

Business Terms & Conditions

(v3.43 03/24)



1 Definitions and Interpretation

1.1 In these Terms, the following words have the following meanings:

Authorised Users: those employees of the Purchaser who are authorised by the Purchaser to use the Product, or where the Purchaser is an individual, the Purchaser itself.

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK.

Business Hours: 09:00 to 17:00 UK time on each Business Day.

Confidential Information: information that is by its nature proprietary or confidential or is either clearly labelled as such or identified as Confidential Information in clause 12.

Credits: USP's credits that can be purchased in advance by the Purchaser and subsequently exchanged for courses within the Products.

Data Protection Legislation: the General Data Protection Regulation (EU 2016/679) the Data Protection Act 2018 and any other laws, regulations and secondary legislation relating to the protection of personal data having effect in England and Wales.

Deliverables: any content or deliverables, including bespoke content delivered under Schedule B made available to the Purchaser by USP.

Documentation: the documentation made available to the Purchaser by USP on the Platform from time to time which sets out a description of the Product and the user instructions for the Product.

Fees: means the fee for the Product set out in the order.

IP Rights: patents, patentable rights, copyright, design rights, utility models, trade marks (whether or not any of the above are registered), trade names, rights in domain names, rights in inventions, rights in data, database rights, rights in know-how and confidential information, and all other intellectual and industrial property and similar or analogous rights existing under the laws of any country and all pending applications for and right to apply for or register the same (present, future and contingent, and including all renewals, extensions, revivals and all accrued rights of action).

Order: The form that USP sends to the Purchaser for signature that sets out the commercial terms of the subscription.

Personal Data: shall have the meaning given to it in the Data Protection Legislation.

Platform: USP's platform on which its Software runs and in which Documentation and the Purchaser Platform Data is held, further details of which are set out in the Specification,

Product: the Platform, together with the online courses provided by USP to the Purchaser, including access to the Documentation, Deliverables, Purchaser Platform Data and Software.

Purchaser Data: the data inputted by the Purchaser, Authorised Users, or USP on the Purchaser's behalf for the purpose of using the Product or facilitating the Purchaser's use of the Product including any personal data relating to the Authorised Users.

Purchaser Platform Data: the data in relation to the Authorised Users and/or the Purchaser recording details of access and use of the online courses.

Software: the online software applications provided by USP within the Platform.

Specification: the specification for the Platform set out in Schedule C.

Subscription Term: the subscription term set out on the Order.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Terms.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Words in the singular shall include the plural and vice versa.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.7 References to clauses and schedules are to the clauses and schedules of these Terms.

2 User Subscriptions

2.1 USP hereby grants to the Purchaser a non-exclusive, non-transferable right to permit the Authorised Users to use the Product during the Subscription Term solely for the Purchaser's internal business operations.

2.2 In relation to the Authorised Users, the Purchaser will use commercially reasonable endeavours to ensure that:

2.2.1 the maximum number of Authorised Users that it authorises to access and use the Product shall not exceed the number of posts identified on the Order;

2.2.2 it will not permit Authorised Users to share access credentials except where reassigned in their entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Product;

2.2.3 if any Authorised User accesses the Product in a manner that by-passes any internal systems of the Purchaser, each Additional User shall keep a secure password for their use of the Product, and each Authorised User shall keep their password confidential;

2.2.4 it shall maintain an up to date list of current Authorised Users and provide such list to USP within 5 Business Days of USP's written request at any time; and

2.2.5 the Purchaser is responsible for all acts and omissions of the Authorised Users.

- 2.3 The Purchaser shall permit USP to audit the Product in order to establish the name and password of each Authorised User and compliance with these Terms. Such audit may be conducted no more than once every 3 months, at USP's expense, and this right shall be exercised with reasonable prior written notice, in such a manner as not to interfere with the Purchaser's normal conduct of business. If any audit reveals that:
 - 2.3.1 any password has been provided to any individual who is not an Authorised User, then, without prejudice to USP's other rights, the Purchaser shall promptly disable such passwords and USP shall not issue any new passwords to any such individual; and
 - 2.3.2 the Purchaser has underpaid Fees to USP, the Purchaser shall pay to USP an amount equal to such underpayment as USP reasonably deems appropriate within 20 Business Days of the date of the relevant audit. If the Purchaser has any Credits, USP shall be entitled to offset such Credits against any sums due under this clause 2.3.2.
- 2.4 The rights provided under this clause 2 are granted to the Purchaser only and shall not be considered granted to any subsidiary or holding company of the Purchaser. The Purchaser shall not be entitled to sub-license the rights granted to it under these Terms.

