

Terms and Conditions

1. What are these Terms and Conditions used for?

These terms and conditions (“Terms and Conditions”) are a legal agreement between the person or entity who is registering for access to use our LMS service (“you”, “your,” or “Client”) and Easy LMS B.V. (“Easy LMS”, “us”, or “we”).

These Terms and Conditions govern our respective rights and obligations with respect to your access and use as well as the support of the online learning management system (the “Service”) and the associated electronic documentation (the “Materials”).

If you are a business user who grants its customers access to the Service, these Terms and Conditions also apply to those customers and their administrators (also “Clients” and “you”). It is your responsibility to make sure your Clients comply with these Terms and Conditions. Upon our request, you will have to, at your own cost, enforce these Terms and Conditions against your Clients who violate them.

2. What rules apply to the Participants?

Participants (defined in section 3, below) must also comply with these Terms and Conditions, in so far as they relate to their access and use of the Service. It is solely your responsibility to make sure that Participants comply with those provisions. Upon our request, you will have to, at your own cost, enforce those provisions against Participants who violate them.

3. What does the Service consist of?

Subject to the provisions of these Terms and Conditions and your payment of the Fees in accordance with section 6, below, we grant you the non-exclusive, non-transferable, limited right to remotely access and use the Service for your own business purposes only – these business purposes also include allowing your Clients to access and use the Service for their own business purposes, but they exclude commercially exploiting the Service. We hereby also grant you the right to let your participants (“Participants”) remotely access and use the content (e.g. Courses, Exams, Assessments, Quizzes) that you have created and/or uploaded through your use of the Service (“Content”). The term “Content” also includes messages or other content you transmit using the Service. We do not grant you (i) any right to allow persons or entities other than Participants and (other) administrators within a Client’s organization the right to access and use the Service, (ii) any right for you to access and use the Service outside your own business purposes (which may consist of making Content available to your Clients and their Participants). The Service supports modern versions of all regular browsers.

4. What if I have problems or questions?

If you are experiencing problems with the Service, or if you have questions about the Service, you may contact us through the help function in the Service's dashboard or by email. You cannot contact us by phone. We will reply to your messages during weekdays, excluding national holidays in the Netherlands, between CET 09:00 and 22:00. We will try to reply to your message as soon as we can but we cannot give any response times or lead times. The Service is provided "as is", "where is". We do not give any guarantees with regard to the Service, for example that it is never interrupted, that it is faultless or that it has full functionality.

5. What happens if the Service changes?

We may change, revise, modify or delete (either permanently or temporarily) a part or all of the functionality or scope of the Service at any time at our sole discretion (an "Update"). Following such an Update, the definition of the term "Service" shall be automatically amended without any further action on the part of any of the parties to include such an Update. We may also delete or discontinue (either permanently or temporarily) the Service at our sole discretion after reasonable notification, without being liable for any costs or damages. We shall however in that case reimburse those Fees you have paid in advance, for the remaining subscription period during which the Service is discontinued.

6. How do I pay the Fees?

You pay the fees for access and use of the Service ("Fees") as indicated on the website. We collect the Fees each month or every calendar year, depending on the subscription you choose through your Account (the term Account is defined in section 7, below). If we cannot collect the payment for whatever reason, we reserve the right to downgrade your subscription to the free version of the Service or block your access and use of the Service, without being liable for any costs or damages. The Fees vary depending on the type of LMS solution you have chosen. You may upgrade the chosen solution at any time through your Account, after which we will collect the additional Fees for the upgrade. You may also downgrade the subscription. In that case, if you have a monthly subscription, we will reduce the Fees accordingly in the next month, and if you have a yearly subscription, we will reduce the Fees accordingly from the start of the next year. You are responsible for all sales, excise, VAT and all other taxes associated with your use of the Service other than taxes on our net income. We may reasonably increase the Fees (and bill your credit card for such increased Fees) upon thirty (30) days prior notice to you.

