

EDGE Education – Customer Relationship Terms

Version 5.3

general terms for the provision of educational related goods or services that you order on our online store

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Terms Version Number

5.2

1. Introduction

These terms are the general terms of the relationship between us and you. The terms cover any transactions where you purchase goods or services on our online store. The commercial terms of any transaction will be contained in an order that will incorporate these terms.

2. Definitions and interpretation

Definitions. In the agreement:

additional fee means a charge you must pay us for the supply of any goods or the provision of any services outside of an order, which charge must be made at our then current standard prices and rates, unless otherwise agreed in writing between the parties;

administrator means an authorised user in your employ who is authorised to provision, manage and administer certain services;

AFSA means the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead);

agreement means the agreement between us and you, consisting of the terms and any orders the parties enter into;

authorised user means you or a user in your employ where you are a juristic person, who has been assigned credentials;

business day means any day other than a Saturday, a Sunday, or a holiday (including a public or bank holiday) in the jurisdiction where our entity that entered into the relevant order is organised;

business hours means our normal business hours on business days;

CMS means our content management system;

contract year means, in respect of an order, each successive 12 calendar month period during the term of the order, calculated from the effective date;

delay means where you do not provide access to a person, place or thing timeously; you change a decision that you have previously communicated to us; you do not reply to a communication from us within the required (or reasonable) period required; you unreasonably withhold an acceptance or consent; you commit a breach of this agreement that is not otherwise categorised as a delay; or where our performance is affected by an event of force majeure; or the failure of a third party supplier or service provider;

deliverable means any task we undertake for you, including physical learning media such as books, booklets, DVDs, USBs, pamphlets and any other physical hard copy documents; and digital learning media such as any online learning media, software including our learning ecosystem, online and USB video and content playlists, PDFs, videos, online quizzes or questionnaires, rapid learning tools, interactive learning artefacts, that correspond directly or indirectly to the physical learning media;

digital learning media means any online learning media, software including our learning ecosystem, online and USB video and content playlists, PDFs, videos, online quizzes or questionnaires, rapid learning tools, interactive learning artefacts, that correspond directly or indirectly to the physical learning media;

effective date means in respect of each order, the effective date stipulated in each order, in the absence of which it will be the date the order is accepted by us;

ELE means the EDGE Learning Ecosystem®, an online platform we have developed to house and display learning material. It is an eReader as well as providing additional functionality such as linking, note taking, quizzing and question and answers.

existing material means any code, forms, algorithms or materials developed by or for either party independently and outside of the agreement and provided during the course of the agreement;

fees means the fees, charges, or purchase consideration that you will pay to us in respect of goods or services we provide under orders;

milestone means a deliverable related progress goal agreed between the parties in writing;

non bespoke means media that was not specifically created for you and is termed 'off the shelf';

order means any transactions where you purchase goods or services on our online store without previously signing a contract with us;

our technology means any technology that we have created, acquired or otherwise have rights in and may, in connection with the performance of our obligations under the agreement, employ, provide, modify, create or otherwise acquire rights in and includes any: concepts or ideas; methods or methodologies; procedures or processes; know-how or techniques; function, process, system, data, or object models; templates; the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs; general purpose consulting and software tools, utilities, routines or frameworks; logic, coherence and methods of operation of systems; and patches or enhancements to open source libraries;

personnel means any representative, including any director, employee, agent, affiliate, consultant, or contractor;

physical learning media means the books, booklets, DVDs, USBs, pamphlets and any other physical hard copy documents;

related and related persons means natural and juristic persons who are connected to one another in the manner contemplated in sections 2 and 3 of the Companies Act 71 of 2008;

services means any services we or related persons provide to you, under orders;

service levels means the levels according to which we will provide each service as agreed by the parties in writing and signed;

sign means the handwritten signature, an advanced electronic signature, or an electronic signature that the parties agree to use, of each of our duly authorised representatives;

signature date means the date of signature by the party signing last;

specification means the specification (which may be in the form of a proposal, wire frame, project initiation document, functional specification, or technical specification) of the deliverables, which may be (i) in or attached to an order, or (ii) in writing, dated and signed by the parties;

support means ad hoc support (including troubleshooting, research, fault-finding, diagnosis, improving) which could result in a configuration change, service restart, or performing end-user actions on your behalf;

tax means any:

- tax (including value added tax, income taxes, pay-as-you-earn tax or other taxes levied in any jurisdiction);
- duty (including stamp duty);
- tariff, rate, levy; or
- any other governmental charge or expense payable;

terms means the terms, consisting of:

- these terms; and
- any other relevant specific terms, orders, policies, disclaimers, rules and notices that the parties agree on, (including any that may be applicable to any specific goods or services);

third party contractor means any contractor, supplier, vendor, service provider or licensor of a part of the goods or services, which is not a party to the agreement;

third party software means all third party software owned by a third party but legally licensed to us for use in providing the services;

we, us, or our means EDGE Learning Media (Pty) Ltd t/a EDGE Education: 2015/332511/07, the vendor or service provider that enters into an order and, if specified in the order, those related to it;

writing means the reproduction of information or data in physical form (includes handwritten documents, hard copy printouts and fax transmissions) or any mode of reproducing information or data in electronic form that the parties agree to use (like pdf), but excludes information or data in the form of email;

you or your means the customer that enters into an order and, if specified in the order, those related to it;

your data means your data (including information about an identifiable person) that:

- you provide (or any third party on your behalf provides) to us; or
- we generate, process, or supply to you in providing the goods or services; but excludes any derived data that we create for our own internal purposes or which is proprietary or confidential to us or our third party contractors, or which belongs to third parties

2.1 **Definitions in the order.** Words defined (or assigned a meaning) in an order will have that meaning in the terms, unless the context clearly indicates otherwise.