3 Purchaser Data and Purchaser Platform Data

- 3.1 The Purchaser shall use commercially reasonable endeavours to ensure that it shall not access, store, distribute or transmit Purchaser Data that contains:
 - 3.1.1 any viruses or other malicious or harmful code;
 - 3.1.2 any content that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive, facilitates or constitutes illegal activity, depicts sexually explicit images, promotes unlawful violence, is discriminatory based on race, gender, colour, religious belief, sexual orientation or disability, causes or encourages damage or injury to any person or property;
- 3.2 The Purchaser shall not access, store, distribute or transmit Purchaser Data that contains any content that is provided and/or used in breach of any third IP Rights.
- 3.3 USP reserves the right, without liability to the Purchaser, to temporarily disable the Purchaser's access to the Products until the issue is rectified if the Purchaser breaches the provisions of clause 3.1 or 3.2.
- 3.4 The Purchaser shall not except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Terms:
 - 3.4.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software (as applicable) in any form or media or by any means;
 - 3.4.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
 - 3.4.3 access all or any part of the Product in order to build a product or service which competes with the Product;
 - 3.4.4 use the Product to provide services to third parties or to compete with USP;
 - 3.4.5 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Product available to any third party except the Authorised Users; and/or
 - 3.4.6 attempt to obtain, or assist third parties in obtaining, access to the Product, other than as provided under clause 2.
- 3.5 The Purchaser shall use all commercially reasonable endeavours to prevent any unauthorised access to, or use of, the Product and, in the event of any such unauthorised access or use, promptly notify USP.
- 3.6 The Purchaser shall own all rights, title and interest in and to all of the Purchaser Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Purchaser Data. The Purchaser shall own all rights, title and interest in and to all Purchaser Platform Data, provided that USP shall be entitled to use the Purchaser Platform Data on an anonymous basis for its business purposes including research and development and generally to improve the Product.
- 3.7 USP shall ensure all Purchaser Data and Purchaser Platform Data is backed-up in a regular, secure and robust manner.
- 3.8 In the event of any loss or damage to Purchaser Data and/or Purchaser Platform Data, the Purchaser's sole and exclusive remedy shall be for USP to use all reasonable commercial endeavours to restore the lost or damaged Purchaser Data from the latest back-up of such Purchaser Data and/or Purchaser Platform Data maintained by USP or by any third party on USP's behalf. USP shall not be responsible for any loss, destruction, alteration or disclosure of Purchaser Data and/or Purchaser Platform Data caused by any third party (except those third parties sub-contracted by USP). Nothing in this clause 3.8 shall apply in respect of any Personal Data comprised in the Purchaser Data and/or Purchaser Platform Data.

4 Product

- 4.1 USP shall provide the Product and make available the Documentation to the Purchaser on and subject to these Terms.
- 4.2 USP shall use commercially reasonable endeavours to make the Product available 24 hours a day, seven days a week, except for:
 - 4.2.1 planned maintenance carried out during the maintenance window of 16:00 to 09:00 UK time; and

- 4.2.2 unscheduled maintenance performed outside Business Hours, provided that USP has used reasonable endeavours to give the Purchaser at least 8 Business Hours' notice in advance.
- 4.3 USP will comply with USP's service level agreement set out in schedule A as may be amended on notice to the Purchaser provided such variation does not substantially affect the Purchaser's rights and remedies under these Terms. The Purchaser may purchase enhanced support services separately at rates to be agreed between the parties.
- 4.4 USP shall comply with its Privacy & Cookie Policy and Security Policy which are available on request from USP as such documents may be amended from time to time by USP in its sole discretion.

