the Platform which means they are permanently removed from the Platform
Documentation	means any course materials, downloads, descriptions, instructions, manuals, literature, technical details or other related materials supplied in connection with the Services;
Force Majeure	means an event or sequence of events beyond a party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances

GDPR

resulting in the Customer's inability to pay;

means the General Data Protection Regulation,
Regulation (EU) 2016/679

;

Intellectual Property Rights

means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in software, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case:

- (a) whether registered or not;
- (b) including any applications to protect or register such rights;
- (c) including all renewals and extensions of such rights or applications;
- (d) whether vested, contingent or future;
- (e) to which the relevant party is or may be entitled, and
- (f) in whichever part of the world existing;

International Organisation

shall have the meaning given to it in applicable Data Protection Laws from time to time;

IPR Claim

has the meaning given in clause 14.1;

Location

means the physical address or addresses for performance of the Services, if relevant, as agreed between the Supplier and the Customer in writing;

Modern Slavery Policy

means, if applicable, the Supplier's anti-slavery and human trafficking policy in force and notified to the Customer from time to time;

MSA Offence

has the meaning given in clause 10.2.1;

Paused User

means a User whose access to receive Services and/or Documentation through the Platform has been suspended for any reason by the Customer, usually on a temporary basis;

Personal Data

shall have the meaning given to it in applicable Data Protection Laws from time to time;

Personal Data Breach

shall have the meaning given to it in applicable Data Protection Laws from time to time;

Platform	means the web based platform available at academy.florence.co.uk or rota.florence.co.uk, through which the Services will be provided by the Supplier;
Price	has the meaning set out in clause 4.1;
processing	has the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including process , processing , processed , and processes shall be construed accordingly);
Processor	shall have the meaning given to it in applicable Data Protection Laws from time to time;
Protected Data	means Personal Data received from or on behalf of the Customer in connection with the performance of the Supplier's obligations under the Contract;
Services	means, (i) in the case of Florence Academy, the e-learning and in-person training courses provided by or on behalf of the Supplier; and (ii) in the case of Florence Rota, the staffing rota management platform, each to be performed by the Supplier for the Customer in accordance with the Contract, together with any ancillary services available on the Platform and through the Documentation;
Sub-Processor	means any agent, sub-contractor or other third party (excluding its employees) engaged by the Supplier for carrying out any processing activities on behalf of the Customer in respect of the Protected Data;
Supplier	means Digital Staff Solutions Ltd, a company incorporated and registered in England & Wales with company number 10434349 whose registered address is at 2nd Floor, 32-38 Leman Street, London, England, E1 8EW;
Supplier Personnel	means all employees, officers, staff, other workers, agents and consultants of the Supplier, its Affiliates and any of their sub-contractors who are engaged in the performance of the Services from time to time; and
User	means any staff member, worker, employee or officer of the Customer, without limitation, who

may be granted access to the Platform by the Customer;

UK GDPR

means the General Data Protection Regulation, Regulation (EU) 2016/679 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);

VAT

means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Services.

1.2 In these Conditions, unless the context requires otherwise:

1.2.1 any clause, schedule or other headings in these Conditions is included for convenience only and shall have no effect on the interpretation of the Conditions;

1.2.2 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;

1.2.3 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;

1.2.4 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;

1.2.5 a reference to a gender includes each other gender;

1.2.6 words in the singular include the plural and vice versa;

1.2.7 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;

1.2.8 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form (including email);

1.2.9 a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, 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 equivalent in that jurisdiction.

2 Application of these conditions

2.1 By accessing or using the Platform in any manner the Customer is deemed to have accepted these Conditions in full without amendment. These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply.

2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the

Contract except to the extent that the Supplier otherwise agrees in writing.

- 2.3 We may update and change these Conditions from time to time and we recommend the Customer to check regularly for updates. We will try to give the Customer reasonable notice of any major changes and by continuing to use the Services the Customer will have been deemed to accept any changes. Updates will be binding regardless of whether notice has been given or received.
- 2.4 In the event that the Customer has agreed to any fixed contract period for receipt of the Services, at the end of any such contract period these Conditions shall renew automatically for the same period and on the same terms unless the Customer gives written notice of the Customer's intention to terminate these Conditions. Such written notice must be delivered to the Supplier no less than 60 days in advance of the then current contract period. In all other cases (and always subject to any other termination provisions set forth herein) the Customer shall be required to give 6 months advance written notice in order to terminate these Conditions.