2.2 **Interpretation.** All headings are inserted for reference purposes only and must not affect the interpretation of the agreement. Whenever "including" or "include", or "excluding" or "exclude", together with specific examples or items follow a term, they will not limit its ambit. Terms other than those defined within the agreement will be given their plain English meaning. References to any enactment will be deemed to include references to the enactment as re-enacted, amended, or extended. A reference to a person includes a natural and juristic person and a reference to a party includes the party's successors or permitted assigns. Unless otherwise stated in the agreement, when any number of days is prescribed in the agreement the first day will be excluded and the last day included. The rule of construction that an agreement must be interpreted against the party responsible for its drafting or preparation does not apply. GMT +2 will be used to calculate any times.

2.3 **Conflict.** If there is a conflict of meaning between these terms and any order, the order will prevail in respect of the relevant goods or your use of the relevant services.

3. Duration

The terms commence on acceptance and continue until terminated. Where the duration of this agreement is specified in an order, if you are a "consumer" for purposes of the Consumer Protection Act, you may terminate the relevant service prior to the expiry of the term on 20 business day's written notice to us. However, we may charge you an early termination fee.

4. Orders

4.1 **Capacity.** You represent and warrant that you (and any person who places an order):

- are old enough under applicable law to enter into the agreement;
- are legally capable of concluding any transaction;
- possess the legal right, full power, and authority to enter into the agreement; and
- will submit true, accurate and correct information to us.

If you are younger than 18 years of age, you warrant that you have the consent of your legal guardian to enter into the agreement or that you have obtained legal status in another manner.

4.2 **Invitation to do business.** The marketing of the goods or services by us is merely an invitation to do business or for you to make an offer to procure goods or services. The parties only conclude a valid and binding order when we accept the offer made by you. Unless otherwise agreed in writing or we accept an offer earlier, we only accept an offer relating to goods, when we ship the goods. If we only dispatch part of the goods relating to an offer, we only accept that portion of the offer. Unless proven to the contrary, we only accept an offer relating to services, when we begin providing the services. We may accept or reject any offer. If we do not accept any offer, then we will refund any monies already paid by you.

4.3 **Cancel.** Unless otherwise agreed, we may cancel any order at any time in our absolute discretion. We will refund any monies already paid by you if we do.

4.4 **Fees.** Despite our best efforts, the stated fees may be incorrect. We will confirm the fees for any goods or services when we accept your offer.

4.5 **Time and place.** The parties conclude any agreement between each other at the time when our duly authorised representative accepts the relevant offer and at the place where you have your head office. We do not need to communicate the acceptance of the offer to you.

4.6 **Orders.** The terms in effect at the time you make an offer will govern the order. Each order will create a separate agreement. Despite that, we may consider the breach of any one order to constitute a breach of any or all orders.

4.7 **Stock availability.** We may not always have the goods on which you make offers on in stock. You may cancel the offer or make another offer on the part of the goods that are in stock.

5. Goods

5.1 **Sale.** We sell the goods to you who purchases them on the terms of the agreement.

5.2 **Countries.** You may only make offers for goods for delivery to the countries specified by us. If your delivery or billing address is not amongst those specified, you must not make an offer. We are only able to sell into the countries specified, and we are only able to deliver to those countries.

5.3 **Delivery and packaging.** Unless otherwise agreed in an order the goods will be supplied on the following basis:

- we will pack the goods in accordance with our packaging specifications for the goods;
- in the absence of any packing specifications, we will package the goods suitably to ensure that damage in transit does not occur due to incorrect packaging;
- the fees will exclude the cost of packaging;
- unless otherwise agreed in writing, you will select the specific mode of delivery for the goods; and
- the delivery costs will be for your account.

5.4 **Time until dispatch.** Once we receive an offer, we will endeavour to dispatch the goods as soon as reasonably practicable (with the

lead time being approximately ten business days) to the address specified in the offer. We will try to adhere to the estimated delivery dates but accept no liability for failing to do so. **You may not withdraw any offer due to a delay in delivery.**