5 Warranty

- 5.1 USP warrants that:
 - 5.1.1 it shall comply with all applicable laws and regulations with respect to its activities under these Terms;
 - 5.1.2 the Product shall perform: (i) in relation to the Platform, substantially in accordance with the Specification; and (ii) in relation to the on-line courses, substantially in accordance with published specification, current at the date of first access; and (iii) in relation to any Deliverables, substantially in accordance with any specification for such Deliverables as may be agreed by the parties.
- 5.2 USP does not warrant that the functions of the Product will meet any particular requirements or that their operation will be entirely error-free or that all program defects are capable of correction or improvement, provided that USP shall use commercially reasonable endeavours to correct any program defects notified to it.
- 5.3 The Purchaser clearly understands that the information provided in the on-line courses is only a guide to good practice but shall, to the best of USP's knowledge and belief, comply with the description provided and comply with and adhere to all prevailing law as at the date of it first being made available in the live environment for use by the Purchaser. It is up to the Purchaser to ensure that on-line courses meet the needs of their particular circumstances or industry. Although every reasonable effort has been made to ensure the accuracy of the information contained in the on-line courses, it may include inaccuracies or typographical errors. USP shall be entitled to change and/or update the Product to remedy such inaccuracies or typographical errors and shall, as soon as reasonably practicable thereafter, notify the Purchaser..
- 5.4 USP is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities outside of its control, including the internet, and the Purchaser acknowledges that the Product may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 5.5 All other warranties including any implied warranties of satisfactory quality, fitness for purpose or ability to achieve a particular result are hereby excluded to the fullest extent permitted by law. In the absence of fraud, no oral or written information or advice given by USP or its agents or licensees shall create a warranty or give rise to any other liability other than is given in these Terms.
- 5.6 USP itself does not warrant third party products. Where USP supplies third party hardware, USP will pass on to the Purchaser the benefit of any third-party warranty which will usually be supplied by a third-party manufacturer as specified in the documentation provided with the third party products.

6 Warranty remedies

- 6.1 In respect of the on-line courses, and subject to USP's compliance with its obligations in clause 11.5 and 11.6, the Purchaser agrees that its sole remedy in respect of any non-conformance with any warranty in these Terms is that USP will remedy such non-conformance as soon as reasonably practical and if in USP's reasonable opinion, it is unable to remedy such non-conformance USP shall refund any sums paid or Credits exchanged on a pro-rata basis equal to the remainder of the Subscription Term or in respect of any part of the on-line course that has not been viewed as the case may be.
- 6.2 The Purchaser must promptly notify USP of any non-conformance to the above warranties in order to benefit from the remedies stated above and in any event within 90 days after delivery of the online course that is the subject of the claim.

7 Limitation of liability

- 7.1 Nothing in these Terms limits or excludes either party's liability:
 - 7.1.1 for death or personal injury caused by its negligence;
 - 7.1.2 for fraudulent misrepresentation or for any other fraudulent act or omission;
 - 7.1.3 to pay sums properly due and owing to the other in the normal course of performance of these Terms; or
 - 7.1.4 for any other liability which may not lawfully be excluded or limited.
- 7.2 Subject to clause 7.1, USP shall not be liable (whether from breach of contract, tort (including negligence), breach of statutory duty or otherwise) for any:
 - 7.2.1 loss of profit;
 - 7.2.2 loss of sales, turnover, revenue or business;