2.5 Marketing and other promotional material relating to the Services are illustrative only and do not form part of these Conditions.

2.6 These Conditions shall incorporate the Supplier's Acceptable Use Policy.

3 Signing up to and using the Platform

3.1 The Customer must activate their account on the Platform before any Services can be accessed by the Customer or any User. The Customer may activate an account at academy.florence.co.uk or rota.florence.co.uk dependent on which service the Customer wishes to access.

3.2 The Customer shall be solely responsible for adding Users, although the Supplier may help with bulk uploads, to the Platform and the Customer represents and warrants that the Customer has obtained each Users consent in compliance with all Data Protection Laws.

3.3 Once activated, the Customer and Users can use the Platform to search for, assign and carry out training and tasks relevant to their own professional development.

3.4 Subject to continued compliance with the Contract, the Customer and Users shall have access to a messaging area on the Platform. The Supplier does not routinely monitor any messages sent and received on the Platform and will only use the messaging area to send reminders or help guidance relevant to each User's use of the Platform. The Supplier shall at no time use the messaging service on the Platform for marketing.

3.5 All Users will be Active Users unless the Customer notifies the Supplier that any user is a Paused User or a Deactivated User. The Customer can do this within the products.

3.6 The Platform is compatible with the majority of modern devices and modern operating systems and, subject to the following, the Customer shall provide any hardware or software necessary for the Platform to function.

3.7 In the event that the Customer subscribes to the premium package of the Florence Rota Platform, the Supplier shall, at the Customer's request, provide the Customer with a tablet device on the following terms:

3.7.1 where the Customer agrees to a minimum contractual term contract of one year and pays in advance for one year or more, together with a minimum annual spend that shall be notified to the Customer in writing from time to time, the tablet will be provided at no additional cost;

3.7.2 in all other cases or if the provisions of clause 3.7.1 are not adhered to, the tablet will be subject to a charge of the full retail value plus VAT;

3.7.3 subject to fair and reasonable use, should any tablet provided for the Florence Rota Platform break within two years of the Customer's receipt, the Supplier will provide a replacement at no additional cost; and

3.7.4 at the end of every two-year contract period, the Customer shall be eligible to receive a replacement tablet on the same terms as set forth in clauses 3.7.1 to 3.7.3 above.

4 Price

- 4.1 The price for the Services shall be calculated in accordance with the Supplier's scale of charges in force from time to time (the **Price**). The Supplier reserves the right to determine which elements of the Services are included within the Price as standard, and which elements of the Services constitute premium offerings for which additional fees may be levied. In the event that the Customer is affected by any exercise of the Supplier's discretion in this regard, any changes to the Price shall take effect one month following the date that the Supplier notified the Customer of the changes.
- 4.2 The Price for the Florence Academy Platform is currently calculated by reference to the highest number of Active Users registered on the Platform by the Customer in any billing period, subject always to any additional course content services that the Customer may require. The customer will always be charged for at least 90% of the users quoted. The current charges are available separately from the Supplier.
- 4.3 The Price for the Florence Rota Platform is subject to varying tiers depending on the service purchased. Special pricing terms may be available on request.
- 4.4 The Customer shall be solely liable for notifying the Supplier through the Platform in the event that any Users become Paused Users or Deactivated Users. Any failure by the Customer to provide such notification to the Supplier shall result in the Price being charged in accordance with these Conditions.
- 4.5 The Price and access to the Platform shall be subject to fair usage restrictions in order to protect the reasonable commercial interests of the Supplier. Fair usage shall be determined in good faith by the Supplier and notified to the Customer from time to time. In determining fair usage, the Supplier shall have regard for the number of Active Users, the number of days or months that any User has been registered as a Paused User or a Deactivated User, and the volume of Services and Documentation received by Active Users and the activity levels over any relevant time frame. Any determination of fair use may result in an increase in the Price or reasonable restrictions placed on any one or more Users at the discretion of the Supplier in the event that the Customer is determined to be using the Platform in a manner that may cause commercial losses to the Supplier. Florence reserves the right to charge customers the minimum fee for the number of users quoted at sign up/renewal.
- 4.6 The Price is exclusive of VAT (or equivalent sales tax).
- 4.7 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
- 4.8 The Supplier may increase the Price at any time by giving the Customer not less than 14 days' notice in writing.
- 4.9 Notwithstanding clause 4.8, the Supplier may increase the Price with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Supplier of supplying the relevant Services.
- 4.10 In the event that the Customer pays for a year in advance, the Supplier shall discount the Price by 18%. Any discount offered in accordance with this clause shall be subject to the provisions of clause 4.5 above.

