

**Brilliant Working Limited (“Brilliant Working”)**

**End User License Agreement**

Client	To be completed
Learning Management System	To be completed
Content	To be completed
Territory	To be completed
Licence Period and Volume of users	To be completed
Licence Fee	To be completed
Payment Terms	To be completed
eCourse support	To be completed
eCourse Updates	To be completed
Signed on behalf of Brilliant Working	Signature: Name (print): Title: Date:
Signed on behalf of the Client	Signature: Name (print): Title: Date:

By signing above, each party agrees to be bound by the terms of the Order Form above and the terms and conditions below.

**BRILLIANT WORKING LIMITED - LICENCE OF TRAINING MATERIALS (LMS)**

**1. DEFINITIONS AND INTERPRETATION**

1.1 The definitions in the Order Form approved by the Client, and the definitions and rules of interpretation in this clause apply in this Agreement.

**Authorised User:** each person given access to the Learning Management System by the Client.

**Client Content:** any content, data or other materials provided to Brilliant Working by or on behalf of the Client for use with the Content, which shall not be shared or used in any other purpose than for the purposes of providing support under this agreement.

**Confidential Information:** any information (including, without limitation, in written, oral, visual or electronic form, or on tape or disk) which is not publicly available including, but not limited to, any information specifically designated by the disclosing party as confidential; any information supplied to the disclosing party by any third party in relation to which a duty of confidentiality is owed or arises; and any other information which should otherwise be reasonably regarded as possessing a quality of confidence. This includes know-how and information about design, development, specifications, manuals, instructions, customer lists, sales, marketing, promotion, distribution, business plans, forecasts, and technical or other expertise.

**Derivative Work:** work generated or developed following the date of this Agreement which is based on the Content or an underlying work in relation to the Content (including translations, abridgements, condensations, or any other form in which a work may be recast, transformed or adapted).

**Digital Rights Management:** effective security and other measures for digital rights management.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, 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.

**Purpose:** internal use for training only.

**Reserved Rights:** all rights in, or in relation to, the Content that are not expressly granted to the Client under this Agreement, including rights in any and all Derivative Works, and any other rights (whether known now, or created later, and whether or not in the contemplation of the parties at the time of this Agreement), excluding any use of the Client Content.

- 1.2 Clause headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time; and shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.5 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.6 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.

## **2. GRANT OF LICENCE**

- 2.1 Brilliant Working hereby grants to the Client and its group companies a non-transferable, non-exclusive licence to permit Client's staff up to the Volume of users to use the Content on the Learning Management System during the Licence Period in the Territory for the Purpose. This license shall extend to all group companies of the Client unless Brilliant Working expressly agrees otherwise in writing.
- 2.2 The licence granted to the Client is strictly limited to, and the Client shall use the Content solely for, the Purpose.

2.3 Brilliant Working may require the removal of, or editorial revisions to, any of the Content licensed to the Client under this Agreement at any time. The Client agrees to effect that removal or editorial revisions within seven days of receipt of the request.

### **3. BRILLIANT WORKING'S OBLIGATIONS AND RIGHTS**

3.1 Brilliant Working expressly retains the Reserved Rights for its own and third party exploitation.

3.2 Brilliant Working may develop, market, sell and promote Derivative Works and may exploit (including by licensing it to third parties) the Content in any media, format or products and for purposes other than the Purpose.

3.3 Brilliant Working may require the Client to cease all use of any of the Content if it reasonably believes that the Client's use of this Content infringes the Intellectual Property Rights of any third party or breaches any applicable law or regulation. In this instance, Brilliant Working may, at its option either:

- (a) provide the Client with alternative Content so as to avoid the infringement; or
- (b) terminate this Agreement immediately on written notice in respect of the affected Content.

3.4 Brilliant Working may not use the Client Content for any other purpose than providing the Content and support as set out in this Agreement.

3.5 Brilliant Working shall ensure that the Client Content is kept secure and not shared with any third party.

### **4. CLIENT'S OBLIGATIONS AND RIGHTS**

4.1 The Client may not change, amend or develop the Content in any way without Brilliant Working's prior written consent.