- 7.2.3 loss of customers, contracts or opportunity;
 - 7.2.4 loss of or damage to reputation or goodwill;
 - 7.2.5 loss of anticipated savings;
 - 7.2.6 loss of any software or data (excluding any Personal Data);
 - 7.2.7 loss of use of hardware, software or data (excluding any Personal Data);
 - 7.2.8 loss or waste of management or other staff time; and/or
 - 7.2.9 indirect, consequential or special loss arising out of or relating to these Terms whether or not advised of the possibility of such losses.
- 7.3 Subject to clause 7.1, USP shall not be liable, whether in contract, tort (including negligence), breach of statutory duty, under any indemnity or otherwise, for any loss, damage, expense or liability incurred or sustained as a result of:
- 7.3.1 use of the Product except for its normal intended purpose;
 - 7.3.2 adaptation or modification of the Product, or integration or combination with any other equipment, software, product or material not supplied by USP, in each case carried out by anyone other than USP or without USP's express written consent;
 - 7.3.3 compliance by USP with any design, specification or instructions provided by or on the Purchaser's behalf; and/or
 - 7.3.4 use of the Purchaser Data in accordance with these Terms and/or as agreed between the parties.
- 7.4 Subject to the provisions of this clause 7, USP's total liability arising out of or relating to these Terms or their subject matter and to anything which it has done or not done in connection with the same (whether from breach of contract, tort (including negligence), breach of statutory duty or otherwise) shall be limited, in respect of each 12 month period, to the total sums paid for the Product during such 12 month period, except in respect of a breach by USP of clause 11.5 and/or 11.6 where USP's liability shall be limited to £1,000,000 (one million GBP).
- 7.5 Both parties acknowledge and agree that the limitations and exclusions of liability set out in this clause are reasonable in the light of all the circumstances existing as at the first date of the Subscription Term and have been agreed taking into account the commercial value of the Products to each party and the commercial standing of each party.

8 Third Party Providers

- 8.1 The Purchaser acknowledges that the Product may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. USP makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Purchaser, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Purchaser and the relevant third party, and not USP. USP recommends that the Purchaser refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. USP does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Product.

9 Purchaser's Obligations

The Purchaser shall:

- 9.1 provide USP with all reasonable co-operation in relation to these Terms;
- 9.2 provide USP with all reasonable access to such information as may be required by USP in order to render the Product, including but not limited to Purchaser Data, security access information and configuration services;
- 9.3 comply with all applicable laws and regulations with respect to its activities under these Terms;
- 9.4 ensure that its network and systems comply with the relevant specifications provided by USP from time to time; and
- 9.5 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to USP's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Purchaser's network connections or telecommunications links or caused by the internet except where such are caused directly or indirectly by USP or a subcontractor of USP.

10 Credits, Fees and Payment

- 10.1 The Purchaser shall purchase the Products either by paying the Fee or by exchanging its Credits.
- 10.2 The Purchaser shall be entitled to purchase and use Credits subject to the following provisions:
 - 10.2.1 Credits are valid for a period of 12 months from the date of purchase and accordingly must be exchanged for Products within this period;
 - 10.2.2 Credits are exchanged when the first Authorised User accesses a Product;
 - 10.2.3 Credits have no value except in relation to Products offered by USP, are non-refundable and accordingly cannot be redeemed for cash;

- 10.2.4 Credits are non-transferable to any third party;
- 10.2.5 the purchase price of Credits may change and USP determines the number of Credit to be exchanged for a Product; and
- 10.2.6 Credits cannot be used to purchase part of a Product. If the Purchaser's Credit balance is below the Fee due for the Products, the Purchaser must purchase additional Credits to exchange for the Product.
- 10.3 If the Purchaser's balance of Credits falls below a certain level, USP may notify the Purchaser.
- 10.4 If the Purchaser wishes to pay the Fee for a Product, then it shall provide to USP valid, up-to-date and complete credit card details or approved purchase order information acceptable to USP and any other relevant valid, up-to-date and complete contact and billing details.
- 10.5 If USP has not received payment which is properly due and payable for a Product before the first date of the Subscription Term and without prejudice to any other rights and remedies of USP:
 - 10.5.1 USP shall, without liability to the Purchaser, be entitled to disable the Purchaser's password, account and access to all or part of the Product and USP shall be under no obligation to provide any or all of the Product while the sums concerned remain unpaid; and
 - 10.5.2 interest shall accrue on such due amounts at an annual rate equal to 3% over the then current base lending rate of HSBC Bank at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 10.6 All amounts and fees stated or referred to in these Terms:
 - 10.6.1 shall be payable in pounds sterling or Credits;
 - 10.6.2 are exclusive of value added tax, which shall be added to USP's invoice(s) at the appropriate rate.
- 10.7 USP shall be entitled to increase the Fees in respect of any renewal of the Subscription Term.