5 Payment

- 5.1 The Supplier shall invoice the Customer for the Services on a monthly or annual basis at the option of the Customer.
- 5.2 The Customer shall pay all invoices:
 - 5.2.1 in full without deduction or set-off, in cleared funds within 14 days of the date of each invoice; and
 - 5.2.2 to the bank account nominated by the Supplier.
- 5.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
 - 5.3.1 the Supplier may, without limiting its other rights, charge interest on such sums at 4% a year above the base rate of Barclays Bank plc from time to time in force;
 - 5.3.2 suspend Users or block the Customer from using the Service; and
 - 5.3.3 levy interest on a daily basis, and apply such interest from the due date for payment until actual payment in full, whether before or after judgment.

6 Credit limit

The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

7 Performance

- 7.1 The Services shall be performed by the Supplier through the Platform and at any agreed Location on the dates agreed between the Supplier and the Customer.
- 7.2 The Supplier shall use its reasonable endeavours to meet estimated dates for performance, but any such dates are indicative only unless otherwise explicitly agreed in writing.
- 7.3 Where a Location has been agreed for the provision of any Services, the Supplier shall not be liable for any delay in or failure of performance caused by:
 - 7.3.1 the Customer's failure to make the Location available;
 - 7.3.2 the Customer's failure to prepare the Location;
 - 7.3.3 the Customer's failure to provide the Supplier with adequate instructions for performance;
 - 7.3.4 Force Majeure.

8 Warranty

- 8.1 The Supplier warrants that, at the time of performance, the Services shall:
 - 8.1.1 conform in all material respects to their description;

- 8.1.2 be free from material defects;
 - 8.1.3 be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II s 13; and
 - 8.1.4 in the case of media on which the results of the Services are supplied, be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 8.2 As the Customer's sole and exclusive remedy, the Supplier shall, at its option, remedy, re-perform or refund the Services that do not comply with clause 8.1, provided that:
- 8.2.1 the Customer serves a written notice on the Supplier not later than five Business Days from performance in the case of defects discoverable by a physical inspection, or within a reasonable period of time from performance in the case of latent defects; and
 - 8.2.2 such notice specifies that some or all of the Services do not comply with clause 8.1 and identifies in sufficient detail the nature and extent of the defects; and
 - 8.2.3 the Customer gives the Supplier a reasonable opportunity to examine the claim of the defective Services.
- 8.3 The provisions of these Conditions shall apply to any Services that are remedied or re-performed with effect from performance of the remedied or re-performed Services.
- 8.4 Except as set out in this clause 8:
- 8.4.1 the Supplier gives no warranties and makes no representations in relation to the Services; and
 - 8.4.2 shall have no liability for their failure to comply with the warranty in clause 8.1 in excess of the liability set forth in clause 8.2,
- and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

9 Anti-bribery

- 9.1 For the purposes of this clause 9 the expressions '**adequate procedures**' and '**associated with**' shall be construed in accordance with the Bribery Act 2010 and legislation or guidance published under it.
- 9.2 Each party shall comply with applicable Bribery Laws including ensuring that it has in place adequate procedures to prevent bribery and use all reasonable endeavours to ensure that:
- 9.2.1 all of that party's personnel;
 - 9.2.2 all others associated with that party; and
 - 9.2.3 all of that party's sub-contractors;
- involved in performing the Contract so comply.

- 9.3 Without limitation to clause 9.2, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and shall implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.
- 9.4 The Customer shall immediately notify the Supplier as soon as it becomes aware of a breach or possible breach by the Customer of any of the requirements in this clause 9.
- 9.5 Any breach of this clause 9 by the Customer shall be deemed a material breach of the Contract that is not remediable and shall entitle the Supplier to immediately terminate the Contract by notice under clause 20.1.1.