4.2 The Client shall not use the Content except as permitted in accordance with the licence in Clause 2.1. The Client shall comply with all applicable laws in performing its obligations and exercising its rights under this Agreement.

4.3 The Client shall not, and shall procure that each Authorised User shall not, infringe any moral rights (as defined in Chapter IV of the Copyright, Designs and Patents Act 1988) that subsist in respect of the Content.

4.4 The Client shall ensure that the Content is kept secure and in an encrypted form, and shall use the best available practices and systems to:

- (a) enforce the territorial and use restrictions of this Agreement; and
- (b) prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Content.

4.5 If the Client becomes aware of any misuse of any Content (including non-compliance with the licence in Clause 2.1), or any security breach in connection with this Agreement that could compromise the security or integrity of the Content or otherwise adversely affect Brilliant Working, the Client shall, at the Client's expense, promptly notify Brilliant Working and fully co-operate with Brilliant Working to remedy the issue as soon as reasonably practicable. Brilliant Working may suspend the Client's rights under this Agreement until the misuse or security breach is remedied (if capable of remedy). In any event, the Client shall be responsible for all use of the Content (and the consequences of such use) by each Authorised User.

### **5. DIGITAL RIGHTS MANAGEMENT**

5.1 The Client shall, at its own cost, implement Digital Rights Management and any other technological protection measures from time to time to ensure that the Content is used within the scope of the rights granted to the Client and to Authorised Users.

5.2 The Client shall ensure that the measures adopted under clause 5.1 in conjunction with the exploitation of the Content as allowed by this Agreement are sufficient to ensure that Authorised Users of the Content are not able to copy, transfer or communicate the Content to the public, or in any way exploit the Content other than as allowed by this Agreement.

5.3 The Client shall ensure that Authorised Users do not remove, bypass, circumvent, neutralise, or modify any of the Digital Rights Management and technological protection measures used for the Content.

## **6. INTELLECTUAL PROPERTY RIGHTS**

6.1 Brilliant Working (or its licensor) retains ownership of all Intellectual Property Rights in the Content, and in any Derivative Works which it may create.

6.2 The Client assigns to Brilliant Working, and shall assign, all other Intellectual Property Rights in any development of the Content or any Derivative Works it may create, by way of future assignment of copyright and database right. The Client shall execute this assignment or confirmatory assignment as Brilliant Working may require.

6.3 The Intellectual Property Rights assigned to Brilliant Working under clause 6.2 shall form part of the Content, and of the licence granted, from the date of that assignment.

## **7. INDEMNITY**

7.1 Subject to clause 7.2, and without prejudice to Brilliant Working's obligations to fulfil its obligations under this Agreement, the Client shall indemnify and hold harmless Brilliant Working against third party claims, liabilities and expenses arising out of or in connection with the Client's use of the Content other than as permitted by this Agreement.

7.2 Brilliant Working shall indemnify the Client against all claims, liabilities and expenses arising out of any claim that the Client's use of the Content, duly approved in accordance with the provisions of this Agreement, infringes the rights of any third party in the Territory. If the use or possession of the Content (as permitted under this Agreement) infringes or, in Brilliant Working's opinion, is likely to infringe any intellectual property right of a third party, Brilliant Working may at its option and expense:

- (a) procure for the Client the right to continue to use the Content free from any liability for such infringement;
- (b) modify or replace the Content so as to avoid the infringement;
- (c) terminate this Agreement immediately on written notice in respect of the affected Content and refund any fees paid in advance of which the Client does not have the benefit.

7.3 Any indemnity under this Agreement shall only apply to the extent that the indemnified party:

- (a) promptly notifies the indemnifying party in writing of any claim or suit relevant to the indemnity;
- (b) makes no admissions or settlements without the indemnifying party's prior written consent;
- (c) allows the indemnifying party complete control over any negotiations or litigation and/or the defence or settlement of such suit or claim; and
- (d) gives the indemnifying party all information and assistance as it may reasonably require.