7. What is the location of the Service and how is it accessed?

- a) **Location of the Service and access.** The Service is hosted on one or more servers either owned or used by us and is accessible by you and the Participants over the Internet.
- b) **Your Account.** In order to access the Service, you will have to register an account with us ("Account"). You will have to submit a unique username and password ("Account Access Information"). The Account Access Information is strictly personal, it is for your use only. You are responsible for keeping the Account Access Information confidential and secure.
- c) **Access by Participants.** In the Service's dashboard, you can indicate whether Participants will have to register an Account ("Participant Account") in order to access the Content. In that case, the Participant will be required to enter an email address and/or (user)name and/or password ("Participant Access Information"). It is your responsibility to make sure that Participants use the correct Participant Access Information and that they keep this confidential and strictly personal.
- d) **Right of Refusal.** We reserve the right to, at our sole discretion, refuse an Account or Participant Account registration (e.g. because the Client or Participant does not match our target audience). In that case we will not or no longer provide the Service to you and terminate your Account, without being obliged to pay any costs or damages. We will refund the Fees you have paid upfront, pro rate the use you have made of the Service until the moment of termination.
- e) **Monitoring.** We have the right but not the obligation to monitor access to the Service and, without limiting any remedies that we may have hereunder or at law, we may deny access to you or any Participant who violates these Terms and Conditions.

8. Are there any conditions or restrictions regarding use of the Service?

Yes, there are conditions for, and restrictions on the use of the Service:

- a) **You provide your own equipment.** You, as well as your Participants, shall provide at your and their own expense all hardware, software (including browsers) and internet service and other items necessary for the access and use of the Service.
- b) **No copies.** The Service is protected by international intellectual property right laws, including copyright and trade secret laws and treaties. Except as otherwise provided in this section, neither you, nor any Participant may make copies of the Service or accompanying Materials.
- c) **No reverse engineering and the like.** Neither you, nor any Participant may, nor cause or permit any of your employees or any third party to modify, adapt, translate, reverse engineer, decompile, disassemble, translate or create

derivative works based on the Service without our prior written consent, which we may withhold in our sole discretion.

- d) **No rent, lease, or transfer.** Access to the Service is granted only to you and your Participants. Neither you, nor any Participant may transfer, lease, assign, rent, distribute, sell or otherwise dispose of the Service, including any of the Materials, on a temporary or permanent basis except with our prior written consent, which we may withhold in our sole discretion. You may however offer the Content to Participants for payment of a fee, irrespective of whether this fee is paid by the Participant or by your own customer. Prior to transferring the Service to an authorized transferee, the transferee shall agree in writing to be bound by all of these Terms and Conditions.
- e) **Access Information.** We shall not be liable for any loss, claim, damages or other liability whatsoever that may arise from the unauthorized use of any Account Access Information or Participant Access Information; this is without limiting any other provision in these Terms and Conditions regarding liability. If any Account Access Information or Participant Access Information is compromised, it is your responsibility to notify us thereof immediately, so that the Account and/or Participant Account can be deactivated and a new username and password can be provided.
- f) **Manner of use.** You are solely responsible for all activity that occurs under your Account, including the activities of other administrators (e.g. at your customers or your own organization) you have authorized for an Account and including the Participants' activities through the Participants Accounts. No-one may use the Service for any illegal or unauthorized purpose(s). You may not, in the use of the Service, violate any applicable laws, including but not limited to copyright laws and laws of tort, nor use it in any manner that is or may be harmful to our and/or the Service's reputation or in violation of these Terms and Conditions. This includes without limitation Content or activities that are unlawful, illegal, offensive, threatening, libelous, defamatory, slanderous, pornographic, discriminatory, inappropriate, politically sensitive, disinforming, obscene or otherwise objectionable or in violation of any party's intellectual property rights, these Terms and Conditions, or applicable law. You may not use the Service to send unsolicited messages to anyone, whether or not this is permitted pursuant to applicable laws.
- g) **Take down.** You accept and acknowledge that we may, but have no obligation to, remove Content and temporarily or permanently disable Accounts containing Content or pertaining to activities that we determine in our sole discretion is/are in violation of the above provision regarding manner of use, such with or without prior notice and in addition to all our other rights.
- h) **Export control license.** You represent and warrant that neither you, nor any Participant shall use the Service in any way that would require either us, you or the Participant to obtain an export control license, whether from a US, EU or other authority. Such use includes without limitation training or use for

weapons, whether biological, chemical, nuclear or otherwise and for any other military or nuclear devices.

- i) **Usage and storage.** We may, in our own discretion, suspend or disable any Account or Participant Account or usage of the Service through the Account should such an Account's usage consumption exceed average usage, as determined by us, in any one month period; this includes without limitation bandwidth usage, total amount of plays and a maximum number of concurrent Participants as determined by us. We also may, in our own discretion, suspend or disable any Account or Participant Account or limit storage capacity with respect to such Account should your storage exceed average usage (as determined by us). If we do so, we will provide you with reasonable notification.