- 5.5 **Risk and ownership.** All risk of loss or damage to the goods will pass to you upon physical delivery of the goods to your delivery address. Ownership in the goods will only pass to you upon full payment of the fees.
- 5.6 **No refund or exchange.** It is your responsibility to order the correct quantity and we will not refund or exchange goods if you purchase more than needed.
- 5.7 **Warranty.** The goods will be subject to any warranty indicated in the description of the goods appearing on the accompanying documentation, packaging, or EULA. Please review those documents carefully. You will have the same rights against us as we have against the supplier regards defects in the goods. The intention being that our liability to you will be co-extensive with the right of recourse we have against the supplier. We will provide a copy of any warranty on request. To the extent legally possible, we assign to you the benefit of any supplier warranties that a supplier may give to us regards the goods. We may not waive any of our common law rights as against the supplier.
- 5.8 **Sales representatives.** Our sales representatives do not have the authority to bind us and no representation, warranty or any other statements made or given by our sales representative will be binding on us, unless given in writing and signed by our duly authorised representative.
- 5.9 **Software.** Please note that intellectual property laws protect all software. Software is licensed, not sold, to you. Unless agreed otherwise, the license for any software is contained in the EULA. You will be required to agree to the EULA prior to use of the software. The applicable EULA, which takes precedence, governs the use of the software. If you do not agree to the EULA, you must return the software in accordance with our return policy for a refund of the fees. If you use the software (or takes any other action that is described in the packaging or software as constituting your consent to the EULA), then you agree to the EULA and may not be eligible for a refund or return of the software, unless otherwise allowed in the documentation accompanying the software or applicable law.
- 5.10 **Resale and exports.** If you wish to resell or export any goods, you must obtain all required consents or licences under all applicable laws and regulations, including the Export Administration Regulations of the United States of America that may affect or regulate such resale or export.

6. Services

We will provide the services to you at the service levels as specified in an order.

7. Online services

- 7.1 **Registration.** Each authorised user must provide their full legal name, a valid email address, and any other information requested by us to complete the registration process.
- 7.2 **Access.** Only authorised users may access the service by using the credentials issued to them.
- 7.3 **Authorised user obligations.** Each authorised user agrees:
- to keep their credentials secure;
 - not to provide access to any person other than an authorised user;
 - not to interfere with the functionality or proper working of the service;
 - not to introduce any viruses, worm, logic bomb, trojan, wares, potentially unwanted program (PUP) or other malicious software into the service; and
 - not use the service for direct marketing, spamming, unsolicited communications, or other advertising or marketing activities prohibited by applicable law.
- 7.4 **Administrator obligations.** The administrator agrees:
- not to use bots or other automated methods to register authorised user accounts;
 - to only create one account per email address per authorised user;
 - to make a list of all authorised users available to us on request;
 - to immediately notify us in writing of any lost credentials by an authorised user;
 - to ensure that authorised users who are no longer authorised to use the service do not use the service;
 - to notify us of any known breach of our privacy policy;
 - to take reasonable measures to ensure that authorised users do not introduce any viruses, worm, logic bomb, trojan, wares, potentially unwanted program (PUP) or other malicious software into the service.
- 7.5 **Security.** Each authorised user is responsible and liable for activities that occur under their account. You authorise us to act on any instruction given by an authorised user, even if it transpires that someone else has defrauded both us and you, unless you have notified us in writing prior to you acting on a fraudulent instruction. We are not liable for any loss or damage suffered by you attributable to an authorised user's failure to maintain the confidentiality of their credentials.

8. Digital learning media

- 8.1 **Licence fee.** The digital learning media licence fee is included in of the fee you paid for the physical learning media.
- 8.2 **Licence.** We grant you a non-exclusive and non-assignable licence to use the digital learning media that corresponds to the physical learning media in accordance with the terms set out in this agreement.
- 8.3 **Rights of use.** You are licensed to use the digital learning media:
- when you purchase the physical learning media;
 - for your own internal business purposes;
 - when you receive a coupon in the physical learning media;
 - for your employees and subcontractors who need to access and use the videos;
 - or if you are ordering on behalf of your students, for each student on whose behalf you have purchased physical learning media.
- 8.4 **Digital storage device.** You agree that we will not be held responsible for the loss or corruption of data on the digital storage device resulting from, but not limited to, viruses transferred to the digital storage device from any device on which you use the digital storage device, deletion of any data on the digital storage device, formatting of the digital storage device, adding any data to the digital storage device, lack of the minimum required hardware and/or software required to access the data on the digital storage device or physical damage to the digital storage device. Should the device be defective by any means other than those stipulated above, as determined by us using (but not limited to) evidence provided by you, we will take the necessary steps to rectify it.

- 8.5 **Minimum system requirements.** The minimum system requirements for the software on the USBs are:
- Windows Vista or later;
 - Internet Explorer 9 or later;
 - Windows XP (and older) and Mac is not supported.
- 8.6 **Back-up purposes.** The licence granted to you also entitles you to copy the videos into any machine readable or printed form for back-up or archival purposes.
- 8.7 **Safe custody.** You agree to keep the copies of the digital learning media under safe custody.
- 8.8 **Acceptance.** You:
- accept the licence granted to you;
 - acknowledge that you claim no rights of ownership of the digital learning media.
- 8.9 **Rights in the digital learning media.** You:
- acknowledge that no title or rights of ownership, copyright or any other intellectual property rights in the digital learning media, including all updates will be transferred to you;
 - acknowledge that the digital learning media have significant commercial value to us and agree to indemnify us in respect of any losses or expenses incurred by us as a result of the unauthorised use of the digital learning media by any third party.
- 8.10 **Restrictions on licence.** You must not:
- except to the extent as may be permitted by law, modify, translate or create derivative works based on the digital learning media, whether directly or indirectly;
 - merge or combine the whole or any part of the digital learning media with any other work or documentation without our prior written consent; or
 - remove any proprietary notices or labels on the digital learning media.
- 8.11 **Delivery of digital learning media.** We will deliver the digital learning media together with any related documentation to you on the effective date. Delivery will be made with the physical learning media it is paired with.

