



Conditions

1 Definitions

"Agreement" means the contract between ELD and the Client for the supply of Services comprising any written agreement (including email), these Conditions and (where applicable) the SSLA;

"Client" means the person, company or body who purchases the Services from ELD;

"Commencement Date" means the date that the Service/s have been made available to the Client;

"Deliverable/s" means the products and materials developed by ELD or associated parties in relation to the Services in any media including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts) set out in the Agreement;

"ELD" means e-Learn Design Ltd, a company incorporated under the Companies Act (Registered Number **SC314233**) with a registered office at Baltic Chambers, Suite 142, 50 Wellington Street, Glasgow, G2 6HJ;

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, moral rights, trade marks and all other intellectual property rights, in each case whether registered or unregistered;

"Service/s" means the service/s, including Deliverables, supplied by ELD to the Client as set out in the Agreement;

"Sign/ed Off" means the acceptance of Deliverables by the Client as set out in clause 9;

"SSLA" means Standard Service Level Agreement as described in clause 4;

"Support Contract" means chargeable contracted services covering specific technical or pedagogical support as set out and agreed in a separate agreement;

"Term" means the length of Service supply as documented in the Agreement, subject to Clause 2.5.

2 Basis of Contract

2.1 The Client's order constitutes an offer by the Client to purchase the Services as set out in the Agreement, subject to these Conditions. The order shall only be deemed to be accepted when ELD issues a written acceptance of the order.

2.2 The Agreement and these Conditions constitute the entire contract between the parties in respect of the provision of the Services. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of ELD which is not set out in the Agreement or these Conditions.

2.3 Any samples, drawings, descriptive matter or advertising or marketing material issued by ELD shall not form part of the Agreement or have any contractual force.

2.4 These Conditions apply to the Agreement to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 The Agreement shall, subject to Clause 17, commence on the Commencement Date and expire at the end of the Term. For the avoidance of doubt, ELD shall be under no obligation to renew or extend the Term.

3 Supply of Services

3.1 ELD shall provide Services to the Client in accordance with the Service specification in all material respects, using reasonable care and skill.

3.2 ELD shall use reasonable endeavours to meet any performance dates for the Services as the parties may agree, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services or of the essence of the Agreement.

3.3 ELD shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services.

4 SLAs & Support Contracts

4.1 If no specific technical or pedagogical Support Contract is in place, all ELD hosted clients can expect an SSLA which includes: access to the ELD ticketing system for raising questions, bugs and requests under ELD's Fair Use Policy, details of which can be found at <https://www.e-learndesign.co.uk/fair-use-policy/>.

4.2 Where no specific technical or pedagogical Support Contract is in place, ELD reserves the right to charge for support with such charges outlined at <https://www.e-learndesign.co.uk/rates-at-a-glance/> (as updated from time to time).

5 Snags, Bugs & Fixes

5.1 Problems caused by client-implemented modification, third-party customisation or any other non-ELD application will incur a charge in line with ELD's charges which can be found at <https://www.e-learndesign.co.uk/rates-at-a-glance/> (as updated from time to time).

6 Shared Server Hosting Allowances

6.1 All Clients using a shared server hosting package agree to maintain their Moodle site within the size limit (GB) as outlined by their hosting package.

6.2 All Clients who exceed this limit will be notified once by ELD before being automatically upgraded to the next appropriate package if not resolved within five working days.

6.3 All Clients are responsible for responding to over-usage alerts and for taking action after any such communications.

6.4 Clients who do not comply with ELD's recommended actions may be subject to the suspension provisions set out in clause 16.

7 Free Moodle Version Upgrades

7.1 Subject to Clause 7.2, all Clients hosting their Moodle or IOMAD installation with ELD are entitled to a free version upgrade once in each complete 12 month period.

7.2 It is the responsibility of the Client to request a version upgrade, although ELD retains the right to remind the Client.

7.3 The Client accepts that if they have requested installation of, or themselves installed, plugins on their Moodle site which are no longer supported with the latest version of Moodle, ELD will not be responsible for any impact on the viability of the free version upgrade offered in this Clause 7.