9. Do I get ownership of the Service?

We do not sell the Service to you, but only grant you a right to access and use the Service according to these Terms and Conditions. We, as well as our licensors, retain ownership in the Service and all intellectual property rights in the Service and the Materials, including without limitation any and all patents, copyrights, trade secrets, database rights, trademarks and any other proprietary and other rights. You agree that we may audit your and the Participants' use of the Service for compliance with these Terms and Conditions at any time, upon reasonable notice. We, as well as our licensors reserve all rights not specifically granted under these Terms and Conditions.

10. Can I create and upload any Content I want?

You decide which Content you create and upload making use of our Service. However, it is your responsibility to make sure that you are allowed to use the Content and that it is not owned by any other party who has not given you permission to use it. It is also your responsibility to make sure the Content complies with these Terms and Conditions including the manner of use indicated in section 8 (f) above.

11. Do I own the Content?

Yes, you, or your licensors own the Content you create or upload making use of the Service, as well as any intellectual property rights in relation to such Content. We do not claim any ownership rights in respect of your Content.

12. What about the Participants' personal data, and mine?

- a) **Your personal data.** We collect and use some of your personal data (including personally identifiable information) in order for you to make use of the Service and in order for us to gain insight into the way in which the Service is used. Please review our privacy policy for more information on how we use your personal data.

- b) **Participants' personal data.** When making use of our Service, you and the Participants may, and probably will create and upload Participants' personal data (the "Personal Data"). Our Data Processing Agreement is included at the bottom of these Terms and Conditions and applies to those Personal Data. The Data Processing Agreement forms an integral part of these Terms and Conditions and the agreement with our Clients. By agreeing to these Terms and Conditions, our Clients also agree to the provisions of the Data Processing Agreement.

13. Do I have to keep information confidential?

You acknowledge and agree that these Terms and Conditions and the Service contain our proprietary information ("Confidential Information"), and you hereby agree to maintain the confidentiality of the Confidential Information using at least as great a degree of care as you use to maintain the confidentiality of your own most confidential information. Notwithstanding the foregoing, in the event that you are required by a valid order by a court or other governmental body to disclose Confidential Information, you may disclose such Confidential Information provided that you first give us prompt notice thereof in order to enable us to have the opportunity to seek protection from such order of disclosure.

14. Your representations and warranties.

Without limiting any other representations and warranties in these Terms and Conditions, you represent and warrant to us that: (i) you have the full power and authority to enter into these Terms and Conditions on behalf of the entity you work for, as applicable, (ii) you are not listed on any restricted persons or parties list, under any jurisdiction, (iii) you are not established in, nor will access and use the Service from a country on a US, EU or other authority's export control list, (iv) you possess the necessary skills and qualifications to competently use the Service in accordance with these Terms and Conditions.

15. Your indemnification.

You shall defend, indemnify and hold harmless us and our subsidiaries, licensors and affiliates (and their respective officers, directors, employees and agents) against any and all claims, losses, damages, liabilities, deficiencies, judgments, assessments, fines, costs and other expenses (including reasonable attorneys' fees and costs) arising from or relating to (i) (Participants') accessing the Service, (ii) (Participants') use or misuse of the Service (including any Content and other data or information input in the Service or file or database created thereby), (iii) your breach, or any of your officers', directors', employees', agents' and/or Participant's breach of applicable laws, such as intellectual property laws and privacy laws and (iv) your breach, or any of your officers', directors', employees', agents' and/or Participant's breach of any of

the provisions of these Terms and Conditions, including without limitation, any of your representations and warranties in these Terms and Conditions.

16. Disclaimer of warranties.

Except as expressly provided in these Terms and Conditions, the Service (including any Materials), and any support are all provided “as is” and “best effort” (*“Inspanningsverbintenis”*) without warranty of any kind, express, implied, or statutory, including but not limited to the implied warranties of merchantability and fitness for a particular purpose or use and any warranty of error-free application or non-infringement. Without limiting the generality of the foregoing, we do not warrant the use, results, or performance of the Service, that the Service will be uninterrupted, error-free or secure, or that the server(s) that make(s) the Service available, is/are free of viruses or other harmful components.