9. Delays

- 9.1 **Notification.** A party will notify the others of an event that has occurred or is anticipated and that:
- the notifying party believes is or may be a delay;
 - occurred no more than 14 calendar days previously.
- 9.2 **Extension of time for performance.** Vendor's performance will be extended on a reasonable basis in proportion to the prejudice caused by the delay, provided that the extension is at least the number of days of the delay.
- 9.3 **Proposals for delay.**
- If a delay arises, the party effected by the delay may instruct the party causing the delay to submit proposals for different, practical ways of dealing with the delay.
 - Proposals for addressing delays will include proposed changes to the scope of work, prices and any delay to the date of performance assessed by us.
 - The party who is the source of the delay will submit proposals within 14 calendar days of the request and the other party will reply within three business days of the submission and notify the party who is the source of the delay of their acceptance; or ask for a revised proposal. Revised proposals will be submitted within 21 calendar days the request. If the revised proposal is not accepted then a dispute will be deemed to exist between the parties and the procedure for dispute resolution must be followed.
- 9.4 **Assessing delays.**
- The changes to the prices must be assessed with regard to the effect of the delay on the fee for the work already done, and the forecast fee for the work not yet done.
 - A delay in performance is assessed as the length of time that, due to a delay, planned performance is later than originally indicated.
 - We will include a change to the scope proposed rates for its personnel in our proposal.
- 9.5 **Implementation.** We will implement each accepted proposal in accordance with the proposal's terms.
- 9.6 **Milestones.** If an amount would have been payable to us had it not been for a delay as set out above, you will pay us the amount, despite the fact that any milestone has been adjusted.

10. Your data

- 10.1 **Your data.** We are not responsible for any of your data stored on our system.
- 10.2 **Privacy and protection of personal information.**
- **Legal obligations.** We are responsible for complying with our obligations and you are responsible for complying with your obligations under applicable laws governing your data. The parties both acknowledge that they are not investigating the steps the other is taking to comply with any applicable privacy and protection of personal information laws.
 - **Responsible party.** You remain the responsible party for determining the purpose and means of our processing of your data, including that processing will not place us in breach of any laws.
 - **Trans-border flows of your data.** You consent to us transferring your data across a country border to enable us to comply with our obligations under the agreement. You are solely responsible for determining that any transfer of your data across a country border complies with the applicable laws.
 - **Indemnity.** You agree to indemnify, defend, and hold us harmless (and those related to us and our personnel, co-branders or other partners) from and against any claim, demand, loss, damage, cost, or liability (including legal costs) arising out of or relating to you failing to comply with your obligations under this clause. If permissible under applicable law, legal costs will be on an attorney and own client basis.
- 10.3 **Access.** On a party's reasonable written request, the other party will provide the requesting party with the information that it has regarding your data and its processing that is necessary to enable the requesting party to comply with its obligations under this clause and the applicable laws. The requesting party will reimburse the other party for its reasonable charges for its assistance.
- 10.4 **Preservation of integrity of your data.** Both of the parties will take reasonable precautions (having regard to the nature of each of their obligations under the agreement), to preserve the integrity of your data and prevent any unauthorised access, corruption or loss of

your data.

10.5 **Records.** You agree that our records are prima facie evidence of the goods supplied or services provided to you.

10.6 **Return of data.** On termination of any order, each party will return to the other party in the form in which it was received all of the other party's data or information provided to the party for the purpose of the performance of the relevant order.

11. Intellectual property

11.1 **Retention of rights.** We have created, acquired or otherwise obtained rights in our learning media and despite anything contained in the agreement, we will own all right, title, and interest in our learning media.

11.2 **Use of our existing learning media.** If we utilise any of our learning media in connection with our performance under an order, our learning media will remain our property and you will not acquire any right or interest in it. If we have inserted our learning media into your work, all right, title and interest, including all rights under all copyright, patent and other intellectual property laws, in and to our sections of work will vest in us, and your sections of work will vest in you. We retain all rights, title and interest to any of the systems that are used, including the CMS and ELE. Any changes to these systems are our property.

11.3 **Licence.** Upon acceptance of the deliverables by you, we will grant you a licence to use the deliverables.

11.4 **Your existing material.** At times we need to use your copyright protected, existing material. (For example, when we are inserting our learning media into your works.) You grant us (and our contractors as necessary) a temporary, non-exclusive license to use, reproduce and modify any of your existing material provided to us solely for the performance of the services.

11.5 **Derivative works.** If we create any derivative works of your copyrighted material, we will assign all rights (including moral rights) back to you.

11.6 **New deliverables.** We will own all right, title, and interest in any new deliverables and learning media we create for you.