10 Anti-slavery

- 10.1 The Supplier shall comply with the Modern Slavery Act 2015 and, where applicable, any Modern Slavery Policy.
- 10.2 The Customer undertakes, warrants and represents that:
- 10.2.1 neither the Customer nor any of its officers, employees, agents or subcontractors has:
- (a) committed an offence under the Modern Slavery Act 2015 (an **MSA Offence**); or
 - (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - (c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- 10.2.2 it shall comply with the Modern Slavery Act 2015 and any Modern Slavery Policy; and
- 10.2.3 it has implemented due diligence procedures to ensure compliance with the Modern Slavery Act 2015 and any Modern Slavery Policy in its business and supply chain, and those of its officers, employees, agents or subcontractors, which will be made available to the Supplier on request at any time throughout the Contract.
- 10.3 The Customer shall notify the Supplier immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Customer's obligations under clause 10.2. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Customer's obligations.
- 10.4 Any breach of clause 10.2 by the Customer shall be deemed a material breach of the Contract and shall entitle the Supplier to terminate the Contract with immediate effect.

11 Indemnity and insurance

- 11.1 The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract.

11.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom or another country commonly held by prudent operators in the business of the Customer, and sufficient to cover its obligations under these Conditions, including but not limited to cyber risks and breaches of the GDPR. On request, the Customer shall supply, so far as is reasonable, evidence of the maintenance of the insurance and all of its terms from time to time applicable. The Customer shall on request assign to the Supplier the benefit of such insurance.

12 Limitation of liability

12.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 12.

12.2 Subject to clauses 12.5 and 12.6, the Supplier's total liability shall not exceed the amounts paid to the Supplier by the Customer in the 12 months preceding any claim.

12.3 Subject to clauses 12.5 and 12.6, the Supplier shall not be liable for consequential, indirect or special losses.

12.4 Subject to clauses 12.5 and 12.6, the Supplier shall not be liable for any of the following (whether direct or indirect):

12.4.1 loss of profit;

12.4.2 loss or corruption of data;

12.4.3 loss of use;

12.4.4 loss of production;

12.4.5 loss of contract;

12.4.6 loss of opportunity;

12.4.7 loss of savings, discount or rebate (whether actual or anticipated);

12.4.8 harm to reputation or loss of goodwill.

12.5 The limitations of liability set out in clauses 12.2 to 12.4 shall not apply in respect of any indemnities given by the Customer under the Contract.

12.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:

12.6.1 death or personal injury caused by negligence;

12.6.2 fraud or fraudulent misrepresentation;

12.6.3 any other losses which cannot be excluded or limited by Applicable Law;

12.6.4 any losses caused by wilful misconduct.

13 Platform content

- 13.1 As between the parties hereto, the Supplier is the owner or the licensee of all intellectual property rights in and to the Platform and the Documentation, unless any Documentation was created solely by or on behalf of the Customer in accordance with the provisions of clauses 13.11 to 13.13. Any works created, licenced, controlled or used by the Supplier are protected by copyright laws and treaties around the world. All such rights are reserved.
- 13.2 In the event that the Customer creates or commissions the creation of Documentation, any data generated from the use of such Documentation on the Platform shall be the sole property of the Supplier, who shall own all related Intellectual Property Rights in that regard.
- 13.3 The Customer and any Active User may print off any number of copies, and may download extracts, of the Documentation for personal use.
- 13.4 The Customer and any User must not modify the paper or digital copies of any Documentation, and neither the Customer nor any User has permission to use any illustrations, photographs, video or audio sequences or any graphics comprising the Platform or the Documentation, unless such Documentation has been created in accordance with the provisions of clauses 13.11 to 13.13.
- 13.5 The Customer and any User agree to acknowledge the Supplier's status (and that of any identified contributors) as the authors, owner or licensee of the Platform or the Documentation.
- 13.6 The Customer and any User must not use any part of the Platform or the Documentation for commercial purposes save for the intended use of the Platform as a learning resource for active Users. No Customer or User shall charge any third party a fee for use of the Platform.
- 13.7 If the Customer and any User prints-off, copies or downloads any part of the Platform or the Documentation in breach of these Conditions, any right to use the Platform will cease immediately and the Customer must, or must procure, the return or destruction of any copies of the Platform or the Documentation.
- 13.8 Whilst the Supplier will use reasonable endeavours to ensure that the Documentation and the Platform is accurate and up-to-date, the Supplier does not warrant the accuracy or completeness of the Documentation or the Platform which is provided "*as available*" and "*as is*" with no express or implied warranty for availability, accessibility, accuracy or completeness and without any other representations, warranties, conditions or other terms of any kind.
- 13.9 The Supplier may update and change the Platform from time to time. The Supplier will try to give the Customer reasonable notice of any major changes and by continuing to use the Platform the Customer will have been deemed to accept any changes.
- 13.10 The Supplier does not guarantee that the Platform, or any content on it, including the Documentation, will always be available or be uninterrupted. The Supplier may suspend or withdraw or restrict the availability of all or any part of the Platform for business, technical or operational reasons. The Supplier will try to give the Customer reasonable notice of any planned suspension or withdrawal of the Platform or any part of it. The Customer agrees that the Supplier will not be liable to the Customer or any User or to any third party for any unavailability, modification, suspension or withdrawal of the Platform, or any features, parts or content of the Platform, including the Documentation.