17. Limitation of liability.

To the extent permitted by applicable laws, neither us nor any person or entity who has been involved in the creation, production, operation, or support of the Service shall be liable (whether in contract, tort (including negligence), warranty, product liability, or other cause of action) to you or any other person or entity for any direct, indirect, consequential, or incidental damages, including but not limited to damages for loss of business revenue or profits, business interruption for any reason, loss of business information or data, injury to reputation, personal injury (whether physical or mental or both), goodwill, use, your Content, data, or other intangible losses or violation of any applicable privacy laws arising out of (i) the use, misuse, or inability to use the Service, (ii) the cost of procurement of substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received or translations entered into through or from the Service, (iii) unauthorized access to or alteration of your transmissions or data; (iv) statements or conduct of any third party on the Service, (v) termination of any of your or the Participants’ Accounts, or (vi) any other matter relating to the Service or use thereof, even if you have been advised of the possibility of such damages. In no event shall our entire liability exceed the total amount paid by you to us. The limitation of liability stated in this section shall not apply for any losses or liability arising on our part due to gross negligence, fraud, or willful misconduct of our management (who can never be held personally liable). In no event shall we be liable for any damage unless we have been served a written notice of default, setting out the default in detail and allowing us a reasonable remedy term of at least two weeks to remedy the default, and we have not remedied the default within such term.

18. How can I terminate the Service?

You may decide to terminate the Service and remove your Account at any time in the Service dashboard. However, should you terminate the Service during the subscription period, we will not reimburse the Fees already paid for that period, which may be a monthly or an annual period. As long as you do not terminate the Service before the end of your subscription period, your subscription will automatically renew for the same subscription period (i.e. monthly or yearly).

19. Can you suspend, terminate the Service and block my Account?

Yes. We may at our discretion immediately suspend or terminate the Service and block your Account without notice and without being obliged to pay damages or repay any Fees, if:

- a) You and/or a Participant fails to comply with any provision of these Terms and Conditions, including without limitation, the Fee payment obligations and the obligation to enforce these Terms and Conditions against Participants in violation hereof;
- b) A government authority orders us to suspend or terminate the provision of the Services to you or the agreement with you;
- c) We become aware that you, or a Participant unlawfully transmits through the Service copyrighted material without a license, valid defense or fair use privilege to do so;
- d) You cause or permit violation of sections 3, 7 (b) or (c), 8 or 14 of these Terms and Conditions;
- e) You apply for bankruptcy protection, or this is requested by a third party;
- f) You apply for or are granted suspension of payment;
- g) You apply for insolvency or similar proceedings under the applicable law, or a receiver is appointed for you;
- h) You cease to carry on your business.
- i) We have well founded grounds to believe that your (mis)use, and/or a Participant's (mis)use of the Service will otherwise harm our business interests and/or the Service's reputation.

20. What happens after termination of the Service?

After termination of the Service, (i) you shall, as soon as possible, cease from using and return all Confidential Information to us, (ii) except as otherwise specifically provided in these Terms and Conditions, all rights and licenses granted to you and the Participants hereunder shall automatically cease without any further action, (iii) we are entitled to block the access and use of the Service and the Account and Participant Accounts, and (iv) all amounts due become immediately payable. You must ensure that you have extracted all of the Content through your Account before you end your subscription. In case we block your Account, we will return the Content to you upon your request, to be made within ten (10) days after we have blocked your Account, on

the condition that all outstanding Fees have been paid. We will then allow you to access to your Account during a three (3) day period solely to extract and delete the Content. If, after these periods the Content has not been deleted, we reserve the right to do so unilaterally.

After termination, the sections 6, 9, 13, 14, 15, 16, 17, 20, 21, 22, and 23 and all other provisions of these Terms and Conditions intended to survive termination of the Service will survive the termination, as applicable to the extent the circumstances described in those sections arise post agreement.

21. How do notices have to be given?

All notices required by these Terms and Conditions or given in connection with the Service shall be deemed given as of the day they are emailed to you or posted in the Service. The email address of record for notices and requests in connection with the Service shall be deemed to be the email address you use to access your Account. It is your responsibility to update any changes to that email address in your Account.