11 IP Rights and Data Protection

- 11.1 The Purchaser acknowledges and agrees that USP and/or its licensors own all IP Rights in the Product.
- 11.2 USP confirms that it has all the rights in relation to the Product that are necessary to grant all the rights it purports to grant under, and in accordance with these Terms.
- 11.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Purchaser is the data controller and USP is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 11.4 The Purchaser will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to USP for the duration and purposes of these Terms.
- 11.5 USP shall, in relation to any Personal Data processed in connection with the performance by USP of its obligations under these Terms:
 - 11.5.1 process that Personal Data only on the written instructions of the Purchaser unless USP is required by the laws of any member of the European Union or by the laws of the European Union applicable to USP to process Personal Data (Where USP is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, USP shall promptly notify the Purchaser of this before performing the processing required by such laws unless those laws prohibit USP from so notifying the Purchaser;
 - 11.5.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - 11.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - 11.5.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Purchaser has been obtained and the following conditions are fulfilled: (i) the Purchaser or USP has provided appropriate safeguards in relation to the transfer; (ii) the data subject has enforceable rights and effective legal remedies; (iii) USP complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and (iv) USP complies with reasonable instructions notified to it in advance by the Purchaser with respect to the processing of the Personal Data;
 - 11.5.5 assist the Purchaser, at the Purchaser's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators
 - 11.5.6 notify the Purchaser without undue delay on becoming aware of a Personal Data breach that affects to USP;
 - 11.5.7 at the written direction of the Purchaser, delete or return Personal Data and copies thereof to the Purchaser on termination of these Terms unless required by applicable laws;
 - 11.5.8 maintain, complete and accurate records and information to demonstrate its compliance with this clause 11.5 and allow for audits by the Purchaser or the Purchaser's designated auditor.

- 11.6 The Purchaser consents to USP appointing third-party processors of Personal Data under this Agreement. USP confirms that it has entered or (as the case may be) will enter with any sub-processor into a written agreement on terms which are substantially similar to those set out in clause 11.5 and which USP confirms reflect the requirements of the Data Protection Legislation. As between the Purchaser and USP, USP shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause. USP shall inform the Purchaser of any intended changes concerning the addition or replacement of sub-processors appointed from time to time, and give the Purchaser the opportunity to object to such additions or replacements.

12 Confidentiality

- 12.1 These Terms are subject to the terms and conditions as set out in any Confidentiality Agreement agreed between the parties hereto. In addition, the following clauses will take effect,
- 12.2 Each party may be given access to Confidential Information from the other party in order to perform its obligations under these Terms. A party's Confidential Information shall not be deemed to include information that:
- 12.2.1 is or becomes publicly known other than through any act or omission of the receiving party;
 - 12.2.2 was in the other party's lawful possession before the disclosure;
 - 12.2.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 12.2.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - 12.2.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 12.3 Each party shall hold the other's Confidential Information in confidence and in accordance with the provisions of the Data Protection Legislation where the provisions may apply and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of these Terms.
- 12.4 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of these Terms and/or the provisions of the Data Protection legislation where the provisions may apply.
- 12.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party except where that third party is under its control.
- 12.6 The Purchaser acknowledges that details of the Product, and the results of any performance tests of the Product, constitute USP's Confidential Information.
- 12.7 USP acknowledges that the Purchaser Data is the Confidential Information of the Purchaser.
- 12.8 This clause 12 shall survive termination of these Terms, however arising.

