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Standard Service Subscription Agreement - itslearning AS

STANDARD TERMS AND CONDITIONS

This SERVICE SUBSCRIPTION AGREEMENT ("Agreement") is entered into between itslearning's representative ("Partner") denoted in the Order Form and itslearning AS, a Norwegian Corporation located at Edvard Griegs vei 3 - 5836 Bergen, Norway ("ITL AS") (collectively, "ITL"), on the first part, and the customer as specified in the Order Form ("Customer"), on the second part Collectively known as the Parties.

WHEREAS ITL AS is the owner of the intellectual property of the itslearning learning Platform, and is the contract party for the licenses of the learning platform and the associated hosting services.

And

WHEREAS the Partner is ITL AS representative in the customers location/country ("Territory") and will have service and support deliveries to the customer

And

WHEREAS the customer has initiated an agreement with the itslearning representative

And

WHEREAS, the parties now wish to enter into a definitive service subscription agreement governing Customer's use of the Software and Services.

And

WHEREAS the Partner is authorized, through an Partner agreement, to sign a license agreement on behalf of ITL AS



NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Subject – Standard Terms and Conditions

(1) Upon signing of the applicable Order Form (the "Order Form") the Customer and ITL agrees to the terms and conditions ("TAC") as set out herein.

The current TAC is found at the following URL <http://www.itslearning.eu/terms>.

2. Right to Use

2.1 Services

(1) The Customer is hereby granted a time limited, non-exclusive, non-transferrable right to use the software itslearning (the "Software") which is developed by ITL AS. Applications from ITL partners or other third parties are also included in this agreement ("Partner Applications"). The software may be accessed through the URL <http://www.itslearning.com> (the "Web Site").

(2) In addition, ITL AS will provide a hosting service for the Customer (Software as a Service - "SaaS").

(3) The Software, Partner Applications, Website and SaaS will hereinafter jointly be referred to as the "Service".

(4) These TAC will also apply to any other products, components and / or features selected in the Order Form, additional T&C might be applicable.

(5) ITL may from time to time and at its own discretion make commercially reasonable modifications to the Service.

(6) The Customer is aware of the special requirements to its own hardware and software (including other licenses) imposed by use of the Service, and accepts all risks for the functionality of its own hardware and software, including the network solutions of the Service directly or indirectly interface with it. ITL is not responsible for the compatibility between the Service and the Customers software and / or hardware.



(7) ITL may deliver information to Customer regarding products, services and tools of ITL and third parties associated with ITL. This information can be submitted by e-mail or posted on the Web Site.

2.2 Authorised Users

(1) The Customer's access to the Service is limited to the number of Authorised Users set out in the applicable Order Form. The Customer is responsible for the appropriate configuration by each Authorised User of the Service's security settings to prevent any unauthorised access to or use of the Service. Any unauthorised use must be terminated and reported to ITL immediately.

(2) Upon the Customer's exceeding the number of active Authorised Users paid for, the Customer will be invoiced for a minimum of 50 new active Authorised Users at a time as specified in the Order Form. An Authorised User is active from the first time he / she logs on to the Service.

(3) ITL may collect information on the Customers use of the Service for invoicing purposes and for gathering statistics for internal use.

(4) The Customer will at its own expense respond to questions and complaints from its Authorised Users or third parties relating to the Customer's or its Authorized Users' use of the Service. Customer will use commercially reasonable efforts to resolve support issues brought to its attention on its own, without escalating them to ITL.

2.3 Service Period

(1) The Service is available for the period specified in the Contract. The Service will be automatically renewed for another 12 months if it has not been terminated in writing by one of the parties at least 60 days prior to expiry.

2.4 Service Fee

(1) The Customer shall pay the Service Fee as specified in the Contract (adding any applicable VAT) in advance for the first twelve months of the Service Period. Payment shall be made upon signing of the Contract.

(2) The remaining Service Fee (if the Service Period is more than 1 year or the Service Period is renewed) will be invoiced 30 days prior to the expiry of the first year. Purchases in excess of basic amounts in the Contract will be invoiced on the first day of each month.