22. Injunctive relief

You acknowledge that breach of a provision of these Terms and Conditions and in particular sections 3, 7 (b) and (c), 8, and/or 14 of these Terms and Conditions will give rise to irreparable injury to us and leave us inadequately compensated in damages. Accordingly, we may seek and obtain injunctive relief against your, or a Participant's breach or threatened breach, in addition to any other legal remedies, such as but not limited to suit for copyright infringement. You further acknowledge and agree that this provision is necessary for the protection of our legitimate business interests and is reasonable in scope and nature.

23. Miscellaneous

- a) These Terms and Conditions shall exclusively be governed and construed in accordance with the laws of the Netherlands, excluding its conflict laws (however, as appropriate without affecting statutory mandatory law provisions).
- b) You hereby consent to the exclusive jurisdiction and venue of the courts of The Hague, the Netherlands in connection with all disputes arising out of or relating to these Terms and Conditions and/or the use of the Service (however, as appropriate without affecting statutory mandatory law provisions).
- c) In performing any and/or all of our respective obligations under these Terms and Conditions, we shall each operate as and have the status of being an independent contractor of the other party, and neither party shall act as or be an agent or employee of the other party.
- d) In the event that any provision of these Terms and Conditions is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of any

remaining provisions shall not in any way be affected or impaired and a valid, legal and enforceable provision of similar intent and economic impact shall be substituted therefor.

- e) We may change these Terms and Conditions during your subscription period. We will timely (in accordance with applicable law) notify you of material changes in advance of the start date of the new version of the Terms and Conditions. Until that start date, if the changes are not mandated by law or made to address security threats, you have the option to object to the changes. If you make this objection, we may at our discretion decide to continue the Service pursuant to the old Terms and Conditions or allow you to terminate the Service.
- f) The provisions of these Terms and Conditions shall be interpreted and construed in accordance with their fair meanings, and not strictly for or against any party, regardless of which party may have drafted these Terms and Conditions or any specific provision of these Terms and Conditions. The headings used are used to facilitate reading and do not define or affect the meaning or interpretation of the wording.
- g) The waiver of any provision of these Terms and Conditions shall not be effective unless in writing and signed by the party against which it is sought to be enforced. The failure of any party to insist, in any one or more instances, upon performance of any of these Terms or Conditions shall not be construed as a waiver of future performance of any terms, covenants or conditions of this License, and the obligations of each party with respect thereto shall continue in full force and effect.
- h) These Terms and Conditions shall be binding upon the parties and their successors and permitted assigns. You may not assign the rights and obligations arising from the use of the Service or these Terms and Conditions, or any portion thereof, to any third party without our express prior written consent. We may assign our rights and obligations hereunder to any affiliate or to any successor to our business.
- i) If you are not established in the Netherlands, you agree that articles 6:232, 234 (1) jo 6:230c, and 235 (1) and (3) of the Dutch Civil Code ("*Burgerlijk Wetboek*") apply. These articles relate to the manner in which these Terms and Conditions are made available and agreed to in an online environment.
- j) You agree that articles 6:227b and 6:227c of the Dutch Civil Code do not apply, in so far as it is possible to deviate from those provisions. These articles relate to the manner in which electronic agreements are concluded and to the information that must be provided in relation thereto.

Date	Change
13 January 2022	Removed the privacy shield and non-EEA data transfers.
13 January 2022	Changed our company name from Quizworks to Easy LMS.
8 February 2024	Replaced wording from article 12 (e)-(q) regarding Easy-LMS as a data processor with Data Processing Agreement. Added Data Processing Agreement

DATA PROCESSING AGREEMENT

This data processing agreement (“Data Processing Agreement”) is concluded between **EasyLMS B.V.** (“Processor”) and its clients (each: the “Client”, also if the Client is itself a processor for its own customers) for which it processes personal data as a (sub)processor;

Hereinafter each a “Party” and collectively the “Parties”;

Whereas:

- A. This Data Processing Agreement forms an integral part of the [Easy LMS Terms and Conditions \(“Terms and Conditions”\)](#) as well as the agreement between Processor and the Client, with respect to the online learning management system offered by Processor to the Client (the “Service(s)”);
- B. In order for Client and its participants to make use of the Services, Processor must process the personal data (“Personal Data”) of the Client’s employees/staff and/or participants (jointly: “Data Subjects”) who use the Services, including the content created by the Client in the Services;
- C. The categories of Personal Data as well as the other details with respect to the processing of the Personal Data are described in Schedule 1 to this Data Processing Agreement;
- D. The General Data Protection Regulation (REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC), (“GDPR”) is applicable to the processing of the Personal Data;
On the basis of the GDPR, the Parties are required to conclude this Data Processing Agreement.