13 Term and Termination

- 13.1 The Purchaser's right to use a Product starts on the first date of the Subscription Term and ends on the last date of the Subscription Term unless otherwise terminated in accordance with the provisions of these Terms.
- 13.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate these Terms if the other party:
- 13.2.1 commits a material breach of any of the terms of these Terms and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - 13.2.2 becomes insolvent, makes composition with its creditors, has a receiver or administrator of its undertaking or the whole or a substantial part of its assets appointed, or an order is made, or an effective resolution is passed, for its administration, receivership, liquidation, winding-up or other similar process, or has any distress, execution or other process levied or enforced against the whole or a substantial part of its assets (which is not discharged, paid out, withdrawn or removed within 28 days), or is subject to any proceedings which are equivalent or substantially similar to any of the foregoing under any applicable jurisdiction, or ceases to trade or threatens to do so.
- 13.3 On termination of these Terms for any reason:
- 13.3.1 all licences granted under these Terms shall immediately terminate;
 - 13.3.2 each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party;
- 13.4 USP may destroy or otherwise dispose of any of the Purchaser Data and/or Purchaser Platform Data in its possession unless USP receives, no later than 10 days after the effective date of the termination of these Terms, a written request for the delivery to the Purchaser of the then most recent back-up of the Purchaser Data and/or Purchaser Platform Data as the case may be. USP shall use reasonable commercial endeavours to deliver the back-up to the Purchaser within 30 days of its receipt of such a written request, provided that the Purchaser has, at that time, paid all fees and charges which are due and payable but are outstanding at the date of termination. The Purchaser shall pay all reasonable expenses incurred by USP in returning or disposing of Purchaser Data. Nothing in this clause 13.4 shall apply in respect of any Personal Data comprised in the Purchaser Data and/or Purchaser Platform Data.

- 13.5 The accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

14 Force Majeure

Neither party will be liable to the other for any failure or delay in performing its obligations under this agreement which arises because of any circumstances which it cannot reasonably be expected to control (which shall include Act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargoes, or interruption or failure of the Internet or of any network, telecommunications, power supply or infrastructure, or any provider of any of the foregoing, but shall not include shortage or lack of available funds on the Purchaser's part), provided that it:

- 14.1 notifies the other in writing as soon as reasonably practicable about the nature and extent of the circumstances and likely effects;
- 14.2 uses reasonable efforts to mitigate the effects of the circumstances so as to minimise or avoid any adverse impact on the other; and
- 14.3 uses reasonable efforts to resume performance as soon as reasonably practicable.

In the event of a force majeure event exceeding one (1) month, the Purchaser may immediately terminate these Terms on written notice to USP without incurring any liability.

15 General

- 15.1 A waiver of any right under these Terms is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 15.2 If any provision (or part of a provision) of these Terms is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 15.3 These Terms, the Schedules and the Order constitutes the entire agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 15.4 Each of the parties acknowledges and agrees that in entering into these Terms it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person other than as expressly set out in these Terms.
- 15.5 The Purchaser shall not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms. Subject to clause 11.6, USP may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Terms.
- 15.6 Nothing in these Terms is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 15.7 These terms do not confer any rights on any person or party under the Contracts (Rights of Third Parties) Act 1999.
- 15.8 Any notice required to be given under these Terms shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Order, or such other address as may have been notified by that party for such purposes or sent by email to the address nominated by the party. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in Business Hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of sending.
- 15.9 These Terms and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with These Terms or its subject matter or formation (including non-contractual disputes or claims).

Schedule A: Service Level Agreement

Availability of the Product

The Product shall be available 99%, measured monthly, excluding holidays and weekends and scheduled maintenance. If the Purchaser requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Downtime will not accrue where the non-availability is due to:

- 15.10 A cause beyond USP's reasonable control;
- 15.11 Any scheduled, notified or emergency downtime;
- 15.12 A fault on the Purchaser's network or own equipment configuration not caused by USP or USP subcontractor(s);
- 15.13 A fault or incident caused within the Purchaser's own infrastructures or configuration of said infrastructures causing the suspension of the Product and/or hardware failure not caused by USP or USP subcontractor(s);
- 15.14 A fault/bug in the Purchaser's own software such as firmware, operating system, infrastructure software or the Purchaser's own infrastructures or configuration of such infrastructures causing suspension of the Products and/or hardware failure not caused by USP or USP subcontractor(s);
- 15.15 Any incidents and downtime caused by the Purchaser's own management of the Product except where such management is in accordance with USP's instructions;
- 15.16 Third Party network issues or suspensions;
- 15.17 Downtime caused by the Purchaser accessing the Product over the internet, where the downtime is directly attributable to the public network itself.

Performance Monitoring

USP will continuously monitor its performance and compliance with the Service Levels. Throughout the Term, USP will make available its uptime status to the Purchaser upon request.