(3) All payments shall be made with reference to the invoice number. In case of late payment the Customer will be charged a penalty interest of 1.25 % per commenced month and / or collection fees according to provisions in the relevant national legislation. ITL will claim a collection fee equal to NOK 60 charged in the currency agreed upon in the Contract in connection with late payment notice.

(4) When the Service is renewed in accordance with clause 2.3 above, the current price for the same services at the time of renewal shall apply.

(5) All fees may be changed by ITL with effect from 1 January each year, such annual increase to be limited to a maximum of 5%.

(6) Itslearning might outsource or delegate its Invoicing to a partner or 3rd party dependent on its instructions for each country.

2.5 Rights to the Service, intellectual property rights

(1) ITL and its Partners will retain all right, title and interest in and to the Services, all appurtenant documentation and any other intellectual property rights. Nothing in the Contract or in these TAC shall impair or alter ITL's rights to the Service or Software, including copyright and other intellectual property rights, or be construed so as to constitute a sale or transfer of such rights to the Customer.

(2) The Customer is not allowed to perform any reverse engineering on any of the Service elements, including but not limited to reconstructing, back transfer, decompile, disassemble, modify, make derived versions of, or in any other way attempt to discover or find the source code for any of the Service elements.

(3) The Customer is only given a right to use the Service in its own business and is under no circumstances allowed to copy, sell, transfer, sublicense or in any other way distribute any of the Service elements to others.

(4) If the Customer infringes upon ITL's copyrights or other interests in the Software, Customer shall pay a fee equivalent to fifteen times the annual Service Fee. If ITL suffers a loss that is higher than fifteen times the annual Service Fee as a result of the infringement, ITL can also demand compensation for the uncovered loss.

3. SaaS

3.1 Application management



(1) ITL shall operate the Service for the Customer as a hosted service and provide access to the latest version of the Service at any given time.

(2) Information in respect of notices of downtime, operational disturbances, maintenance and other circumstances influencing the service and the Authorised Users, shall be provided to the Company Contact. Notification of planned downtime during working hours shall, under normal circumstances, be provided no later than 14 days before the event.

3.2 Data Centre

(1) The Customer's data will be stored in ITL and / or ITL's partners' network of data centres. ITL and its partners maintain a number of geographically distributed data centres, the locations of which are kept discreet for security purposes. ITL computing clusters are designed with response time, resiliency and redundancy in mind.

(2) Subject to the limitations of liability applicable, ITL shall adhere to reasonable security standards with regard to protecting the data centre from unauthorised access by third parties. ITL and its partners adhere to the European Commission Directive on Data Protection and U.S. Safe Harbour Privacy Principles of Notice, Choice, Onward Transfer, Security, Data Integrity, Access and Enforcement.

(3) ITL is responsible for all hardware, software and equipment in the data centre and will ensure that it is fit for its purpose and scaled out if necessary.

3.3 Availability Guaranty and response time

(1) Availability is measured in the form of uptime per product / component; defined as the period when the Authorised Users are able to handle and receive transactions with defined functionality and response time.

(2) The Service shall have a minimum of 99.7% uptime 24 hours a day, seven days a week, except for notified periods of updating and maintenance.

(3) This uptime guarantee does not include loss of access to the Service caused by circumstances beyond ITL's control, or loss of access to the Service that is of little or no significance in the Customer's day-to-day operation.

(4) The uptime guarantee from ITL is limited to products and software produced by ITL. For uptime complaints regarding products and software supplied by ITL partners and other third parties (such as Google and Ephorus) the Customer



must contact the relevant supplier. List of ITL Partners may be accessed on the following URL: <http://www.itslearning.eu/extension-partner-overview>.

(5) The Customer will be entitled to rebates in case of deviation from uptime

With uptime higher than or equal to 98% but lower than 99.7%, the Customer is entitled to a rebate of 3% of the charges for the product in question per month.