1. Definitions

- 1.1. In addition to the defined capitalized terms above, the following capitalized terms shall have the following meanings:
- 1.2. “DPA”: a competent Data Protection Authority.
- 1.3. “EEA”: the European Economic Area.
- 1.4. “Personal Data Breach”: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, the Personal Data.
- 1.5. “Processing”, “Process” etc: those processing actions carried out with the Personal Data as defined in the GDPR, including without limitation storing it, viewing it, portioning it off, deleting it, altering it, forwarding it.
- 1.6. “Schedule”: a schedule to this Data Processing Agreement.

- 1.7. "Services Agreement": the agreement on the basis of which the Services are provided, which may consist of the Terms and Conditions and/or another type of agreement.
- 1.8. "Sub-processor": a third party to which Processor subcontracts the Processing of the Personal Data, whether in whole or in part.

2. General obligations

- 2.1. With regard to the Personal Data, Processor takes appropriate technical and organizational measures to ensure compliance with the GDPR and the protection of the rights of the Data Subjects.
- 2.2. Client declares that it complies with the GDPR with regard to the Personal Data that are Processed by the Processor. It is the Client's responsibility to comply with the applicable personal data legislation with regard to the Personal Data created in or uploaded to the Service. This includes without limitation having a legal ground for the Processing (e.g. valid consent if so required) of the Personal Data, informing the Data Subjects about the Processing of their Personal Data and making sure the Data Subjects have the legal age for submission of their Personal Data, if applicable.

3. Processing solely on Client's instructions

- 3.1. The purpose of the Processing by the Processor is to enable the Processor to provide the Services.
- 3.2. Processor will only Process the Personal Data on Client's written instructions, which are the Processing activities set out in Schedule 1, or those reasonable instructions otherwise given by the Client in writing (which may include by email). Processor shall only Process the Personal Data outside the Client's instructions if required to do so to comply with an applicable legal obligation. In that case, article 3.3 below applies.
- 3.3. In the event the Processor becomes legally obliged under European law to disclose any of the Personal Data, Processor shall provide the Client with prompt notice and notify the relevant legal requirement, unless the legal requirement prohibits Processor from such notification on important grounds of public interest. If Processor is not prohibited from notifying Client, Processor will refrain from disclosing any Personal Data until Client has taken steps to obtain a protective order or other appropriate remedy. If such protective order is not obtained, the Processor shall furnish only such Personal Data which it is advised is required by timely written notice of Client, or, in absence of such timely notice, Processor will furnish such Personal Data it deems is required pursuant to the legal requirement.
- 3.4. Processor shall notify the Client if, in its opinion, an instruction given by the Client infringes the GDPR, in which case Processor will not have to comply with the instruction.

4. Assisting the Client

- 4.1. Processor shall provide the assistance reasonably requested by the Client to:
- a) taking into account the nature of the Processing, assist the Client by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Client's obligations to respond to the Data Subjects' requests for exercising their rights, insofar as Processor can factually do so in light of the Services. In case Processor receives a request from a Data Subject, it will forward such request to the Client and the Client will further handle the request;
 - a) taking into account the nature of the Processing and the information available to Processor, assist the Client in complying with the Client's obligations relating to security, notifying Personal Data Breaches (see article 5.5), investigations by DPA's, data protection impact assessments and prior consultation if so required.

5. Security Measures and Personal Data Breaches

- 5.1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Processor implements appropriate technical and organizational measures to ensure a level of security appropriate to the risk involved with the Processing.
- 5.2. Client warrants and guarantees that it will not ask Data Subjects to submit Personal Data to the Service that are regarded as a special category or sensitive personal data under applicable laws. This concerns for example: data related to health, religious beliefs, political opinions, race, ethnic background, sexual preference or behavior, trade union membership, criminal records, biometric data for identification purposes, genetic data. The Services' security measures are not suitable for these types of Personal Data.
- 5.3. Processor has implemented appropriate technical and organizational measures to ensure the Personal Data can only be accessed by those persons within its organization that are required to gain access thereto for the purpose of providing the Services, e.g. by limiting the amount of persons with access rights.
- 5.4. On its website, Processor makes available information about its security measures. In addition, at the Client's request, Processor will submit an overview of the security measures in place at the time of the request. Client may submit such request once each calendar year, unless there is a well-founded reason to submit the request more frequently, for example in case of a Personal Data Breach.