- 13.11 The Customer may be permitted to create their own content to make available to all Active Users using the functionality of the Platform by sending any such content to the Supplier in such formats as the Supplier may notify to the Customer.
- 13.12 The Customer may be permitted to create private content to be made available to a select and closed group of Active Users. Before any such permission may be granted by the Supplier, the Supplier and the Customer shall agree formal written terms including as to any additional fees payable.
- 13.13 The Supplier can prepare and develop bespoke course materials in accordance with the Customer's explicit written instructions. Such additional services shall be the subject of a separate agreement and the payment of additional fees. The Supplier's current fee for the preparation of bespoke course materials is available from the Supplier on request.

14 Intellectual property claims

- 14.1 Subject to the provisions of clause 14.5 the Supplier shall indemnify the Customer from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that performance of benefit of the Services infringes the Intellectual Property Rights of any third party (**IPR Claim**), provided that the Supplier shall have no such liability if the Customer:
 - 14.1.1 does not notify the Supplier in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;
 - 14.1.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Supplier;
 - 14.1.3 does not let the Supplier at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;
 - 14.1.4 does not take all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim;
 - 14.1.5 does not, at the Supplier's request, provide the Supplier with all reasonable assistance in relation to the IPR Claim (at the Customer's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Customer;
 - 14.1.6 uses the Services in combination with any other goods or services, which without such combination, no IPR Claim could or would have been made.
- 14.2 If any IPR Claim is made or is reasonably likely to be made, the Supplier may at its option:
 - 14.2.1 procure for the Customer the right to continue receiving the benefit of the relevant Services; or
 - 14.2.2 modify or replace the infringing part of the Services so as to avoid the infringement or alleged infringement, provided the Services remain in material conformance to their description.
- 14.3 The Supplier's obligations under clause 14.1 shall not apply to Services modified or used by the Customer other than in accordance with the Contract or the Supplier's instructions. The Customer shall indemnify the Supplier against all losses, damages, liability, costs and expenses

(including reasonable legal fees) incurred by the Supplier in connection with any claim arising from such modification or use.

14.4 The Supplier's obligations under clause 14.1 shall not apply to any part of the Documentation created by or on behalf of the Customer.

14.5 To the extent that the Customer created or commissioned the creation of any part of the Documentation, the Customer represents and warrants that it owns, controls or has licenced all Intellectual Property Rights necessary for the use of such Documentation on the Platform. The Customer shall indemnify the Supplier from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by the Supplier as a result of any action, demand or claim that any such Documentation infringes the Intellectual Property Rights of any third party.

15 Viruses

15.1 The Supplier does not guarantee that the Platform will be secure or free from bugs or viruses. The Customer agrees that we are not liable for any bugs or viruses on the Platform.

15.2 The Customer is responsible for configuring its information technology, computer programmes and platform to access the Platform. The Customer agrees to use its own virus protection software.

16 Website links on the Platform

Where the Platform contains links to other sites and resources provided by third parties, these links are provided for information only. Such links should not be interpreted as approval by the Supplier of those linked websites or information may be obtained from them. The Supplier has no control over the contents of those sites or resources. The Supplier suggests that the Customer reads the terms of use and privacy notices of such sites at the time of visiting such sites.