- With uptime higher than or equal to 97% but lower than 98%, the rebate is 5% of the charges for the product in question per month.
- With uptime higher than or equal to 96% but lower than 97%, the rebate is 7% of the charges for the product in question per month.
- With uptime higher than or equal to 95% but less than 96%, the rebate is 10% of the charges for the product in question per month.

(6) Availability measured below 95% constitutes material breach and the Customer may choose to terminate the Contract with immediate effect and receive a refund proportionate to the charges of the remaining Service Period.

(7) Uptime is measured on a monthly basis. The following formulae shall be used to calculate the potential Monthly Service Credit Payment (MSCP). ($MSCP = MSP * SCP$). Monthly Service Payment (MSP) is calculated as one twelfth of the annual Service Fee payable in accordance with schedule 1 for each Contract Year. Service Credit Percentage (SCP) is defined within each of the Service Level Tables above.

(8) ITLs objective is to achieve a response time of no more than 2 seconds (server side) for a minimum of 99% of queries.

(9) The Customer cannot claim compensations or any other remedies from deviation from the uptime and or response time except for the rebates / right to terminate referred to herein.

3.4 Storage Capacity and backup

(1) ITL will provide Initial Storage Capacity as set out in the Contract. Additional capacity is automatically made available as needed (in steps of 1 GB), at a specified fee specified in the Order Form.

(2) ITL will secure a backup from the machines every night. Up to three versions

of each file may be stored. File recovery is performed at a standard hourly rate for consultant services specified in the Order Form.

4. Support

4.1 Right to support

(1) Basic support is included when purchasing the Service. Support will be offered through telephone, e-mail and web.

(2) Representatives appointed by the Customer ("Designated Support Users") have the right to use ITL support services. Unless otherwise agreed the Customer may nominate two Designated Support Users.

(3) ITL shall ensure that the support staff is competent to answer any question related to the Service. If the support staff is not able to answer a question, ITL's responsibility is limited to providing the assistance one more time.

(4) The Customer shall immediately inform the support staff of any Customer specific circumstances that might affect the handling of the request. Designated Support Users must have attended relevant training, including basic training and super user training. Where available, Designated Support Users might be required to undergo an annual certification test at Customers expense.

4.2 Response time

(1) ITL shall commence assistance within 1 business day after having received a request on normal Business Days between 08:00 a.m. until 04:00 p.m. local time (for countries with an official ITL office). For some countries support will be provided by a local ITL partner. The support centre is not manned on Saturdays, Sundays, Christmas Eve, New Year's Eve and public holidays.

4.3 Products and services offered by ITL partners

(1) The right to basic support from ITL is limited to products and software produced by ITL. For support for products and software supplied by ITL partners and other third parties the Customer must contact the relevant supplier. List of ITL Partners may be accessed on the following URL:
<http://www.itslearning.eu/extension-partner-overview>.

5. General Provisions

5.1 "As is" and transfer

(1) Without prejudice to the uptime guarantee in clause 3.3, the Service is delivered as documented in the Product of Principles [<http://www.itslearning.eu/product-principles>] with no representation, guarantee or warranty of any kind as to further functionality of the Service. All corrections shall be performed within reasonable time.

(2) The Customer may not assign, sublet or sell his rights and / or obligations under the Contract, temporarily or permanently, to any third party.

5.2 Warranty

(1) ITL AGREES TO USE COMMERCIALY REASONABLE EFFORTS TO DELIVER THE SOFTWARE AND THE SERVICES IN ACCORDANCE WITH THE SOFTWARE SPECIFICATIONS AND SERVICE SPECIFICATIONS LISTED HEREIN AND IN THE PRODUCT OF PRINCIPLES [<http://www.itslearning.eu/product-principles>].

ITL hereby disclaims all OTHER warranties and REPRESENTATIONS with regard to the software, services AND/OR THE WEBSITE, WHETHER express, implied or statutory, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose.

