

CLICK LEARNING TERMS AND CONDITIONS

1 APPLICATION OF THESE TERMS

- 1.1 These terms and conditions ("**Terms**") apply to the contract between:
 - 1.2 Flourish Learning Ltd a company incorporated in England (company number 06158047) whose registered office is at **Switch House Suite B2, First Floor, Northern Perimeter Road, Bootle, England, L30 7PT** ("Flourish", "We", "Ours" or "Us"); and
 - 1.3 The customer entity identified in Our Invoice to You ("You" or "Your"),
- 1.4 These Terms are the only terms and conditions upon which We will provide the Product to You and they apply to the exclusion of all other terms and conditions, including those that would otherwise be implied or imposed by statute, common law, trade custom or practice, except to the extent We are prevented from excluding such terms and conditions by law.
- 1.5 These Terms together with the most recent invoice we have sent you ("**Invoice**") constitute the entire agreement and understanding between us relating to the Product (**Contract**) and You acknowledge that You have not relied on, and shall have no remedy in respect of, any representation made or given by Us or on Our behalf (whether innocently or negligently) which is not expressly set out in these Terms.
- 1.6 We will send You an Invoice setting out what Courses you have chosen to purchase as part of your access to the Product, the total number of licences for those Courses, and the applicable fees.
- 1.7 The Contract between Us and You will be formed upon Us accepting your purchase of access to the Product (as defined below) by issuing you with the first Invoice we send you.

2 THE COURSE AND ACCESS TO THE PRODUCT

- 2.1 Upon payment of the Fee in accordance with these Terms We shall grant You a non-exclusive and non-transferable licence, without the right to grant sublicences, to access and use the Click Learning Platform (**Platform**) and access the Click Learning Courses selected by You and identified in the latest Invoice (**Courses**) (the Platform and Courses shall be referred to as **Products** for the purpose of the Contract) during the Contract Term (as defined in paragraph 9.1) for the purpose of training Your employees, agents, contractors and/or other third parties who You notify to Us will access the Product(s) ("**Learners**") during the Contract Term.
- 2.2 You shall be responsible for setting up all Learners within the Platform You shall be entitled to add additional Learners to the Platform at any time throughout the Contract Term, and your Invoice will automatically be adjusted to reflect the increase in Learners. .
- 2.3 Once You have added the Learners to the Platform, We will email each Learner providing them with a unique login ("**Learner ID**"). Upon receipt of their Learner ID, a Learner shall be entitled to access the Product. Each Learner must have a unique email address and Learner ID, and general email addresses and Learner IDs cannot be utilised for multiple individuals to access the Product. You shall procure that only those individuals who have been assigned a Learner ID access the Product(s) and You shall take such reasonable steps to ensure that nobody other than the allocated Learner accesses the Product(s) using the Learner ID exclusively provided to the allocated Learner.
- 2.4 We calculate Your usage of the Product once a month which is used to calculate any change in the Learner volumes and Fees on the next invoice. However, We retain the right to calculate usage on a monthly average basis to determine the appropriate Fees. We may audit Your usage

of the Product at any time to check that the Product is being used in accordance with this Contract, including to confirm that no persons other than Learners are accessing the Product.

- 2.5 Each Learner can make use of each Course an unlimited number of times whilst You have an active method of payment in place with Us.
- 2.6 You shall procure that all Learners that access the Product comply with these Terms and the applicable website terms and conditions. If We believe that any Learner ID is being used in any way which is not permitted by these Terms or the applicable website terms and conditions We reserve the right to suspend Your access rights immediately on giving notice to You or block access from a Learner ID until the issue has been resolved.
- 2.7 If You believe that there has been a breach of any security (to include unauthorised use of a Learner ID) You must notify Us immediately by emailing support@clickclearing.co.uk.
- 2.8 We are not responsible if You or your Learners are unable to view and participate in the Product as a result of not having suitable access to the internet or suitable hardware or software. You or the Learner (as applicable) shall be responsible for paying any service fees, telephone charges or other costs associated with enabling access.
- 2.9 We continually seek to improve the Courses and as such We reserve the right to make changes to any part of the Courses which may, for a period of time, render one or more Courses inaccessible to a Learner.
- 2.10 You acknowledge that the Platform (and the Courses hosted thereon) may be unavailable as a result of maintenance. We will use reasonable endeavours to provide reasonable advance notice of any planned maintenance, but reserve the right to provide emergency maintenance as and when necessary for the continued functioning of the Platform.
- 2.11 At the end of each course made available by the Product each Learner will be tested on their understanding of the course. You can alter the required pass mark for each Course in the Product by requesting a change with Our customer care team. The Platform will monitor the number of Learners who successfully complete the Course and will make this information available for you to access on your dashboard page on the Platform during the Contract Term.