17 Confidentiality and announcements

17.1 The Customer shall keep confidential all Confidential Information of the Supplier and of its Affiliates and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

17.1.1 any information which was in the public domain at the date of the Contract;

17.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;

17.1.3 any information which is independently developed by the Customer without using information supplied by the Supplier or by any Affiliate of the Supplier; or

17.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract

except that the provisions of clauses 17.1.1 to 17.1.3 shall not apply to information to which clause 17.4 relates.

17.2 This clause shall remain in force for a period of five years from the date of the Contract and, if longer, three years after termination of the Contract.

- 17.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.
- 17.4 To the extent any Confidential Information is Protected Data (as defined in clause 18) such Confidential Information may be disclosed or used only to the extent such disclosure or use is in compliance with and does not conflict with any of the provisions of clause 18.1.

18 Processing of personal data

- 18.1 The parties agree that the Customer is a Controller and that the Supplier is a Processor for the purposes of processing Protected Data pursuant to the Contract. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to the Supplier in respect of Protected Data (including the terms of the Contract) shall at all times be in accordance with Data Protection Laws. Nothing in the Contract relieves the Customer of any responsibilities or liabilities under any Data Protection Laws.
- 18.2 The Supplier shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the Contract.
- 18.3 The Customer shall indemnify and keep indemnified the Supplier against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a Data Protection Supervisory Authority) arising out of or in connection with any breach by the Customer of its obligations under this clause 18.
- 18.4 The Supplier shall:
- 18.4.1 only process (and shall ensure Supplier Personnel only process) the Protected Data in accordance with the schedule and the Contract (including when making any transfer to which clause 18.9 relates), except to the extent:
- (a) that alternative processing instructions are agreed between the parties in writing; or
 - (b) otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and
- 18.4.2 without prejudice to clause 18.1, if the Supplier believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall promptly inform the Customer and be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.
- 18.5 Taking into account the state of technical development and the nature of processing, the Supplier shall implement and maintain the technical and organisational measures set out in Part B of the schedule to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.
- 18.6 The Supplier shall:
- 18.6.1 not permit any processing of Protected Data by any agent, subcontractor or other third party (except its or its Sub-Processors' own employees in the course of their

employment that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the written authorisation of the Customer;

- 18.6.2 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this clause 18 (including those relating to sufficient guarantees to implement appropriate technical and organisational measures) that is enforceable by the Supplier and ensure each such Sub-Processor complies with all such obligations;
 - 18.6.3 remain fully liable to the Customer under the Contract for all the acts and omissions of each Sub-Processor as if they were its own; and
 - 18.6.4 ensure that all natural persons authorised by the Supplier or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.
- 18.7 The Customer authorises the appointment of the Sub-Processors listed in the schedule.
- 18.8 The Supplier shall (at the Customer's cost):
- 18.8.1 assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to the Supplier; and
 - 18.8.2 taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.
- 18.9 The Supplier shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the United Kingdom or to any International Organisation without the prior written authorisation of the Customer.
- 18.10 The Supplier shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate the Supplier's compliance with the obligations placed on it under this clause 18 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of *[one]* audit request in any 12 month period under this clause 18.10).
- 18.11 On the end of the provision of the Services relating to the processing of Protected Data, at the Customer's cost and the Customer's option, the Supplier shall either return all of the Protected Data to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires the Supplier to store such Protected Data. This clause 18 shall survive termination or expiry of the Contract.

19 Force majeure

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 20 days, the party not affected may terminate the Contract by written notice to the other party.

20 Termination

20.1 The Supplier may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:

20.1.1 the Customer commits a material breach of Contract and such breach is not remediable;

20.1.2 the Customer commits a material breach of the Contract which is capable of being remedied and such breach is not remedied within 14 days of receiving written notice of such breach;

20.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after the Supplier has given notification that the payment is overdue; or

20.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.