5.3 Limitations on liability

(1) ITL AND ITS EMPLOYEES, OFFICERS, DIRECTORS, CONTRACTORS, DISTRIBUTORS, PARTNERS AND AGENTS, WILL NOT BE LIABLE FOR ANY INDIRECT, DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOST DATA, ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE, SERVICES AND/OR THE WEBSITE CAUSED BY INCORRECT OR INCOMPLETE INFORMATION IN THE SERVICE, LACK OF OR INSUFFICIENT FUNCTIONALITY OF THE SERVICE, LOSS OF DATA HOSTED BY ITL, UNAUTHORIZED USE OF DATA HOSTED BY ITL OR ANY OTHER CIRCUMSTANCES CONNECTED TO THE SERVICE THAT MAY BRING FINANCIAL LOSS, DAMAGES AND/OR INCONVENIENCE UPON THE CUSTOMER OR THIRD PARTIES EVEN IF ITL HAS ACTUAL OR



CONSTRUCTIVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE.

(2) ITL SHALL NOT BE HELD RESPONSIBLE FOR THE CUSTOMERS DIRECT OR INDIRECT LOSSES INCURRED BY REASONS OF THE SERVICE NOT BEING AVAILABLE (PARTLY OR IN ITS ENTIRETY) AND REDUCED RESPONSE TIME, FOR TECHNICAL OR OTHER CAUSES.

(3) ITL SHALL NOT BE RESPONSIBLE FOR ANY INFRINGEMENT OF THE COPYRIGHT OF A THIRD PARTY IN RESPECT OF INFORMATION MADE AVAILABLE IN OR THROUGH THE SERVICE BY THE CUSTOMER.

(4) ITL UNDERTAKES NO RESPONSIBILITY FOR, AND DISCLAIMS ALL LIABILITY ARISING FROM, ANY DEFECTS OR FAILURES IN ANY COMMUNICATIONS LINES, THE INTERNET OR INTERNET SERVICE PROVIDER, THE COMPUTER HARDWARE OR SOFTWARE OF CUSTOMER OR ITS AUTHORIZED USERS, OR ANY OTHER SERVICE OR DEVICE USED TO ACCESS THE SOFTWARE OR TO AUTHENTICATE ANY USER AS AN AUTHORIZED USER.

CUSTOMER ACKNOWLEDGES AND AGREES THAT ITL IS NOT RESPONSIBLE FOR THE CUSTOMER DATA AND/OR ANY THIRD-PARTY CONTENT, AND ITL SHALL NOT BE LIABLE FOR ANY LOSSES OR DAMAGES RESULTING FROM RELIANCE ON ANY SUCH INFORMATION OR DATA UNDER ANY CIRCUMSTANCES.

(5) SUBJECT TO THE LIMITATIONS SET OUT IN THIS CLAUSE 5.2, THE MAXIMUM AGGREGATE LIABILITY OF ITL UNDER THIS AGREEMENT SHALL UNDER NO CIRCUMSTANCES EXCEED 50 % OF THE YEARLY SERVICE FEE PAID BY CUSTOMER HEREUNDER.

5.4 Indemnification/Customer Representations

(1) Requisite Authority. Customer represents and warrants that it is a company duly organized, validly existing and in good standing under the laws of its territory and that it has all requisite power and authority to enter into and perform this Agreement in accordance with its terms and provisions without violating, to the best of its knowledge, the rights of any other person or entity.

(2) Customer Data. Customer represents and warrants that the content of the Customer Data, and the processing and/or storage thereof by ITL hereunder, will not violate, to the best of its knowledge, the rights of any other person or entity.



(3) CUSTOMER WILL DEFEND, INDEMNIFY AND HOLD ITL HARMLESS FROM ANY LOSS, DAMAGE, COSTS, LIABILITY AND EXPENSE (INCLUDING REASONABLE ATTORNEYS' FEES) RESULTING FROM ANY ACTION OR CLAIM OF A THIRD PARTY (THE "LOSSES") ARISING FROM CUSTOMER'S BREACH OF SECTIONS 1 OR 2 ABOVE (THE "CUSTOMER INDEMNIFICATION").

