



TERMS AND CONDITIONS FOR THE SUPPLY OF EDUCATION SERVICES

This document was adopted by the Unloc Leadership Board on Monday 4th April 2022 and will be reviewed within two years of this date.

CONTENTS

CLAUSE

1.	Interpretation	2
2.	Basis of contract	3
3.	Supply of Services	4
4.	Customer's obligations	4
5.	Charges and payment	5
6.	Intellectual property rights	6
7.	Data protection	6
8.	Limitation of liability	6
9.	Termination	7
10.	Consequences of termination	8
11.	General	9

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1. Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 11.5.

Contract / Memorandum of Understanding: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Customer: the person or firm who purchases Services from the Supplier.

Customer Default: has the meaning set out in clause 4.2.

Deliverables: the deliverables set out in the contract or memorandum of understanding produced by the Supplier for the Customer.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, [moral rights,] trade marks [and service marks], business names and domain names, rights in get-up [and trade dress], goodwill and the right to sue for passing off [or unfair competition], rights in designs, [rights in computer software,] database rights, rights to use, and protect the confidentiality of, confidential information (including know-how [and trade secrets]), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for Services as set out in the contract or memorandum of understanding.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the contract, memorandum of services and any relevant preceding proposals provided to the client.

Specification: the description or specification of the Services provided [in writing] by the Supplier to the Customer.

Supplier: Unloc Learning Limited, registered in England and Wales with company number 08578126.

Supplier Materials: has the meaning set out in clause 4.1(h).

1.2. Interpretation:

- (a) Unless expressly provided otherwise in the Contract, a **OR** A] reference to legislation or a legislative provision:
 - (i) is a reference to it as [amended, extended or re-enacted from time to time **OR** it is in force as at the date of this Contract]; and
 - (ii) shall include all subordinate legislation made [from time to time **OR** as at the date of this Contract] under that legislation or legislative provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes fax and email.

2. Basis of contract

- 2.1. The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2. The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**). This will usually take the form of a counter-signed contract or memorandum of understanding.
- 2.3. Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5. Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. Supply of Services

- 3.1. The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2. The Supplier shall use all reasonable endeavours to meet any performance dates specified in the contract or memorandum of understanding, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3. The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4. The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Customer's obligations

- 4.1. The Customer shall:
 - (a) ensure that the terms of the Order and any information it provides in the Specification, contract or memorandum of understanding are complete and accurate;
 - (b) co-operate with the Supplier in all matters relating to the Services;
 - (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
 - (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - (f) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; [and]
 - (g) comply with any additional obligations as set out in the Specification, contract or memorandum of understanding

- 4.2. If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
 - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. Charges and payment

- 5.1. The Charges for the Services shall be calculated on a per-service basis:
- (a) the Charges shall be calculated in accordance with the Supplier's rates and specified in the contract or memorandum of understanding
 - (b) travelling expenses, hotel costs, subsistence and any associated expenses are included in the Supplier's rates (as specified in the contract or memorandum of understanding) unless specifically stated otherwise
- 5.2. The Supplier shall invoice the Customer in line with the payment schedule specified in the contract or memorandum of understanding
- 5.3. The Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice [or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer within the contract or memorandum of understanding]; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier
- 5.4. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

- 5.5. If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.6. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. Intellectual property rights

- 6.1. 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 Customer) shall be owned by the Supplier.
- 6.2. The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables [in its business].
- 6.3. The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.
- 6.4. The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

7. Data protection

The parties shall comply with their data protection obligations as set out in Unloc Learning Limited's Data Protection Policy, which is publicly available on the company's website.

8. Limitation of liability

- 8.1. Nothing in this clause 8 shall limit the Customer's payment obligations under the Contract.
- 8.2. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;

- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8.3. Subject to 8.2, above:

- (a) we will not be liable to you in any circumstances whatsoever for any loss of profit or any indirect or consequential losses which you suffer in connection with our services, however arising (including in contract, tort and negligence and breach of statutory duty);
- (b) each of our and your total liability to the other in respect of all other losses, however so arising (including in contract, tort and negligence and breach of statutory duty) shall in no circumstances exceed the total fees paid and payable by you as per our contract or memorandum of understanding provided that this clause shall not apply to your obligations to pay us the fees and any applicable interest.

8.4. The terms implied by law, including sections 3 to 5 of the Supply of Goods and Services Act 1982, are, to the fullest extent allowed by law, excluded from this Agreement.

8.5. This clause 8 shall survive termination of the Contract.

9. Termination

9.1. Without affecting any other right or remedy available to it, either party may only terminate the Contract in line with the termination clause specified in the contract or memorandum of understanding.

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:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 20 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.3. Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment OR
 - (b) there is a significant change of control of the Customer.
- 9.4. Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment;
 - (b) the Customer becomes subject to any of the events listed in clause 9.2(c) or clause 9.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them; and
 - (c) the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 9.2(b).

10. Consequences of termination

- 10.1. On termination of the Contract:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 10.2. Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, which existed at or before the date of termination.
- 10.3. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

11. General

11.1. Force majeure. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11.2. Assignment and other dealings.

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

11.3. Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

11.4. Entire agreement.

- (a) These terms and conditions, plus the contract or memorandum of understanding between the parties, supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set

out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

11.5. Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.6. Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

11.7. Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 11.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.8. Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified on the company's website.

(b) Any notice or communication shall be deemed to have been received:

- (i) if delivered by hand, at the time the notice is left at the proper address;
- (ii) if sent by next working day delivery service, at 9.00 am on the second Business Day after posting; [or]
- (iii) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

- (c) This clause 11.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

11.9. Third party rights.

- (a) Unless it expressly states otherwise, 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.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

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

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