11.7 **Third party work.** We will correctly reference any third party copyrighted material that we include in the storyboard and framework. This material will remain the property of the copyright holder.

11.8 **Copyright notice.** Our copyright notice will appear in your works to separate our sections of work from your sections of work. We will try to mark any of our learning media that appears in your existing material or in a new work with our copyright notice.

11.9 **Trademarks.** Our logo and sub-logos, marks, and trade names are our trademarks and no person may use them without permission. Any other trademark or trade name that may appear on our marketing material is the property of its respective owner.

11.10 **Defence.** We will defend you against any claims made by an unaffiliated third party that any goods or services infringe its patent, design, copyright, or trade mark and will pay the amount of any resulting adverse final judgement (or settlement to which we consent). We will reimburse you with all costs you reasonably incurred in connection with assisting us with the defence of the action. You will promptly notify us of the claim in writing and we will have sole control over its defence or settlement.

11.11 **Consequences of successful claim by third parties.** If any third party succeeds in its claim for the infringement of any intellectual property rights, we may within 90 calendar days of the infringing item having been found to so infringe:

- obtain for you the right to continue using the infringing item or the parts that constitute the infringement;
- replace the infringing item or the parts that constitute the infringement with another product that does not infringe and that in all respects operates substantially in accordance with its specifications;
- alter the infringing item in a way as to render it non-infringing while still in all respects operating substantially in accordance with its specifications; or
- withdraw the infringing item and enter into a new agreement with you for new digital media.

11.12 **Exclusion.** We will not be liable for any claim that arises out of goods or services you select and acquire from third parties.

11.13 **Restrictions.** Except as expressly permitted under the agreement, the goods or services may not be:

- modified or used to make derivative works;
- rented, leased, loaned, sold or assigned;
- reverse engineered or copied; or
- reproduced or distributed.

11.14 **Prosecution.** All violations of proprietary rights or the agreement will be prosecuted to the fullest extent permissible under applicable law.

11.15 **Survival.** This clause will survive termination of the agreement.

12. Confidential information

12.1 **Responsibility to keep information confidential.** Each party must keep confidential any information it receives from the other party or under this agreement.

12.2 **The receiving party's responsibilities.** The party that receives confidential information agrees to protect the interests of the party it is from, and will:

- only use it to comply with its responsibilities under this agreement;
- only give the information to any of its employees or agents that need it, and only give as much of it as they need;
- use reasonable security procedures to make sure employees or agents keep the information confidential;
- get promises of confidentiality from those employees or agents who need access to the information;
- not reveal the information to anyone else; and
- not use it for any purpose other than this agreement.

12.3 **Exceptions.** These responsibilities will not apply to any information that:

- is lawfully in the public domain (available to the general public) when a party received it;
- lawfully becomes part of the public domain afterwards;
- is given to the receiving party afterwards by a different person who is allowed to reveal the confidential information; or
- is given to comply with a court order or other legal duty.

12.4 **Indemnity.** You indemnify us against any loss or damage that we may suffer because of a breach of this clause by you or your employees or agents.

12.5 **Survival.** This clause about confidential information is separate from the rest of this agreement and remains valid for five years after the end of this agreement.

13. Non-solicitation

No party will, during the currency of any order or for a period of 12 calendar months following termination, directly or indirectly solicit, offer employment to, employ, or contract in any manner with any personnel of the other party who were involved in the implementation or execution of the order.

14. Our warranties

14.1 **Service warranties.** We warrant that in relation to the services:

- we and our personnel will possess and have the right to use knowledge and expertise sufficient to enable us to provide the services;
- we and our personnel will possess and have the right to use all maintenance and other manuals, specifications, diagnostic aids and testing devices and specialised tools and equipment necessary to enable us to provide the services.
- we will employ a sufficient number of suitably trained personnel to provide the services and to achieve the service levels; and
- we will provide the services in accordance with all applicable laws, enactments, and regulations.

14.2 **General warranties.** We warrant that:

- we have the legal right and full power and authority to execute and deliver, and to exercise our rights and perform our obligations under the agreement; and
- we and our personnel will not knowingly introduce any malicious software into your material or your system.

15. Disclaimer of warranties

15.1 **Disclaimer.** You use our goods or services at your sole responsibility and risk. We provide the goods or services on an “as is” and “as available” basis. Except for the warranties given in this agreement and to the extent allowed by law, we expressly disclaim all representations, warranties, or conditions of any kind, whether express or implied, including:

- any implied warranties or conditions of satisfactory quality, no latent defects, merchantability, fitness for a particular purpose, accuracy, system integration, quiet enjoyment, title, and non-infringement
- any warranties regards third party software;
- that the goods or services will meet your requirements or be uninterrupted, legally effective or complete, timely, secure, error-free or free from infection by malicious software. You should keep up-to-date security software on any systems used to access the services.

15.2 **Exclusion of liability.** Despite any warranty we give, we will not be liable regards any defect arising from negligence, failure to follow our instructions (whether oral or in writing) or misuse.

