



TERMS AND CONDITIONS

1. Definitions

In this Contract, unless otherwise expressly provided, each of the following terms shall have the meaning set opposite it:

Business Days – 9am to 5pm UK time, Monday through Friday, excluding public and bank holidays in Bailiwick of Guernsey.

Commencement Date – date the Contract enters into force if listed on the Quotation, or otherwise the date of the Quotation itself.

Confidential Information – all confidential information disclosed by a party ("Discloser") to another party ("Recipient"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Subscriber shall include Subscriber Data; Confidential Information of Company and Product Supplier and shall include the Products' content, the courses, software, and the services provided by Company. Confidential Information of each party shall include the terms and conditions of this Contract and all Quotations, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party.

Company – ONYX Training Solutions Limited, registered company number is 70723 whose registered office is Serendipity, Holly Drive, Route du Braye, St Sampson, Guernsey GY2 4EF.

Contract – the contract between Subscriber and Company including these Terms and Conditions and each Quotation agreed between Subscriber and Company.

Data Protection Legislation – the General Data Protection Regulation (EU) 2016/679, as adopted into law of the United Kingdom in the Data Protection Act 2018, the Data Protection (Bailiwick of Guernsey) Law 2017, and any legislation and/or regulation which amends, replaces, re-enacts, or consolidates them, as may be in force and applicable, from time to time.

Product Supplier – Vinci Legal Limited or other VinciWorks company (DeltaNet International Limited, Essentialskillz Limited or Skill Boosters Limited) which may be supplying the product.

Fees – fees as specified on the Quotation, invoices or as otherwise disclosed by Company to Subscriber from time to time in accordance with this Contract.

Initial Term – the initial period of the Contract as listed on the Quotation.

Intellectual Property Rights – including patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, 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. Including, without limiting the foregoing, all rights held by the Product Supplier in relation to its Products.

Personal Data – as defined in the Data Protection Legislation.

Products – the courses and/or software and/or services and the content in them as applicable, each as listed in the Quotation which are to be provided by Company to Subscriber for use.

Quotation – a quotation, order form, document, or other written correspondence for placing orders that are agreed between Company and Subscriber from time to time, including amendments or addenda to such documents.

Subscriber – the person, partnership or company which has entered into the Contract with Company.

Subscriber Data – all information, data, text, logos, images, audio, video, and content in any form provided by Subscriber to Company in relation to or for use within the Products.

User – any person who accesses the Products directly or indirectly as a result of Subscriber entering into the Contract whether or not a fee is paid.

2. Fees and Payment

- 2.1.** In consideration for the provision of the Products, the Subscriber shall pay all Fees in the currency stated in the invoice. Fee payments are non-cancellable, and Fees paid are non-refundable.
- 2.2.** Unless otherwise stated, Fees are exclusive of all applicable taxes, levies or duties imposed by tax authorities, including without limitation value-added and withholding taxes.
- 2.3.** Unless otherwise stated, Fees are based on services purchased and not actual usage.

- 2.4.** Company reserves the right to increase the Fees. Such increases shall not exceed an aggregate annual increase of 5%.
- 2.5.** If Subscriber fails to pay the Company in full by the due date, at the Company's discretion, outstanding Fees may accrue late interest at an annual rate of the Bank of England Base Rate plus 2% of the outstanding balance. Company shall not exercise its rights under this clause if Subscriber disputes the applicable charges reasonably and in good faith and cooperates diligently to resolve such dispute.

3. Supply of Products

- 3.1.** The Company will make the Products available to the Subscriber and Users for the duration of the Contract.
- 3.2.** The Company and Product Supplier reserves the right to amend the Products, if necessary, as long as it will not materially degrade the nature or quality of the Products.
- 3.3.** The Subscriber accepts and understands that neither the Company nor the Product Supplier offer any regulated advice, including legal advice or financial advice, and that Products are not intended to constitute legal advice and will not absolve the Subscriber of their responsibility to comply with any regulations they are subject to.
- 3.4.** Where a Product has been customised or edited by Subscriber, Subscriber shall be responsible for the accuracy of the content of the Product. The Subscriber is responsible for ensuring the courses provided are fit for their intended purpose.
- 3.5.** Where the Products are made available to Subscriber in downloadable format:
 - 3.5.1.** Product Supplier is responsible for the cost, operation, and maintenance of the website where downloads are available; and
 - 3.5.2.** Subscriber is responsible for all computer hardware and software required to access the Products for download including establishing and maintaining Subscriber's network connectivity, sufficient bandwidth between Subscriber's facilities and the internet and servers for hosting the downloaded Products and purchasing any third-party software which may be required to use the Products.
- 3.6.** Where the Products are made available to Subscriber via a system hosted by the Product Supplier:
 - 3.6.1.** Product Supplier is responsible for the cost, operation, and maintenance of the Products and the network connections between the Products and the internet; and
 - 3.6.2.** Subscriber is responsible for all computer hardware and software required to access the Products including establishing and maintaining Subscriber's network connectivity and sufficient bandwidth between Subscriber's facilities and the internet.
- 3.7.** Subscriber will not be granted access to the source code of the Products.