8 Domains

8.1 ELD is not responsible for availability of domain names and does not guarantee that any requested domain name may be available for new registration.

8.2 ELD is not responsible for the transfer of already-registered domain names nor any downtime caused by the process of transfer.

9 Deliverables

9.1 Any Deliverables (which include, but are not limited to, Moodle installations, course materials, audio or video recordings or other media, workshops or training) shall remain the property of ELD.

9.2 Should full payment of the amount owing under the Agreement not be made when due, ELD may remove the site(s) or stop hosting materials and / or media from any system where they may have been installed in addition to exercising such other rights or remedies as may be conferred on ELD by law.

9.3 Once any ELD site, service, media or other Deliverable is made available to the Client, it will be considered that the Client has Signed Off on the Deliverable.

9.4 The Client has 10 working days after Sign Off to report any bugs/faults to be addressed by ELD. If any bugs/faults are not reported to ELD within this timeframe, the Service will be considered 'fully delivered', except in the case where the Client has taken out a Support Contract with ELD, in which case such Support Contract between the parties shall take precedence.

9.5 In the event that any Deliverables are alleged by the Client to be faulty on delivery and the fault is reported as per clause 9.4, ELD will endeavour, where appropriate, to remedy the fault at no extra cost to the Client.

9.6 In the event that any Deliverable has been Signed Off and the fault has been discovered or developed in a timeframe outwith that described in clause 9.4, a new arrangement will be made to remedy the fault at the standard ELD consultancy and/or support rates.

10 Charges and Payment

10.1 Credit accounts are only available to Limited Companies, Public Bodies and Educational Institutions on receipt of an official purchase order from the organisation concerned.

10.2 ELD reserves the right at its sole discretion to offer or rescind Credit accounts at any time.

10.3 All accounts shall be settled by the due date marked on the invoice sent by ELD;

10.4 Overdue accounts ("Default") are subject to interest at an annual rate of 8% above the Bank of England base rate from time to time, or part thereof, on the outstanding balance of any overdue accounts.

10.5 ELD reserves the right to withdraw credit facilities and suspend work, site access and deliveries on overdue accounts.

10.6 The Client shall be liable for all costs, including legal fees, incurred in the collection of any due and outstanding balance.

10.7 All Clients without Credit accounts shall make payment in advance by cleared cheque, credit card (via PayPal) or BACS transfer.

10.8 All Clients, including those with Credit accounts, are liable for any charges incurred by:

10.8.1 PayPal;

10.8.2 international bank transfer and all associated currency exchange costs; and

10.8.3 any other charges (including, without limitation) bank charges incurred in addition to the invoice total;

10.9 Basic Rate Services, Health Checks, Project Support, Consultancy, Development, Instructional Design and Annual Remote Services are payable in advance unless otherwise agreed in writing by ELD.

10.10 Price lists on the ELD website from time to time are valid and binding.

10.11 Prices given through official ELD quotations are valid for 30 days unless otherwise stated.

10.12 ELD reserves the right to increase its listed prices at any time. Any such price increase shall not impact an active Agreement until the Term has expired.

10.13 Early cancellation of a multi-year Agreement shall be subject to pro rata charges based on the actual Term.

11 Acceptable Use

11.1 All Moodle site hosting contracts will adhere to ELD's Acceptable Use Policy (a copy of which can be found at <https://www.e-learndesign.co.uk/acceptable-use-policy/>), failing which the provisions of clause 17 shall apply.

11.2 ELD reserve the right to remove any material that it determines may be breaking any relevant laws, or causing distress to users of the services it provides, and terminate the Agreement.

11.3 ELD shall not be held liable for any loss or damage caused by the use or misuse, unavailability or removal of Services

11.4 The Client must not install or store any software that enables or assists any Internet user to send mass mail, change mail headers, allow anonymous messages to be sent to another user or facilitate any other activity considered unacceptable by ELD.

11.5 If ELD is notified that the Client has used an ELD Service, or that of a third party, to undertake the activities listed in clauses 11.1, 11.2 or 11.4 ("Breach") the Client's account will be terminated without notice.