16. Your warranties

You warrant that:

16.1 you have not been induced to enter into the agreement by any prior representations, warranties or guarantees (whether oral or in writing), except as expressly contained in the agreement;

16.2 by entering into an order you are not acting in breach of any agreement to which you are a party;

and you agree to indemnify, defend, and hold us harmless (and those related to us and our personnel, co-branders or other partners) from and against any claim for damages by any third party as a result of the breach of these warranties, including all legal costs. If permissible under applicable law, legal costs will be on an attorney and own client basis.

17. Fees and payment

17.1 **Due dates.** You will be liable for and pay the fees specified in the order and any additional fees promptly on the due date, without any deduction, set off, or demand and free of exchange in the currency specified in the order.

17.2 **Manner of payment.** You must make payment in the manner specified.

17.3 **Late payments.** Any additional surcharges and penalties specified will apply to any payment received after the due date to cover collection fees and additional administration costs. You must pay the surcharges and penalties to us on-demand. We may withhold or remove any goods or halt the provision of any services until you have paid all amounts that are due.

17.4 **Interest on overdue amounts.** To the extent permitted by applicable law, any amount not paid by you on the date of the statement of outstanding invoices will bear interest for our benefit, from the due date until the date you pay it. The rate of interest will be either 2% above the published prime overdraft rate from time to time of our bankers or 15%, whichever is higher. A letter signed by a general, branch or other bank manager setting out their rate will be proof of the rate. Interest will be payable on a claim for damages from when the damages were suffered.

17.5 **Appropriation.** We may appropriate any payment received from you towards the satisfaction of any of your indebtedness to us under the agreement.

17.6 **Withhold payment.** You may not withhold payment of any amount due to us for any reason.

17.7 **Certificate.** A certificate, signed by an accountant appointed by us, of the amount due by you and the date on which it is payable will be proof of the correctness of the certificate's contents.

17.8 **Tax.** All fees exclude any tax, which will be payable where applicable by you in addition to the fees.

17.9 **Payment profile.** You and any signatory consent and agree that we may provide any registered credit bureau with information about the payment of amounts.

17.10 **Reimburse costs.** If we suspend a service or remove any goods that we supplied, you will pay us the costs that we incurred (including redeployment, travel and associated expenses) in remobilising our employees affected by the agreement and recommencing the services or re-installing the removed goods.

18. Intellectual property infringement

18.1 **Defence.** We will defend you against any claims made by an unaffiliated third party that any goods or services infringe its patent, design, copyright, or trade mark and will pay the amount of any resulting adverse final judgement (or settlement to which we consent). We will reimburse you with all costs you reasonably incurred in connection with assisting us with the defence of the action. You will

promptly notify us of the claim in writing and we will have sole control over its defence or settlement.

- 18.2 **Consequences of successful claim by third parties.** If any third party succeeds in its claim for the infringement of any intellectual property rights, we may within 30 calendar days of the infringing item having been found to so infringe:
- obtain for you the right to continue using the infringing item or the parts that constitute the infringement;
 - replace the infringing item or the parts that constitute the infringement with another product that does not infringe and that in all respects operates substantially in accordance with its specifications;
 - alter the infringing item in a way as to render it noninfringing while still in all respects operating substantially in accordance with its specifications; or
 - withdraw the infringing item and refund to you all fees paid by you to us under the relevant order specifically with regard to the infringing item in the preceding six calendar month period.
- 18.3 **Exclusion.** We will not be liable for any claim that arises out of goods or services you select and acquire from third parties.
- 18.4 **Survival.** This clause will survive termination of the agreement.

19. Exclusions

- 19.1 We do not deal with or provide:
- 19.1.1 academic related queries or student support,
- 19.1.2 Portfolio of Evidence (PoE) support or administration,
- 19.1.3 administrative queries with respect to your assessment (e.g. dates, venue, re-assessments, etc.) and these should be directed to the relevant college, institution, or association (like the Institute of Certified Bookkeepers (ICB)).
- 19.2 When learners register with the college for an assessment a few years after receiving the material, we will not be held liable for outdated material. Therefore, you should be aware of the college's Assessment Policy before purchasing material.
- 19.3 It is your responsibility to arrange a courier if you are located outside of South Africa. You may request our help, but we are not obligated to arrange or help you arrange a courier.
- 19.4 We do not offer exchanges or refunds offered on excess stock ordered.

20. Limitation of liability

- 20.1 **Direct damages limited.** To the extent permitted by applicable law, regardless of the form (whether in contract, delict or any other legal theory) in which any legal action may be brought, our maximum liability to you for direct damages for anything giving rise to any legal action will be an amount equal to the total fees already paid by you to us for the goods or services related to the claim. The aggregate amounts for all claims will not be greater than the maximum amount.
- 20.2 **Indirect damages excluded.** To the extent permitted by applicable law, in no event will we (or our personnel) be liable for any indirect, incidental, special or consequential damages or losses (whether foreseeable or unforeseeable) of any kind (including loss of profits, loss of goodwill, damages relating to lost or damaged data or software, loss of use, damages relating to downtime or costs of substitute products) arising from the agreement.
- 20.3 **Exclusions.** The limitation contained in this clause will not apply to any breach by a party of the other party's proprietary or confidential information or intellectual property or damages arising from a party's gross negligence.
- 20.4 **We are not liable for your default.** We will not be liable for any loss or damage suffered by you arising out of or in connection with any breach of the agreement by you or any act, misrepresentation, error or omission made by or on behalf of you or your personnel.
- 20.5 **Other goods or services.** We are not liable for any other deliverable, including website, goods, or service provided by any third party.
- 20.6 **Indemnity.** We agree to indemnify, defend, and hold you (and your personnel) harmless against any and all:
- loss of or damage to any property or injury to or death of any person; and
 - loss, damage (including attorneys' fees on an attorney and own client basis), costs and expenses that you may suffer or incur arising directly or indirectly from: (i) any wilful misconduct or fraud by us or our personnel; or (ii) a breach by us of your proprietary or confidential information, or intellectual property.
- 20.7 **Liability.** Without limiting liability, neither party will be liable to the other for any loss that it may suffer as a result of theft, fraud, or other criminal act by a party or its personnel.