4. Acceptable Use of Products

- 4.1.** The Subscriber undertakes that:
 - 4.1.1.** Subscriber's license is non-transferable, non-assignable, and non-sublicensable. The Subscriber may not permit access to the Products by persons who are not its partners, staff, or affiliates/group companies' staff, who shall be bound by all the rights and obligations of this Contract, as Subscriber;
 - 4.1.2.** The maximum number of Users that it will authorise to access and use the Products shall not exceed the number of Users listed on the Quotation. Where Subscriber exceeds the listed number of Users, Company may charge Subscriber for the additional usage on a pro-rata basis;
 - 4.1.3.** It will not attempt to use Product Supplier's systems, networks, or data without consent (including through open relay, port probing and the use of packet sniffers), regardless of whether or not such access or use has any adverse effect on the system, network, or data;
 - 4.1.4.** It will keep secure any identification, password and other Confidential Information relating to User accounts;
 - 4.1.5.** It will not send spam email from the Products;
 - 4.1.6.** It will not do anything which constitutes a misuse of the Company's and the Product Supplier's or any other person's Confidential Information;
 - 4.1.7.** If it becomes aware of a User acting in breach of this Contract, the Subscriber shall immediately suspend the User's access to the Products. If the Subscriber does not do this, the Company and/or Product Supplier may (but shall not be obligated to) disable the relevant User's access to the Product, without liability or prejudice to its other rights, and without prior notice to the Subscriber or the User.
- 4.2.** If Product Supplier or Company receives a complaint from a third party regarding the acceptable use of the Products by Subscriber or its Users, Product Supplier or Company will make reasonable endeavours to resolve such complaint working together with Subscriber, except:
 - 4.2.1.** In relation to complaints that are the subject of court order or proceedings, or
 - 4.2.2.** where Product Supplier or Company reasonably believes that it must take urgent action without reference to the Subscriber.

5. Product Rights

- 5.1.** Product Supplier retains ownership of all rights in the Products, in the Product Supplier's Confidential Information and all related Intellectual Property Rights. Product Supplier shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable licence, for the duration of all applicable Intellectual Property Rights, to use in any way with regard to the Products. This includes any suggestions, enhancement requests or other feedback provided by Subscriber and/or its Users, relating to the operation of the Products. The Subscriber shall not sub-

license, assign or otherwise transfer the rights granted under this Contract.

5.2. Subscriber retains ownership of any Intellectual Property Rights in its Confidential Information and in the Subscriber Data. Subscriber grants Product Supplier and the Company permission to use and reproduce all Subscriber Data in order to fulfil its obligations under this Contract.

5.3. Other than as expressly set forth herein, nothing in this Contract grants Subscriber any right, title, license, or interest in or relating to the Products and Product Supplier's Confidential Information and the Company's Confidential Information and Product Supplier reserve all rights, title, and interest in and to Products and Product Supplier's Confidential Information, including all related Intellectual Property Rights.

5.4. Save to the extent expressly permitted by applicable law, Subscriber will not, nor allow any third-party, to reverse engineer, decompile, copy, or attempt to discover any source code or underlying ideas or algorithms of the Products, or remove or modify any copyright, trademark, or other proprietary notices of Product Supplier or the Company. Subscriber will not access the Products to copy their features, functions, or graphics.

6. Suspension of Access to the Products

6.1. Product Supplier or Company may, at their absolute discretion, where possible with advanced notification to Subscriber, suspend access to the Products:

- 6.1.1. during any technical failure, modification or maintenance involved in the Products. Product Supplier will use reasonable endeavours to procure the resumption of the Products as soon as reasonably practicable;
- 6.1.2. if Subscriber fails to comply with any provision in this Contract, including failure to pay Fees due, or does anything which in Company's or Product Supplier's opinion may have the effect of jeopardising the operation of the Products, until remedied;
- 6.1.3. where Company and Product Supplier is made aware that Subscriber Data is illegal, offensive, objectionable or in breach of a third-party's rights;
- 6.1.4. in extreme circumstances, to protect the personal safety of Users of the Products, the Company's and Product Suppliers' websites, Company's or Product Suppliers' staff, or the public.