## **8. TERMINATION**

8.1 Without affecting any other right or remedy available to it, Brilliant Working may terminate this Agreement with immediate effect by giving written notice to the Client if:

- (a) if either party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
- (b) the Client suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

8.2 This Agreement shall expire automatically at the end of the Licence Period (if any).

8.3 On any expiration or termination of this Agreement:

- (a) all rights and authorisations granted by Brilliant Working to the Client under this Agreement shall automatically terminate and immediately revert to Brilliant Working;
- (b) the Client shall immediately cease all use of Content, and shall, at Brilliant Working's option and according to Brilliant Working's instructions, immediately return to Brilliant Working or destroy all Content in the Client's possession or subject to its control including from back-up systems and any cached Content within the Client's control; and
- (c) the Client shall immediately pay the Licence Fee outstanding or any part of it.

8.4 The Client may terminate this Agreement for convenience by providing Brilliant Working with 30 days' written notice.

**9. LIMITATION OF LIABILITY**

9.1 Except as expressly and specifically provided in this agreement:

- (a) the Client assumes sole responsibility for results obtained from the use of the Content by the Client, and for conclusions drawn from such use. Brilliant Working shall have no liability for any damage caused by errors or omissions in any Client Content, information, instructions or scripts provided to Brilliant Working by the Client in connection with the Content, or any actions taken by Brilliant Working at the Client's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
- (c) the Content is provided to the Client on an "as is" basis without warranty.

9.2 Nothing in this agreement excludes the liability of Brilliant Working:

- (a) for death or personal injury caused by Brilliant Working's negligence; or
- (b) for fraud or fraudulent misrepresentation.

9.3 Subject to clause 9.1 and clause 9.2:

- (a) Brilliant Working shall have no liability for any special, indirect or consequential loss, costs, damages, charges or expenses; and
- (b) Brilliant Working's total aggregate liability to the Client, in any period of twelve months shall not exceed an amount equal to the Licence Fee payable in that period of twelve months or, in the case of a perpetual licence of the Content, one quarter of the Licence Fee.

9.4 References to liability in this clause 10 include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

## **10. THIRD PARTY RIGHTS**

This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## **11. ASSIGNMENT AND OTHER DEALINGS**

- 11.1 The Client shall not assign, transfer, mortgage, charge, subcontract, sub-license, delegate, declare a trust over or deal in any manner with this Agreement or any of its rights and obligations under this Agreement without the prior written consent of Brilliant Working.
- 11.2 Brilliant Working may, after having given prior written notice to the Client, assign its rights under this Agreement to any person to which it transfers that part of its business to which this Agreement relates, provided that the assignee undertakes in writing to the Client to be bound by Brilliant Working's obligations under this Agreement.
- 11.3 The Client shall, at Brilliant Working's request, execute any agreements or other instruments (including any supplement or amendment to this Agreement) which may be required in order to give effect to or perfect any assignment, transfer, mortgage, charge or other dealing referred to in clause 11.2.

## **12. FORCE MAJEURE**

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

## **13. NO PARTNERSHIP OR AGENCY**

- 13.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 13.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **14. CONFIDENTIALITY**

- 14.1 Each party undertakes that it shall not at any time during this Agreement, and for a period of [two] years after the expiry or termination of this Agreement, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, nor any of the terms of this Agreement, except as permitted by clause 14.2.
- 14.2 Each party may disclose the other party's Confidential Information:
  - (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. 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 14.2; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

## **15. NOTICES**

15.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be sent by email to the contact address habitually used by the recipient in connection with this Agreement.

15.2 Any notice or communication shall be deemed to have been received 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, business hours mean 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt.

15.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **16. INADEQUACY OF DAMAGES**

Without prejudice to any other rights or remedies that Brilliant Working may have, the Client acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement by the Client. Accordingly, Brilliant Working shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.

## **17. FURTHER ASSURANCE**

Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement.

## **18. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **19. ENTIRE AGREEMENT**

19.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

19.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

## **20. VARIATION**

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **21. GOVERNING LAW**

This Agreement 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.

## **22. 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 this Agreement or its subject matter or formation provided that either party may enforce any judgement of the courts of England and Wales in the courts of any jurisdiction.