21. Breach

- 21.1 **Breach.** If a party:
- does not fix any breach of this agreement (failure to comply with it) within seven days of receiving written notice from the other party to do so;
 - breaches this agreement materially twice or more in any six month period;
 - is insolvent (bankrupt), or has some legal disability, for example, if they are placed under administration;
 - takes steps to deregister itself (close down) or is deregistered;
 - makes any settlement or arrangement with its creditors; or
 - fails to pay a court order against it (does not satisfy a writ of execution) for more than one million rand, within 21 days;
- then the other party may, without prejudice to any of its rights:
- claim specific performance of this agreement (make the party comply with this agreement); or
 - immediately cancel this agreement in writing; and
- claim damages from the other party, including any claim for any fees already due.
- 21.2 **Discontinue the goods, or services.** This agreement will automatically terminate if we discontinue the goods or services.

22. Termination

- 22.1 **Termination for good cause.** We may immediately terminate this agreement at any time by giving you notice in writing if:
- we discontinue the services;
 - we believe providing the services could create an economic or technical burden or material security risk for us;

- termination is necessitated by us having to comply with any applicable law or requests of governmental entities; or
- we determine that your use of a service or the provision of any services to you has become impractical or unfeasible for any legal or regulatory reason.

22.2 **Duties on termination.** On termination, cancellation, or expiry of this agreement:

- we will stop providing the services;
- your access rights will cease to exist; and
- we will erase your data, unless we have agreed to provide you with post termination assistance in writing.

22.3 **Survival.** The termination, cancellation, or expiry of this agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.

23. Effect of termination

23.1 **Amounts due to us become due and payable.** On termination, cancellation, or expiry this agreement, all amounts due to us for services rendered before termination will become due and payable even if we have not yet invoiced them. You may not withhold the amounts for any reason, unless the arbitrator directs otherwise.

23.2 **Post termination assistance.** Following termination, you may take advantage of any post-termination assistance that we may generally make available (such as data retrieval arrangements). We may provide you with post-termination assistance, but we will not be under an obligation to do so. Your right to take advantage of any post termination assistance will depend on your acceptance of and compliance with any additional fees and terms that we may impose for such assistance.

23.3 **No expectation.** We acknowledge and confirm that no expectation has been created by anyone, by the agreement or any other agreement, entitling us or you to expect the renewal or extension of the term of any agreement

23.4 **Survival.** The termination, cancellation, or expiry of this agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.

24. Resolving disputes

24.1 **Notifying each other.** There will be a dispute about or from this agreement if a party writes to the other about it and asks for it to be resolved under this clause. The parties must refer any dispute to be resolved by:

- negotiation (direct talks to try and agree how to end the dispute); failing which
- mediation (talks in which a neutral third party tries to help the parties agree how to end the dispute); failing which
- arbitration (a hearing after which a neutral third party makes a binding decision about the dispute).

24.2 **Negotiation.** Each party must make sure that their chosen representatives meet within 10 business days of notification, to negotiate and try to end the dispute by written agreement within 15 more business days.

24.3 **Disputes relating to the calculation or quantum of any payments.** Any dispute between the parties about the calculation or quantum of any payment will be referred to a practising chartered accountant of at least 15 years' standing.

24.4 **Technical disputes.** Any dispute between the parties of a technical nature, (which includes a dispute relating to acceptance testing, commissioning and any deliverable concerning the interpretation of any specifications or requirements or relating to the functions or capabilities of the services), will be referred to an independent technical expert having appropriate expertise with respect to the dispute.

24.5 **Accountant and the Technical Expert.** The accountant and the technical expert will be appointed by agreement or, if we fail to agree, we will appoint one within three business days. The accountant and technical expert will act as experts and not as arbitrators. They will give their decision as soon as practicable but no later than five business days after the dispute is referred. The decision of the accountant and the technical expert will (in the absence of clerical or manifest error) be final and binding on the parties. The outstanding payment, as determined by the accountant, will be paid by the party as determined by the accountant, on demand by the other party. The fees and all associated costs of the accountant and the technical expert will be borne by the parties equally.

24.6 **Mediation.** If negotiation fails, the parties must refer the dispute to mediation under AFSA's rules.