Service Credits

If the Product is unavailable for 24 hours, then after such 24 hour period and for each complete subsequent 24 hour period, the Purchaser is entitled to either:

- Credits to be used against further Services on the Platform of a sum equal to the Fee charged pro-rata for each 24 hours period of downtime; or
- A refund of a sum equal to the Fee charged pro-rata for each 24 hour period of downtime.

The Purchaser must notify USP in writing of a request for Credits or a refund within 10 days of the initial 24 hour period of unavailability and no more than 5% of the total Fee paid by the Purchaser shall be refunded/credited under this Schedule A.

Subject to the Supplier's compliance with clause 11 and save as otherwise set out in clause 7, the provisions of Credits or a refund is USP's sole liability for unavailability of the Product.

Technical Contacts and Incident Response

USP shall provide regularly staffed email and phone support in the UK during Business Hours. The contact details and response time for general support are as detailed below:

Query Level	Contact Details	Response Time
General	support@upskillpeople.com	24 working hours
Urgent	www.upskillpeople.com (live chat during support hours)	8 working hours

Schedule B: Services Schedule for Bespoke Deliverables

15.18 In this Schedule the following words and expressions shall have the following meanings:

“**Deliverables**” the content, sites and applications created by USP for the Purchaser;

“**Development Fee**” the fee due for the Development Products set out in the Statement of Work;

“**Development Products**” the development products set out in the Order required in relation to the Deliverables;

“**Proposal**” the proposal agreed between the parties;

“**USP’s Terms and Conditions**” USP’s standard terms and conditions to access the Products;

“**Supplier’s Terms and Conditions**” USP’s standard terms and conditions to access the Products.

15.19 All capitalized terms not defined in this Schedule shall have the same meaning set out in USP’s Terms and Conditions.

15.20 In this Schedule, a reference to a clause shall be a clause in USP’s Terms and Conditions and a reference to a condition, is to a condition of this Schedule.

Development Products

15.21 Subject to the Terms, USP will develop the Development Products in accordance with the specifications set out in the Order and the Proposal and in accordance with any timetable agreed, provided that time for delivery shall not be of the essence.

15.22 If on completion of the Development Products, the Purchaser reasonably believes that the Deliverables do not materially conform with the specifications set out in the Order and/or Proposal it shall notify USP, and USP shall repair or replace the Deliverables within a reasonable period of time, and such repair or replacement shall be the Purchaser’s sole remedy for breach of paragraph 15.21 above. USP shall not be under any obligation to make any changes to the Deliverables that are outside the scope of the Order or Proposal.

15.23 The Purchaser acknowledges and agrees that in order to provide the Development Products, USP may require access to Purchaser Materials. The Purchaser hereby warrants that (a) USP shall be entitled to access and use the Purchaser Materials; (b) access and use of the Purchaser Materials shall not infringe any third party IP Rights or give rise to any breach of contract; and (c) the Purchaser Materials shall not contain viruses, Trojan horses, worms, time bombs, corrupted files, or any other similar software or programs that may damage the operation of a computer or other device. The Purchaser shall indemnify USP and its directors from and against all costs, claims, demands, liabilities, expenses, damages or losses arising out of or in connection with any breach of the warranties set out in this paragraph 15.23.

15.24 If at any time prior to the delivery of the Deliverables, the Purchaser wishes to alter all or any part of the Deliverables, then the Purchaser shall provide USP with full details in respect of the same. USP shall be entitled to make a reasonable charge for considering such alterations and preparing a written quotation in respect of such alteration. If the Purchaser’s request for such alterations is subsequently withdrawn but results in a delay, then USP shall not be liable for such delay and shall be entitled to an extension of time for performing its obligations in Business Days equal to the period of the delay.

Delivery and Installation

15.25 USP shall deliver to the Purchaser a final installation of the Content for use in a live environment and the Documentation (if applicable).