- 5.5. Processor shall notify Client without undue delay after becoming aware of a Personal Data Breach. Such notice shall:
- a) contain the available information with regard to the Personal Data Breach, including without limitation a description of the Personal Data Breach, the cause thereof; the categories, nature and (estimated) amount of affected Personal Data and Data Subjects and the Personal Data Breach's scope;
 - b) explain the effect of the Personal Data Breach on Client and the relevant Data Subjects;
 - c) explain the corrective action taken or to be taken by Processor, the Client and/or the Data Subjects and the time scale for completion of such action.
- 5.6. Processor will provide the co-operation reasonably requested by the Client, and submit the information within its control, in relation to notifying the Personal Data Breach to the DPA, and, as applicable, to the Data Subjects.
- 5.7. Processor cannot be required to notify a Personal Data Breach to any DPA, nor to the Data Subjects, unless Processor explicitly agrees to do so in writing in case of a specific Personal Data Breach.
- 5.8. To make use of the Services, Client must use log-in details to access its account. The Client must keep these log-in details secure and confidential, as it gives access to the Personal Data. It is also the Client's responsibility to make sure the Data Subjects who use the Services keep their own log-in information secure and confidential as it gives access to their own Personal Data.

6. Confidentiality

- 6.1. Processor shall take into account confidentiality with regard to the Personal Data.
- 6.2. In respect of the foregoing, Processor:
- a) shall not disclose the Personal Data to any third party, unless this is explicitly permitted in this Data Processing Agreement;
 - b) has implemented appropriate technical and organizational measures to ensure that any person who has access to the Personal Data shall be informed of and bound by confidentiality.

7. Sub-contractors

- 7.1. Processor uses the Sub-processors set out in Schedule 2. If Processor intends to hire another or additional Sub-processor to Process the Personal Data, it shall notify Client thereof in advance, including the start date of the Sub-processor's Processing activities. Client may object to the change or addition within seven (7) working days after the notification. If the Processing of the Personal Data is not adversely affected by such change or addition,

Client will not reasonably object so that Processor can continue offering the Services. In case Client does timely object and Processor cannot amend the Services to accommodate Client's objection with fourteen (14) days of such objection, Client and/or Processor may terminate the Services and the Services Agreement and Processor shall reimburse those fees the Client has paid in advance, if any, for the remaining subscription period during which the Service is discontinued. Per the start date of the new Sub-processor's Processing activities, Schedule 2 will be updated (or deemed updated) with the notified information about the new Sub-processor; if this is a Sub-processor Processing Personal Data outside the EEA, article 8 also applies.

- 7.2. Processor ensures that Sub-processors:
- a) declare to have implemented appropriate technical and organizational measures to ensure compliance with the GDPR and the protection of the rights of the Data Subjects;
 - b) are bound in writing to comply with the same obligations as set out in this Data Processing Agreement, that are relevant in relation to the Sub-processor's Processing activities.
- 7.3. For the avoidance of doubt: if Client uses functionality through the Services where a connection is made with services that are offered to the Client by third parties, such third parties are not the Processor's Sub-processors; the Client has a direct legal relationship with such third parties. By way of example, these third parties may be social media platforms, email providers and Client's service providers where the Client has its own account that receive data using integrations in the platform.

8. Data export (transfers outside the EEA)

- 8.1. Processor transfers Personal Data to the country or countries (if any) listed in Schedule 2.
- 8.2. Processor ensures that the countries or parties to which the Personal Data are transferred, offer an adequate level of protection. In absence of this, if the Client's cooperation is required, Client agrees to provide the cooperation requested by the Processor to arrange for one of the transfer mechanisms set out in the GDPR for transfer to such a country without an adequate level of protection, in which case Processor and/or Sub-processor, if necessary, implements supplementary measures to safeguard the Personal Data.
- 8.3. In so far as the Client's access to the Personal Data from outside the EEA is to be regarded as a transfer of the Personal Data to outside the EEA, the Client agrees to be bound to the Standard Contractual Clauses, processor to controller modules.