20.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:

20.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;

20.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;

20.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;

20.2.4 becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;

20.2.5 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;

20.2.6 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;

20.2.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;

20.2.8 has a resolution passed for its winding up;

- 20.2.9 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
 - 20.2.10 suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
 - 20.2.11 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
 - 20.2.12 has a freezing order made against it;
 - 20.2.13 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 20.2.1 to 20.2.12 including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 20.3 The Supplier may terminate the Contract any time by giving not less than four weeks' notice in writing to the Customer if the Customer undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.
 - 20.4 The right of the Supplier to terminate the Contract pursuant to clause 20.2 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) where the amalgamated, reconstructed or merged party agrees to adhere to the Contract.
 - 20.5 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 20, it shall immediately notify the Supplier in writing.
 - 20.6 The Customer shall be entitled to terminate the Contract at any time on written notice to the Supplier, provided that the Customer shall not be entitled to any refunds or rebates of any kind or any amount from the Supplier in relation to any prepayments or advance payments made by the Customer.
 - 20.7 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination, including, for the avoidance of doubt, the obligation on the Customer to settle any unpaid sums due to the Supplier hereunder.

21 Notices

- 21.1 Any notice or other communication given by a party under these Conditions shall:
 - 21.1.1 be in writing and in English;
 - 21.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
 - 21.1.3 be sent to the relevant party at the address set out in the Contract
- 21.2 Notices may be given, and are deemed received:
 - 21.2.1 by hand: on receipt of a signature at the time of delivery;

- 21.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;
 - 21.2.3 by Royal Mail International Tracked & Signed post: at 9.00 am on the fourth Business Day after posting; and
 - 21.2.4 by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission; and
 - 21.2.5 by email: on receipt of a delivery receipt email from the correct address.
- 21.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 21.1 and shall be effective:
- 21.3.1 on the date specified in the notice as being the date of such change; or
 - 21.3.2 if no date is so specified, five Business Days after the notice is deemed to be received.
- 21.4 All references to time are to the local time at the place of deemed receipt.
- 21.5 This clause does not apply to notices given in legal proceedings or arbitration.

22 Cumulative remedies

The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

23 Time

Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.

24 Further assurance

The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

25 Entire agreement

- 25.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 25.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 25.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

26 Variation

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is issued by the Supplier duly signed or executed by, or on behalf of, each party.

27 Assignment

27.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, which it may withhold or delay at its absolute discretion.

27.2 Notwithstanding clause 27.1, the Customer may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Supplier prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Customer acknowledges and agrees that any act or omission of its Affiliate in relation to the Customer's rights or obligations under the Contract shall be deemed to be an act or omission of the Customer itself.

28 Set off

28.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.

28.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

29 No partnership or agency

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

30 Equitable relief

The Customer recognises that any breach or threatened breach of the Contract may cause the Supplier irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that the Supplier is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

31 Severance

31.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

31.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the

event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

32 Waiver

- 32.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 32.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.
- 32.3 A waiver of any term, provision, condition or breach of the Contract by the Supplier shall only be effective if given in writing and signed by the Supplier, and then only in the instance and for the purpose for which it is given.

33 Compliance with law

The Customer shall comply with Applicable Law and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

34 Costs and expenses

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

35 Third party rights

- 35.1 Except as expressly provided for in clause 35.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 35.2 Any Affiliate of the Supplier shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

36 Governing law

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

37 Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

THE SCHEDULE

Part A Data processing details

Processing of the Protected Data by the Supplier under the Contract shall be for the subject-matter, duration, nature and purposes and involve the types of Personal Data and categories of Data Subjects set out in this Part A of the schedule.

Subject-matter of processing:

To provide a service to the Customer, the Data Controller, for the benefit of the Customer and its employees, workers and consultants, and that involves the processing of personal data.

Duration of the processing:

The duration of the contract and any period thereafter where the Supplier is obliged to retain records for legal and regulatory purposes

Nature and purpose of the processing:

For the proper performance of the Contract

Type of Personal Data:

(i) First name; (ii) last name; (iii) email; (iv) role; and (v) work location

Categories of Data Subjects:

Employees, workers and consultants of the Customer

Specific processing instructions:

n/a

Part B Technical and organisational security measures

The Supplier shall implement and maintain the following technical and organisational security measures to protect the Protected Data:

- 1.1 In accordance with the Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Protected Data to be carried out under or in connection with the Contract, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, the Supplier shall implement appropriate technical and organisational security measures appropriate to the risk, including as appropriate those matters mentioned in Articles 32(1)(a) to 32(1)(d) (inclusive) of the GDPR (and any similar obligations under applicable Data Protection Laws).