15.26 USP may, at its discretion, provide telephone and/or email support for the installation and configuration of the Deliverables. If requested by the Purchaser, and subject to the discretion of USP, USP may visit the Purchaser’s premises to configure Deliverables. on the Purchaser’s behalf. Such site visits for configuration of the Deliverables. may be subject to a further charge on a time and materials basis on USP’s standard daily rates then in force, plus expenses. The minimum charge for such a site visit shall be equivalent to 8 hours of USP’s then prevailing daily rate.

Acceptance

15.27 USP shall provide the Purchaser with access to the beta Deliverables in order for the Purchaser to review and confirm that it meets its specific requirements. This beta testing shall consist of the Purchaser having access to the Deliverables in a built environment and programme whereby it will undertake its own robust internal testing and review to ensure that it entirely meets its specifications and requirements. Following this review, the Purchaser will either revert to USP with further amendments, whereby the Content and/or programme will be further amended by USP and re-submitted to the Purchaser for beta testing again, or shall confirm that the Content and programme are acceptable to it. Such acceptance of suitability shall be deemed as acceptance of the content and/or programme.

15.28 Acceptance of the Deliverables shall take place on the date of confirmation from the Purchaser in accordance with paragraph 15.27 or within 20 Business Days of delivery.

15.29 USP shall be entitled at any time and from time to time after installation of the beta Deliverables to serve written notice on the Purchaser requiring the Purchaser to identify any material defect in the beta version of the Deliverables and/or

any functionality that differs materially from that explicitly specified in the Proposal which would prevent the Purchaser from using the same in a live running environment.

- 15.30 If the Purchaser shall fail to identify any such defect or derivation from the functionality specified in the Proposal in accordance with paragraph 15.29 above, in writing to USP within seven (7) days after the receipt of such notice, then the Purchaser shall be deemed to have accepted the same and USP will deliver the final version of the Deliverables for the Purchaser's use.

Development Fee

- 15.31 The Development Fee shall be calculated and invoiced in accordance with the Order Form. Invoices are due in accordance with their terms.
- 15.32 If it shall be necessary for any of USP's personnel to visit the Purchaser's premises or make any other journeys in the course of providing the Development Product, then USP reserves the right to claim reimbursement from the Purchaser in respect of all reasonable travelling and subsistence expenses properly incurred in so doing. In order to claim such reimbursement for expenses USP shall provide the Purchaser with the relevant receipts or invoices (as the case may be).

Licence

- 15.33 USP and/or its licensors shall, as between the parties, remain the owner of all Intellectual Property Rights in the Deliverables. Subject to full payment of the Development Fee, USP grants to the Purchaser a non-transferable, non-exclusive licence, for the Initial Subscription Term, to access and use the Deliverables in accordance with USP's Terms and Conditions. The Purchaser agrees that the Deliverables may not operate properly unless and until the Development Fee has been paid in full.

Liability

- 15.34 Notwithstanding the provisions of USP's Terms and Conditions, USP's total liability arising out of or relating to this Schedule or its subject matter and to anything which it has done or not done in connection with the same (whether from breach of contract, tort (including negligence), breach of statutory duty or otherwise) shall be limited to the Development Fee.

Schedule C: Specification

- 15.35 The USP Learning Management System (LMS) is a software application for the administration, documentation, tracking, reporting, and delivery of online learning courses.
- 15.36 Courses can be built via the inbuilt Easy Course Builder provided by USP or uploaded onto the LMS as an external SCORM package.
- 15.37 The online platform enables Authorised Users to access learning courses and record data relating to learning and development activity accessed online. Features include:
- access on desktop, tablet, mobile
 - management level reporting and data analysis tools
 - configuration utilities
 - capability to record all learning/training sessions
 - includes Easy Course Builder, content publishing tool
 - production of course completion certificates
 - post course survey functionality and reporting
 - ability to interface with third party systems, e.g. payroll
 - multilingual
- 15.38 Admin users can:
- manage course modules
 - assign courses to different users
 - set up new starters
 - set up the company structure and hierarchy for reporting functionality and module assignment
 - report on module completion by company structure
 - upload and disable modules
 - transfer courses and refresh learning of employees
 - set up and manage user passwords
- 15.39 Further details describing the functionality and operation of the LMS may be given via a Learning Platform Privacy Impact Risk Assessment as agreed with the Client.

END