11.6 On closure of any account, all data will be deleted. ELD undertakes to use reasonable endeavours to notify the Client in advance but, once an account is closed, the Client accepts that all data associated with that account will cease to exist and will not be retrievable.

12 Intellectual Property Rights

12.1 Unless explicitly agreed otherwise in writing, all Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by ELD.

12.2 ELD grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-

exclusive, royalty-free licence to copy the Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Services and the Deliverables as intended by ELD.

12.3 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 12.2.

12.4 The Client grants ELD a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to ELD for the Term of the Agreement for the purpose of providing the Services to the Client.

12.5 ELD and all ELD clients are subject to the following Moodle obligations:

Moodle™ is a registered trademark of the Moodle Trust. If you are intending to use the name to advertise commercial generic Moodle services (eg Moodle Hosting, Moodle Support, Moodle Certification etc), then you must seek direct permission in via the moodle.com helpdesk. There are no restrictions on how you use the name in other contexts (for example, if you use Moodle just to provide courses then you can use the name freely to refer to it.) If you aren't sure of a particular case, please ask us via the moodle.com helpdesk: we'll be happy to either provide you with official permission in writing or help you fix your wording.

12.6 The Client or their associates may not, without prior written consent from ELD, provide or offer to provide any part of the Deliverables or such materials, or any services involving their use, on a commercial basis to any third party.

12.7 ELD does not take any responsibility for the content of websites linked from the Client's Moodle installation.

13 Information & Confidentiality

13.1 Each party undertakes that it shall not at any time during the Agreement, and for a period of five years after termination or expiry of the Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by this Clause 13.

13.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.2; and
(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Agreement.

13.4 The Client accepts that, as a Moodle Partner, ELD is contractually required to disclose certain information about clients, potential and actual, for the purposes of accounting.

14 Limitations of Liability

14.1 ELD shall under no circumstances whatsoever be liable to the Client, whether in contract, delict, tort (including

negligence), breach of statutory duty, or otherwise, for any loss of profits, loss of anticipated savings, loss and/or corruption of data or any indirect or consequential loss arising under or in connection with the Agreement;

14.2 ELD's total aggregate liability to the Client in respect of all other losses arising under or in connection with the Agreement whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be the total amount paid by the Client for the Services supplied under the Agreement during the previous 12 month period and in no circumstances shall exceed that amount;

14.3 For the avoidance of doubt, ELD shall under no circumstances be liable to the Client for any alternative supplier's charges, irrespective of whether the Client has appointed the alternative supplier due to a failure of the Services or for any other reason;

14.4 Clause 14 shall survive termination of the Agreement.

15 Client Obligations

15.1 The Client shall ensure that the terms of any Service specification are complete and accurate;

15.2 The Client shall cooperate with ELD in all matters relating to the Services;

15.3 The Client shall provide ELD with such information and materials as ELD may reasonably require to supply the Services and ensure that such information is accurate in all material aspects;

15.4 The Client is responsible for upholding its own responsibilities in terms of Deliverables, especially where these may cause delays in overall delivery;

15.5 If/Once a contract for consultancy or customised development has been agreed, any change to the specification of the Services involved must be agreed with ELD in writing and may result in an additional fee being charged;

15.6 Security for the Client's Moodle administrator account is the Client's responsibility and ELD is not responsible for any impact incurred by a breach of security due to Client error, action or activity;

15.7 The Client must comply specifically with clauses 6.1 and 6.4 in regard to Shared Server Hosting Allowances or be subject to the suspension provisions as set out in clause 16;

15.8 The Client must comply with ELD's Charges and Payment policy (as defined in clause 10) which can be seen at <https://www.e-learndesign.co.uk/rates-at-a-glance/> or be subject to the suspension provisions as set out in clause 16;

15.9 The Client must rectify any Default (as defined in clause 10) within 14 days of written notice by ELD or be subject to the termination provisions as set out in clause 16.

15.10 The Client must comply with ELD's Acceptable Use Policy or be subject to the termination provisions as set out in clause 17.