THE CUSTOMER SHALL INDEMNIFY AND HOLD HARMLESS ITL FROM ANY CLAIM RESULTING FROM INFRINGEMENT OF ANY THIRD PARTY'S RIGHTS ARISING AS A RESULT OF THE CUSTOMER'S USE OF THE SERVICE IN A MANNER CONTRARY TO THIS AGREEMENT OR THE USER DOCUMENTATION.

5.5 Personal information and content

(1) The Customer or its Authorized Users own the content and the personal information he introduces into the system and Customer holds the sole responsibility for the personal information stored on the Service as "Data Controller". The Customer is responsible for meeting any public requirements under the jurisdiction of the Customer to inform, report or apply for concessions for the data processing.

Customer will obtain consent from all Authorised Users (and their parents / guardians) to Customer's access, storage, monitoring, use or disclosure of this data and to ITLs providing the Customer with the ability to do so. Such consent to be voluntary, expressly and informed. ITL may collect information on the Customers use of the Service for invoicing purposes and for gathering statistics.

(2) In performing the Services ITL undertakes to comply with provisions set out in the national Personal Information Act (in the jurisdiction of the Customer) and EU-regulation as "Data Processor", including implementing adequate measures for preventing third party access to the information, protection against unintended changes or loss of the information and ensuring that the processing is based on sufficient and relevant information.

If the Data Controller is situated outside the EEC (and the data centre is located in Norway), the Norwegian Personal Information Act will apply. ITL shall not process or use the personal information received from the Customer in any other way than in accordance with what has been agreed in this Contract. ITL shall also maintain a log and document all attempts at unauthorised access and other breaches of system security. The Customer accepts however that ITL can sub-



contract the safekeeping of the personal information, provided such sub-contracting does not abrogate ITL's responsibilities.

(3) If ITL is obligated to process personal information on behalf of the Customer, such personal information shall not be handled in any other manner than strictly required to comply with the provisions of the Contract and / or the TAC.

(4) ITL (as Data Processor) and the Customer (as Data Controller) shall, through planned and systematic efforts, ensure the satisfactory securing of information in terms of confidentiality, integrity and availability with regard to personal information.

(5) The Customer shall not use the Service to store, distribute or transmit viruses or any other unlawful and / or harmful material or use the Service in any manner that threatens the integrity, performance or availability of the Service.

5.6 Termination/Suspension

(1) Either party may terminate the Contract immediately upon the other party's (including any Authorised User's) material breach of its commitments according to the Contract and the TAC, subject to such breach not being remedied within 30 calendar days after receipt of a written notice specifying such failure.

(2) ITL may also suspend the provision of its services (or any part of them) if the Customer fails to make payment in accordance with the Contract or clause 2.4 herein or if suspension is necessary for security reasons.

(3) If the Contract is terminated by the Customer, the Customer is entitled to a return of the Service Fee proportionate to the remaining Service Period.

(4) Neither party to this Contract will be deemed to be in breach of this Contract or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under this Contract due to circumstances beyond the party's control, provided that it gives written notice to the other party, specifying the nature and extent of the circumstances and prospective recommencement of the party's obligations hereunder.

5.7 Confidential information

(1) Each party agrees to keep strictly confidential all non-public information in respect of the business of the other party, and not to use such information save for complying with its obligations under the Contract and / or the TAC.



Customer hereby agrees to hold in strict confidence any nonpublic information about the Software, Services and Website that is disclosed to Customer in connection with Customer's use of the Software, Services and Website as authorized hereunder (the "ITL Confidential Information"), and agrees not to make the ITL Confidential Information available to any third party or to use such ITL Confidential Information for the benefit of anyone other than ITL. ITL agrees to hold in strict confidence any nonpublic information that is disclosed to ITL in connection with Customer's use of the Software, Services and Website hereunder, including, but not limited to, the Customer Data (the "Customer Confidential Information"), and agrees not to make the Customer Confidential Information available to any third party or to use such Customer Confidential Information for the benefit of anyone other than Customer.