6.2. If a suspension of Products is carried out under clause 6.1 Subscriber shall remain liable for all Fees throughout the period. If Subscriber's account is suspended or terminated due to the Subscriber's breach, reactivation will be completely at Company's discretion.

7. Company Obligations

7.1. The Company warrants that:

- 7.1.1. it is validly existing under the laws of its incorporation and has all rights, powers, and authorities to enter into this Contract;
- 7.1.2. it acts as the Product Supplier's agent in the distribution of the Product which is owned by the Product Supplier and has the proper license, certification and sufficient skills and knowledge to provide the Product;
- 7.1.3. it shall use commercially reasonable endeavours to make the Product available in accordance with this Contract and with reasonable skill and care;

8. Product Supplier Obligations

8.1. The Product Supplier warrants that:

- 8.1.1. it is validly existing under the laws of its incorporation and has all rights, powers, and authorities to enter into this Contract;
- 8.1.2. the Products shall perform materially in accordance with the terms of this Contract but other than as set out in these Conditions, insofar as liability may lawfully be excluded or limited, the Products are provided "as is," without any warranty whatsoever.

8.2. The Product Supplier does not warrant that:

- 8.2.1. The Products provided under this Contract will be uninterrupted or error free;
- 8.2.2. will meet the Subscriber's requirements, other than as expressly set out in this Contract.

8.3. Product Supplier cannot and does not assume any responsibility for the privacy or security practices of any third-party websites which the Subscriber or Users may be able to access through the Products.

8.4. The Product Supplier undertakes that it shall use all reasonable endeavours to:

- 8.4.1. provide support to the Subscriber as is reasonably necessary to allow the Subscriber and Users to use the Products;
- 8.4.2. provide Products with a level of care, skill, and diligence in accordance with common practice in the relevant industry. The Product Supplier does not warrant that the Products will be free from external intruders (hackers), virus or worm attack, denial of service attack, or other persons having unauthorised access to the Products;
- 8.4.3. comply with all applicable laws and regulations including those relating to anti-bribery, anti-corruption, anti-money laundering and modern slavery.

9. Subscriber Obligations

9.1. The Subscriber warrants that:

- 9.1.1. it is validly existing under the laws of its incorporation and has all rights, powers, and authorities to enter into this Contract;
- 9.1.2. at the time of entering into this Contract, Subscriber is not relying on any representation made by the Company or by

the Product Supplier which has not been stated expressly in this Contract;

9.1.3. it will comply with all applicable laws and regulations in collecting, compiling, storing, accessing, and using Subscriber Data in connection with the Products.

9.2. The Subscriber shall:

9.2.1. be solely responsible for the accuracy, quality, and integrity of Subscriber Data.

9.2.2. cooperate with the Company on all matters relating to the Products including by providing Company with all information and materials reasonably required to supply Subscriber with the Products;

9.2.3. be responsible for any unauthorised use of the Product by Users and notify the Company as soon as it becomes aware of any unauthorised use of the Products by any person.

9.2.4. comply with all applicable laws and regulations including those relating to anti-bribery, anti-corruption, anti-money laundering and modern slavery.

9.3. The Subscriber shall not:

9.3.1. store, reproduce, distribute, or publish the Products whether in whole or in part, and in any form or media, without prior written agreement of the Company;

9.3.2. use any parts of Products provided by the Company or Product Supplier to create a software or other product where the use is substantially similar to that of or competes with the Products.

10. Data Protection

10.1. Both Product Supplier and Subscriber will comply with all applicable requirements of the Data Protection Legislation.

10.2. The Product Supplier and Subscriber acknowledge that for the purposes of the Data Protection Legislation, Subscriber is the Data Controller and the Company is the Data Processor, both as defined in the Data Protection Legislation. The Product Supplier will be an authorised Sub-processor of the Company when processing the Data. In circumstances, where the Product Supplier communicates with and receives instruction directly from the Subscriber the Subscriber is the Data Controller and the Product Supplier is the Data Processor.

10.3. The Subscriber will ensure that it has all necessary appropriate consents and notices in place to collect any Personal Data that it keeps on the Products and to enable lawful transfer of the Personal Data to the Company and Product Supplier for the duration and purposes of the Contract.