16 Suspension of Services

16.1 ELD may at its sole discretion upon giving written notice to the Client elect to suspend the supply of Services under the Agreement until further notice in the event that:

16.1.1 the Client commits Default (as defined in clause 10);

16.1.2 the Client does not comply with any or all of their obligations (as defined in clause 15); or

16.1.3 ELD is obliged to comply with an order, instruction or request of the UK Government, an emergency services

organisation or any other competent administrative authority;

16.2 In accordance with clause 10.6, where ELD suspends the supply of Services as a consequence of Client Default, the Client shall reimburse ELD for any costs, losses, claims, fines or damages sustained or incurred by ELD arising from such suspension;

16.3 For the avoidance of doubt, ELD's decision to suspend the supply of Services under this clause 16 shall not prevent ELD from terminating the Agreement in accordance with clause 17.

17 Termination

17.1 Shared Hosting Clients must give, in writing, one months' notice prior to the end of the Term to terminate any Services that are not covered under a separate written "Service Agreement". If such a notice is not received at least one month prior to the end of the Term, the Term shall automatically be extended until the Client provides one months' written notice for termination to take place one month thenceforth.

17.2 Single Server Clients and Multiple Server Hosting Clients must give, in writing, three months' notice prior to the end of the Term to terminate any Services that are not covered under a separate written "Service Agreement". If such a notice is not received at least three months prior to the end of the Term, the Term shall automatically be extended until the Client provides three months' written notice for termination to take place three months thenceforth.

17.3 Without limiting its other rights or remedies, ELD may terminate the Agreement with immediate effect by giving written notice to the Client if:

17.3.1 the Client does not remedy a Default (as defined in clause 10) within 14 days after receipt of notice in writing to do so;

17.3.2 the Client suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or;

17.3.3 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Client (being a company);

17.3.4 the Client suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

17.3.5 the Client's financial position deteriorates to such an extent that in ELD's opinion the Client's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy;

17.3.6 the Client engages in any conduct or behaviour that, in ELD's opinion, brings or has the potential to bring ELD, the Client, or any associated parties into disrepute or lead to negative publicity. This includes, but is not limited to, any illegal activities, unethical conduct, negative associations with third parties, violation of applicable laws or regulations, or public statements that damages or has the possibility of damaging the reputation or goodwill of ELD; or

17.3.7 the Client commits a Breach (as defined in clause 11);

17.4 If, at any time, any government, regulatory authority, or international body issues an order, directive, sanction,

embargo, or other announcement (a "Government Action") that prevents, restricts, delays, or materially impairs ELD's ability to perform the Services, ELD may, at its sole discretion and without liability, suspend or terminate this Agreement (in whole or in part) with immediate effect by giving written notice to the Client. ELD shall not be liable for any loss, damage, cost, or expense arising directly or indirectly from any such suspension or termination, and the Client shall remain liable for all Services performed and expenses incurred up to the date of termination.

17.5 On termination of the Agreement for any reason ELD shall submit an invoice, which shall be payable by the Client immediately on receipt;

17.5.1 in respect of Services supplied but for which no invoice has yet been submitted; and

17.5.2 in respect of Services which ELD had contracted to provide during the remainder of the Term and would have provided had the Agreement not been terminated;

17.6 In the event of an early termination of the Agreement, no refund for payments already made will be due to the Client.

17.7 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

18 Force Majeure

18.1 For the purposes of this Agreement, "Force Majeure Event" means an event beyond the reasonable control of ELD including, but not limited to, strikes, lock-outs or other industrial disputes (whether involving the workforce of ELD or any other party), failure of a utility service or transport 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, storm, pandemic or default of suppliers or subcontractors;

18.2 ELD shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Agreement as a result of a Force Majeure Event;

18.3 If the Force Majeure Event prevents ELD from providing any of the Services for more than four weeks, ELD shall, without limiting its other rights or remedies, have the right to terminate this Agreement immediately by giving written notice to the Client.

19 General

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Scots law and subject to the exclusive jurisdiction of the Scottish courts.