3 FEE AND PAYMENT

- 3.1 Unless otherwise agreed by Us in writing, the fee payable by You for the Product shall be the price set out in the Invoice (the "**Fee**") calculated in accordance with the standard rate for the Courses you have purchased as set out on Our website. The Fee is stated exclusive of value added tax ("**VAT**"), which shall be added at the prevailing rate as applicable.
- 3.2 You shall pay the Fee by as agreed when you sign up for access to the Product. Payment is due on the date specified on the relevant invoice.
- 3.3 You shall make all payments due in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless required by law.
- 3.4 If payment is not made within 30 days of the due date for payment we reserve the right:
 - 3.4.1 to charge a late payment administration fee of £25 for each overdue invoice;
 - 3.4.2 to charge interest on any overdue sums at the rate of 10% per annum, accruing from the due date for payment until the date that payment of such overdue sum is made; and/or

- 3.4.3 suspend Your access to the Product until payment is made in full of the overdue amount (including any interest).

4 DISCLAIMER

4.1 You acknowledge and agree that:

- 4.1.1 although the Product assesses learning outcomes of the Learners, it is not intended to assess or ensure the Learner's general and overall competency in the area covered by the Product. You acknowledge that competency will not be achieved solely as a result of Learners completing the Course (or any part of it), as competency depends on a number of different factors and learning situations for which the Product forms only a limited part;
- 4.1.2 We do not warrant that the information provided by Us in the Product is sufficient, appropriate for any particular circumstances or will meet Your requirements;
- 4.1.3 We do not warrant that the Product will always be available or that Your use of the Product will be uninterrupted or error-free;
- 4.1.4 We do not warrant that the Product will be free from viruses, malware, vulnerabilities or other similar thing or device, but We will take commercially reasonable steps to prevent the existence of these within the Product.
- 4.1.5 We give You no warranty or assurance that the Product or the means of delivering it is compatible with Your software or computer configuration;
- 4.1.6 We may change all or any part of the software or Product at any time at Our discretion; and
- 4.1.7 We are not obliged to provide updates on any developments in respect of the subject of the Product which may arise after You agree to the Terms.

5 CONTENT AND INTELLECTUAL PROPERTY RIGHTS

5.1 The content of the Product (including everything seen on screen) ("**Product Content**") belongs to Us (or Our licensors) and all copyright and other intellectual property rights in the software or Product belong to us or Our licensors. A Learner may:

- 5.1.1 retrieve and display the Product Content on a computer screen by accessing the Product using their Learner ID; and
- 5.1.2 print individual pages on paper and/or store such pages in electronic form on their PC and/or internal server (but not any other server or other storage device connected to an external network).

5.2 You shall not and shall procure that the Learners shall not:

- 5.2.1 redistribute any of the Product Content;
- 5.2.2 make any part of the Product available to anyone except as permitted under these Terms or authorised by Us in writing;
- 5.2.3 create a database in electronic or structured manual form by systematically downloading and storing or printing all or any of the Product Content;
- 5.2.4 alter or seek to alter any of the Product Content;

5.2.5 except as expressly set out in these Terms modify, reproduce or in any way commercially exploit any of the Product Content.

5.3 Our website may contain information and links to and from other online resources maintained by third parties. We do not control the content of these resources and the inclusion of such links does not imply that We endorse or guarantee the reliability or accuracy of the information they contain.

6 IMPLEMENTATION AND SUPPORT

6.1 We shall provide You with access to our standard support services. We will use commercially reasonable endeavours to provide these in accordance with our current support SLA.

7 LIMITATION OF LIABILITY

7.1 Nothing in these Terms shall limit or exclude the liability or remedy of either party:

7.1.1 for death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors;

7.1.2 for fraud or fraudulent misrepresentation; or

7.1.3 for any act, omission or matter, liability for which may not be legally excluded or limited.

7.2 Subject to paragraph 7.1 and 7.3:

7.2.1 Our total liability to You for any claim or claims, whether arising in contract, tort (including negligence), breach of statutory duty or restitution, or for misrepresentation, or otherwise howsoever shall in no circumstances exceed 100% of the Fee; and

7.2.2 We shall not have any liability to You, whether arising in contract, tort (including negligence), breach of statutory duty or restitution, or for misrepresentation, or otherwise howsoever, for any:

- a) loss of profit;
- b) loss of business;
- c) wasted expenditure;
- d) depletion of goodwill and/or similar losses;
- e) loss or corruption of data or information; or
- f) special, indirect or consequential loss, costs, damages, charges or expenses.

7.3 Except as expressly provided in these Terms, You assume sole responsibility for results obtained from the use of the Products by the Learners, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided by You in connection with the Product, or how we incorporate those into the Product.