24.7 **Arbitration.** If mediation fails, the parties must refer the dispute within 15 business days to arbitration (including any appeal against the arbitrator's decision) under AFSA's latest rules for expedited arbitrations. The arbitration will be held in English in Cape Town. The parties will agree and appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 business days after the referral, the Secretariat of AFSA will appoint the arbitrator.

24.8 **Agree otherwise in an order.** The parties may agree otherwise in an order.

24.9 **Periods.** The parties may agree in writing to change the periods for negotiation or mediation.

24.10 **Urgent interim relief.** This clause will not stop a party from applying to court for urgent interim relief (temporary help) while the dispute resolution process is being finalised. An example might be an interdict (type of court order).

24.11 **Severability.** This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid.

24.12 **Collection proceedings.** We retain the right to institute collection proceedings in a court of law of competent jurisdiction for matters involving outstanding payment.

25. Notices and domicile

25.1 **Notices.** The parties will send all notices, authorisations, disclosures, acknowledgements, or requests by hand delivery, prepaid registered post, fax, or email to an address or number given in the relevant order.

25.2 **Service (delivery) address for legal documents.** Each party chooses its street addresses and numbers as its *domicilium citandi et executandi* (its address for the service of any document used in legal action) for this agreement.

25.3 **Change of addresses or numbers.** Each party may change the addresses or numbers in the specific terms to any other addresses or numbers by writing to the other party 14 days before the change.

25.4 **Deemed delivery.** Notice will be considered to be delivered on the date shown on any hand-delivered, prepaid registered post, courier, fax or email confirmation of delivery.

25.5 **Notice actually received.** If a party actually receives any notice or other communication, this will be good enough.

26. Force majeure

- 26.1 **Parties not liable.** No party will be responsible for any breach of this agreement caused by circumstances beyond its control, including flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions, or acts of God.
- 26.2 **Party affected to notify other party.** If there is an event of force majeure, the party affected will tell the other immediately, and they will meet within seven days to negotiate other ways to carry out any affected responsibilities under this agreement. The parties will continue to comply with the responsibilities that are not affected by the circumstances.
- 26.3 **Right to cancel.** If a party cannot fulfil a material (significant) part of its responsibilities under this agreement for more than 60 days because of force majeure, the other party may cancel this agreement by written notice.

27. Assignment and subcontracting

- 27.1 **No assignment.** No party may delegate its duties under this agreement or assign its rights under this agreement, in whole or in part. We may assign this agreement to any successor or purchaser of our business or some of our assets.
- 27.2 **Exception.** Despite this clause, we may cede and assign all rights and obligations under this agreement to a related person without your prior written consent, provided that we notify you within a reasonable time of the event occurring.
- 27.3 **Our third party contractors.** We may sub-contract or delegate our obligations under this agreement to third party contractors. We will remain liable for performance of the third party contractors. No one may require us to disclose the terms (including payment terms) of any sub-contract entered into with respect to our obligations under this agreement.

28. Relationship

- 28.1 **No temporary employment service or partnership.** Nothing in this agreement will be construed as constituting a temporary employment service or as creating a partnership between the parties and no party will have any authority to incur any liability on behalf of the other or to pledge the credit of the other party.
- 28.2 **No employment relationship.** Each party enters into the agreement as an independent contractor. The agreement does not create any other relationship, including employment for any purpose, partnership, agency, trust or joint venture relationship.
- 28.3 **Performance and good faith.** The parties will cooperate with each other and at all times act in good faith towards each other in performing this agreement.

29. General

- 29.1 **Entire agreement.** The agreement is the entire agreement between the parties on the subject.
- 29.2 **Changes to the terms.** We may change the terms at any time and where this affects your rights and obligations, we will notify you of any changes by placing a notice in a prominent place on our website or by email. If you do not agree with the change you must stop using the services. If you continue to use the services following notification of a change to the terms, the changed terms will apply to you and you will be deemed to have accepted such terms.
- 29.3 **Changes to any third party software license agreement.** We will notify you of any changes to any third party software license terms by placing a notice in a prominent place on our website, or notifying you by email. The updated third party software license terms will be effective immediately and you will be deemed to have accepted them upon notification.
- 29.4 **Waiver (giving up of rights).** Any favour we may allow you will not affect or substitute any of our rights against you.
- 29.5 **Severability.** If any term is void (invalid), unenforceable, or illegal, the term may be severed (removed) from and will not affect the rest of this agreement if it does not change its purpose.
- 29.6 **Governing law.** South African law governs this agreement.
- 29.7 **Jurisdiction.** You consent to the jurisdiction of the Magistrate's Court in respect of any action or proceedings that we may bring against you in connection with this agreement, even if the action or proceedings would otherwise be beyond its jurisdiction without prejudice to our right to institute any action in any other court having jurisdiction.
- 29.8 **Non-exclusivity.** We may provide any goods or services to any other person or entity. We may exploit our intellectual property subject to our confidentiality obligations.
- 29.9 **Costs.** Each party is responsible for its own costs of drafting and negotiating this agreement.
- 29.10 **Right to reference.** You consent to us using your name and a general description of the goods or services in any marketing or sales material.
- 29.11 **Publicity.** A party will not make any announcement or statement to the press about this agreement, without first getting written permission from the other party.