10.4. The Company and Product Supplier shall process Personal Data for the purpose of the provision of the Product. The Company and Product Supplier may use, and Subscriber consents to the use of, Personal Data to:

10.4.1. monitor and maintain an account history of Subscriber's and Users' use of the Products;

10.4.2. monitor and address complaints, other feedback, and to resolve disputes;

10.4.3. contact Subscriber in relation to use of the Products.

10.5. Neither the Company nor the Product Supplier will transfer any Personal Data outside of the United Kingdom or European Economic Area unless to a country approved either by the European Commission or by an appropriate Regulatory Authority within the United Kingdom as providing an adequate level of protection for Personal Data. Any other transfer will require prior written consent of the Subscriber. Neither the Company nor the Product Supplier shall have responsibility if the Subscriber or its employees, agents, consultants, or subcontractors access Personal Data from outside of the United Kingdom or European Economic Area resulting in the transfer of the Personal Data outside of this territory.

10.6. The Company and Product Supplier will ensure that they have in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data. This includes measures against accidental loss, destruction, or damage to, Personal Data.

10.7. The Subscriber, the Company and Product Supplier will notify each other as soon as reasonably practicable after becoming aware of any personal data breach (as defined in the Data Protection Legislation).

10.8. In the event that the Company or Product Supplier receives a subject access request, request for erasure of Personal Data, notification, complaint or other communication from an individual to whom the Personal Data relates, or a request from a regulatory authority which is addressed to, or intended for the Subscriber, it will promptly pass on such communication and provide Subscriber with reasonable assistance where required, unless prevented from doing so by law or regulation. Product Supplier and/or the Company will assist the Subscriber, as reasonably necessary to carry out a privacy impact assessment and audits, including inspections, conducted by the Subscriber or other auditor authorised by the Subscriber.

10.9. The Company and Product Supplier will ensure that all employees, agents, consultants, and subcontractors who have access to and/or process Personal Data are obliged to keep the Personal Data confidential.

10.10. The Subscriber shall be responsible for its actions and the action of its employees, agents, consultants, and subcontractors that result in The Company or Product Supplier being in breach of this clause 9.

10.11. The Subscriber acknowledges and agrees that the Company and Product Supplier may engage sub-processors to process the Personal Data. The Company and Product Supplier may appoint a new sub-processor provided that the Subscriber is given 30 days' prior notice and the Subscriber does not legitimately object to such changes within that timeframe. If such objections are

legitimate, the Subscriber may, by providing written notice to the Company, terminate this Contract immediately but shall not receive a refund of any Fees paid in advance of receipt of the Products. The Company and Product Supplier will ensure that any sub-processors to whom it transfers the Personal Data enter into written agreements with the Company or Product Supplier respectively requiring that the sub-processor abide by terms no less protective than this Contract.

11. Confidentiality

11.1. Each party shall treat the other party's Confidential Information as confidential and shall not use, divulge, communicate, or disclose the other party's Confidential Information to any other person without the party's prior written consent. This obligation shall not apply where:

- 11.1.1.** The Confidential Information was in possession of the Recipient, without the obligation of confidentiality, prior to its disclosure;
- 11.1.2.** The Confidential Information was obtained by a third party without a confidentiality obligation;
- 11.1.3.** The Confidential Information was already in the public domain at the time of disclosure, otherwise than by reason of a breach of the Contract;
- 11.1.4.** Disclosure is required by law, by any governmental or other regulatory authority, or by a court, or other authority of competent jurisdiction. Where it is legally permissible to do so, the Discloser will notify the other Recipient of such a disclosure as soon as reasonably practicable.

12. Term and Termination

12.1. This Contract shall commence on the Commencement Date and will continue for the Initial Term.

12.2. Following the Initial Term, this Contract shall be automatically renewed for successive periods of 12 months (each a "Renewal Period") unless either party notifies in writing of cancellation at least 90 days before the end of the Initial Term or any Renewal Period, in which case, the Contract shall terminate upon the expiry of the Initial Term or Renewal Period.

12.3. Without affecting other rights available to the Company or the Subscriber, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- 12.3.1.** The other party fails to pay an amount due according to this Contract on the payment due date, and remains in default for not less than 30 Business Days after being notified in writing to make such a payment;
- 12.3.2.** The other party commits a material breach of any term in the Contract which is irremediable or if such a breach is remediable, if the party fails to remedy that breach within 30 Business Days after being notified to do so;
- 12.3.3.** The other party is subject to suspension of business, insolvency, institution of bankruptcy, liquidation

proceedings, appointment of a trustee or receiver for its property or business, or any assignment, reorganization, or arrangement for the benefit of its creditors or any analogous proceedings in any other jurisdiction.