8 PERSONAL DATA

8.1 You acknowledge and agree that, for the purposes of the Data Protection Act 2018 and UK GDPR (as defined in section 3 of that Act) and other applicable data protection laws ("**Data Protection Laws**"):

- 8.1.1 each party is an independent Controller (as defined in Data Protection Laws) of its processing of any personal data in connection with the Contract;
 - 8.1.2 our privacy notice, currently located at flourish.co.uk/privacy-policy/ as amended from time to time ("**Privacy Notice**"), shall apply to our processing of any personal data relating to Learners in connection with the Contract and nothing in these Terms shall prevent us from processing such personal data in a manner that is consistent with such notice;
 - 8.1.3 any personal data we collect directly from Learners from time to time is personal data obtained from the Learner in its capacity as a Data Subject (as defined in Data Protection Laws), and not from you in your capacity as a Controller; and
 - 8.1.4 without prejudice to the generality of the provisions of this paragraph 8, Learners may, using the functionality of the Product, disclose their personal data to their employer or prospective employer that are our customers.
- 8.2 You shall disclose to us Learner's contact details and job role and location, and any other personal data relating to Learners that we reasonably request from you from time to time in connection with the Product or the Contract.
- 8.3 You shall comply with all of your obligations under Data Protection Laws (and shall not by any act or omission cause us to breach any such laws), including by ensuring that you provide a privacy notice to all Learners that describes us as a recipient of their personal data, the purpose for which you share the personal data with us and the categories of personal data that you share.
- 8.4 You shall notify us with full details of any request you receive from a Learner exercising its rights under Data Protection Laws in relation to our processing of its Personal Data and provide reasonable assistance in relation to any investigation by, or query, request or other communication we receive from, any data protection supervisory authority.

9 CONTRACT TERM AND TERMINATION

- 9.1 The Contract shall, unless otherwise terminated as provided in this paragraph 9, commence on the date set out in the Invoice and shall continue for the duration of the Plan (as defined in the Invoice) and, thereafter, the Contract shall be automatically renewed for successive periods equal to the duration of the Plan (each a "**Renewal Period**"), unless:
- 9.1.1 either party notifies the other party of termination, in writing, at least [30]¹ days before the end of the Plan or any Renewal Period, in which case the Contract shall terminate upon the expiry of the applicable Plan or Renewal Period; or
 - 9.1.2 otherwise terminated in accordance with the Terms,
- and the duration of the Plan together with any subsequent Renewal Periods shall constitute the Contract Term.
- 9.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if the other commits a material breach of any of these Terms and (if such breach is remediable) fails to remedy that breach within a period of 21 days after being notified in writing to do so. If You terminate
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because We are in material breach as a result of circumstances within our control, We shall return any fees paid.

9.3 On termination or expiry of the Contract for any reason:

9.3.1 all licences granted under these Terms shall immediately terminate;

9.3.2 You shall immediately cease all use of the Product and procure that the Learners immediately cease such use; and

9.3.3 You shall take reasonable steps to ensure that You and all the Learners delete any and all Learner ID's and Product Content from Your electronic media, including Your intranet and electronic storage devices so that neither You nor any Learner has an electronically functional copy of the Product Content.

9.4 Termination shall not affect or prejudice 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.

9.5 On termination or expiry of the Contract for any reason We reserve the right to contact Learners to support them to continue directly accessing their electronic learning records. If you terminate the contract and/or stop paying the Fees before the end of the Contract Term, You will be charged Fees for the remainder of the Contract Term, calculated by reference to Your average usage for the Contract Term up to the date of termination/cancellation, plus a £25.00 admin fee

10 CHANGES

10.1 We reserve the right to change the Fee by giving You 90 days' notice in writing, such change to take effect at the commencement of the next Renewal Term following expiry of the notice.

10.2 We cannot change the Fee more than once per contract year.

11 FORCE MAJEURE

11.1 We shall have no liability to You if We are prevented from or delayed in performing Our obligations under the Contract or from carrying on business by acts, events, omissions or accidents beyond Our reasonable control, including without limitation default of sub-contractors, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or communications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm.

12 GENERAL

12.1 The Contract does not constitute, establish or imply any partnership, joint venture, agency, employment or fiduciary relationship between the parties. You shall not have, nor represent that you have, any authority to make or enter into any commitments on Our behalf or otherwise bind Us in any way.

12.2 If any provision, or part of a provision, of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable (a "**void provision**") such invalidity, illegality or unenforceability shall not affect the other provisions of the Contract, which shall remain in full force and effect. If a void provision would be valid, legal and enforceable if some part of it were deleted, that void provision shall apply with such modification as may be necessary to make it valid, legal and enforceable and if it cannot be made valid, legal and enforceable it shall be deemed to be deleted.

- 12.3 The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 12.4 You shall not assign, transfer, mortgage, charge, sub-contract or deal in any other manner with any or all of Your rights and/or obligations under this Agreement without Our prior written consent (such consent not to be unreasonably withheld or delayed).
- 12.5 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes and claims) shall be governed by and construed in accordance with the law of England and the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any such matter.
- 12.6 In these Terms the singular includes the plural and vice versa.