The foregoing restrictions will not apply to information which is available to the public, or is proven to be independently developed or is lawfully received from a third party or is required to be disclosed by law, court order, subpoena or other legal process.

5.8 Governing Law and legal venue

(1) The Parties shall seek to solve through negotiations any dispute, controversy or claim arising out of or relating to the Contract or the TAC, or the breach, termination or invalidity hereof. If the parties fail to solve such dispute, the dispute shall be subject to the legal venue as specified below by Territory. ITL may choose to pursue claims against the Customer before the Customer's legal domicile.

If the customer is based in a Territory in North America this Agreement and its interpretation and performance will be governed by, and construed under, the applicable laws of the Commonwealth of Massachusetts. All disputes arising with respect to this Agreement will be settled by arbitration in Boston, Massachusetts, by a single arbitrator knowledgeable about the subject matter of this Agreement, in accordance with the commercial rules of the American Arbitration Association's International Centre for Dispute Resolution. The decisions of the arbitrator will be final and binding on all parties.

If the customer is based in a Territory in the European Economic Area this Agreement and its interpretation and performance will be governed by, and construed under, the applicable laws of Norway, excluding Norwegian choice of law. All disputes arising with respect to this Agreement will be settled by



arbitration in subject to the ordinary courts of Norway with Bergen tingrett as legal venue.

For any other Territories not mentioned above this Agreement and its interpretation and performance will be governed by, and construed under, the applicable laws of the Norway, excluding Norwegian choice of law. All disputes arising with respect to this Agreement will be settled by arbitration in subject to the ordinary courts of Norway with Bergen tingrett as legal venue.

(2) Injunctive Relief. Notwithstanding Section 1 hereof, the parties acknowledge that violations of ITL's intellectual property rights may cause irreparable damage to ITL. Accordingly, it is understood and agreed that, in ITL's sole discretion, ITL's claims or actions seeking equitable relief under this Agreement may be brought in any court of competent jurisdiction and fully and finally adjudicated in such court, which shall have the full power to grant such equitable remedies, provisional and final, as may be sought by ITL.

(3) Performance. In connection with the Software and Services, ITL will be entitled to act through or in concert with, or to assign some or all of its rights or obligations to, one or more of its affiliated companies. Without limitation to the foregoing, the Partner will have the right to act as agent for ITL AS with regard to the Software licensed hereunder.

(4) Binding Agreement. This Agreement shall be binding on the parties, their successors, affiliated companies, permitted assigns, employees, directors, officers and agents.

(5) Counterparts. This Agreement may be signed in one or more counterparts, all of which will together constitute one and the same instrument.

(6) Severability. If any portion of this Agreement is held to be invalid or unenforceable, said portion will be severed from this Agreement, the remainder of which will continue in effect.

(7) Waiver. No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of those rights.

(8) Force Majeure. Neither party will be liable to the other for any damages of delays in performance under this Agreement to the extent said damages or delays are proximately caused (i) by causes beyond that party's reasonable control and occurring without its fault or negligence, or (ii) by the failure of the other party to substantially meet his or its performance obligations hereunder,



provided that as a condition to the claim of non-liability, the party experiencing the difficulty will give the other party prompt written notice, with full details, following the occurrence of the cause relied on.

(9) Entire Agreement/Amendment. This Agreement supersedes all prior oral or written agreements and understandings between the parties relating to the subject matter hereof, constitutes the entire agreement among the parties, and cannot be amended unless mutually agreed upon in writing by all parties.

(10) Survival of Terms. Sections 2.5, 5.3, 5.4 ,5.5 and 5.6 of this Agreement shall survive any termination thereof.

(11) Titles. The titles used in this Agreement are for convenience only and are not to be considered in construing the terms of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by duly authorized representatives of the parties, by signing the Order Form as of the Effective Date.