12.4. Upon termination of this Contract for any reason, Subscriber shall cease all use of the Products. Upon request by Subscriber made within 30 days of the date of termination, Product Supplier shall provide Subscriber with access to a downloadable file of Subscriber Data in Microsoft Excel format. In line with the Company's and Product Supplier's data management processes, both the Company and Product Supplier will delete all Subscriber Data from the Services following this 30-day period, and shall, unless otherwise required by law, have no obligation to maintain or provide any Subscriber Data thereafter.

12.5. Clauses 2, 5, 9, 10, 11, 12.4 and 13 shall survive termination of the Contract.

13. Liability

13.1. Nothing in the Contract shall limit or exclude Company's liability for:

- 13.1.1.** death or personal injury caused by its negligence, or the negligence of its employees, agents, or subcontractors;
- 13.1.2.** fraud or fraudulent misrepresentation;
- 13.1.3.** any other loss that cannot be excluded pursuant to applicable laws.

13.2. Subject to clause 13.1, neither the Company nor the Product Supplier shall be liable to the Subscriber or any third party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising in connection with the Contract for loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of damage to goodwill, and any indirect or consequential loss.

13.3. Subject to clause 13.1 and without prejudice to clause 13.2, Company's and Product Supplier's total liability to the Subscriber or any third party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising in connection with the Contract shall be limited to 100% of the total Fees paid by the Subscriber and received by Company under the Contract in the 12 months preceding the date any such liability arises.

13.4. Company shall defend Subscriber against any claim, demand, suit or proceeding made or brought against Subscriber by a third party alleging that Subscriber's use of the Products in accordance with the terms of this Contract infringes or misappropriates the Intellectual Property Rights of a third party.

13.5. The Subscriber shall indemnify Company and Product Supplier against all costs, claims, damages, losses and expenses arising out of or connected with:

- 13.5.1.** the Subscriber's use of the Products not in accordance with the terms of this Agreement; or

13.5.2. from the Subscriber's failure to comply with any applicable laws and regulations.

14. Force Majeure

14.1. Where a liability would otherwise exist, neither the Company nor Product Supplier nor Subscriber shall be liable to the extent that the circumstances creating that liability have arisen for reasons outside its reasonable control.

15. Notices

15.1. Any notice given under this Contract shall be given in writing and shall be deemed to have been received if sent via email to the other party's most recently provided email address. If an email is sent before 4:30pm on a Business Day, it shall be deemed received on that day.

16. General Terms

16.1. Modification – The Company may vary this Contract only with the written agreement of the Subscriber. The Company may vary the Fees pursuant to clause 2.

16.2. Parties' Relationship - The Subscriber and the Company are independent to one another, and nothing herein shall be deemed to cause this Contract to create an agency, partnership, employment relationship or joint venture between them.

16.3. Entire Contract - This Contract constitutes the entire agreement of the parties relating to the matters covered by this Contract, and supersedes all prior representations, proposals, discussions, and communications, whether oral or in writing. Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any representation or warranty that is not set out in this Contract.

16.4. Assignment - Company may assign any or all of its rights and obligations under this Contract to any affiliated entity which directly or indirectly controls, is controlled by or is under common control with Company without the consent of Subscriber, on the condition that the assignee expressly assumes all of the obligations of for the performance of this Contract. Subscriber shall not assign this Contract without written consent of Company including by reason of merger, consolidation, reorganisation, or the like. Where there is a purported assignment by Subscriber in breach of this clause Company may terminate this Contract upon written notice to Subscriber without refund of any prepaid Fees covering the remainder of the term of all subscriptions after the effective date of termination.

16.5. Severance - If any provision of this Contract is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision shall be enforced to the maximum extent permissible so as to affect the intent of this Contract, and the remainder of this Contract shall continue in full force and effect.

17. Governing Law and Jurisdiction

17.1. This Contract and any dispute or claim rising in connection with it, or its subject matter or formation (including non-

contractual disputes or claims) shall be governed and construed according to the law of England and Wales.

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

17.3. Notwithstanding the above, any dispute or claim arising exclusively between the Company and the Client, excluding the Product Supplier, shall be governed and construed according to the law of the Bailiwick of Guernsey. In such cases, the parties irrevocably submit to the exclusive jurisdiction of the courts of Guernsey to settle any such dispute or claim.