9. Reporting, audit rights

- 9.1. Processor will allow the Client, under the terms and conditions set out in this article, access to its administration in order for the Client to audit Processor's

compliance with the terms and conditions of this Data Processing Agreement. Processor does not allow the Client access to personal data of data subjects other than the Data Subjects.

- 9.2. Client may appoint a third party to perform the audit. Client will in that case ensure the third party is bound to keep confidential the Processor's information to which the third party has access in relation to the audit and not disclose this to any third party.
- 9.3. Client shall not make use of its audit rights under this clause more than once per calendar year. Client will notify Processor at least two weeks in advance of the audit to allow Processor to prepare for it.
- 9.4. If the audit evidences that Processor does not comply with its obligations pursuant to this Data Processing Agreement, Processor will take those measures reasonably requested by the Client to comply with those obligations.

10. Term and termination

- 10.1. This Data Processing Agreement shall have the same term as the Services Agreement. This Data Processing Agreement shall therefore terminate when the Services Agreement terminates.
- 10.2. The Parties may at any time jointly decide to terminate this Data Processing Agreement by written agreement, in which case the Services Agreement also ends.

11. Exit assistance

- 11.1. Processor will Process the Personal Data during the Client's use of the Services.
- 11.2. Client must ensure that it has extracted and deleted the Personal Data from all accounts before ending the Services Agreement. If Processor blocks the Client's account due to non-compliance with the Services Agreement, Processor will, upon Client's request, which is to be made within a ten (10) day period after the account was blocked, and upon payment of any fees still due under the Services Agreement, hand over to Client the Personal Data or, at Processor's discretion, allow Client access to its account during a three (3) day period solely to extract and delete the Personal Data. If, after these periods, Client has not deleted the Personal Data, Processor reserves the right to do so unilaterally, and will delete the Personal Data after two (2) years, unless Processor is required by applicable laws to retain certain Personal Data. In the latter case, Processor will delete the Personal Data after the legal retention term has expired.

12. Miscellaneous

- 12.1. The provisions in the Services Agreement apply to the Processing of the Personal Data and shall prevail with regard to the clauses that do not concern data protection, such as liability.
- 12.2. In case Processor's activities in relation to this Data Processing Agreement exceed Processor's normal activities for the Services, Processor is entitled to a reasonable compensation based on Processor's regular fee at that time. Processor will provide a specification of the invoiced compensation.
- 12.3. This Data Processing Agreement can be amended or modified by Processor pursuant to the provisions in the Services Agreement.
- 12.4. If any provision of this Data Processing Agreement is held invalid or unenforceable by a court of competent jurisdiction, such decision shall in no way affect the validity or enforceability of any other provision hereof, and this Data Processing Agreement shall be interpreted as if such term or provision were not included in it.
- 12.5. The considerations under "whereas", as well as the Schedules form an integral part of this Data Processing Agreement.

13. Applicable law, dispute resolution

- 13.1. This Data Processing Agreement is governed exclusively by the laws of the Netherlands, excluding its conflict laws.
- 13.2. The dispute resolution clause in the Services Agreement applies for any disputes arising between the Parties.

SCHEDULE 1 – Information regarding the Processing

1. Description of the Services and Processing activities:

Type of Service: online learning management system.

Processing activities: storage, access, amendment and deletion upon the Client's request.

2. Categories of Data Subjects:

- Participants who access and use the online learning management system
- Administrators of the Client's customers

3. Categories of Personal Data:

Administrators of the Client's customers register their name, email address and other contact details in the online learning management system, these data are managed by the Client.

The Client can choose the types of Personal Data that are requested from the Participants, such as:

- name
- phone number
- email address
- job title
- gender
- date of birth
- street name
- postal code
- city or town
- country
- employee ID
- Participant's answers to free text questions
- Participant's answers to dropdown questions

The Participants may themselves also create Personal Data as a result of accessing and using the content created by the Client in the online learning management system, such as:

- test results
- exam results
- comments added to the system
- certification documents

The Client must not ask Data Subjects to submit special categories of Personal Data, or upload any such Personal Data, which concerns: data related to health, religious beliefs, political opinions, race, ethnical background, sexual preference or behaviour,

trade union membership, criminal records, biometric data for identification purposes, genetic data.

SCHEDULE 2 – Sub-processors

The Personal Data are transferred to the following sub-processors:

Sub-processors			
Sub-processor	Country	Country outside the EEA without an adequate level of protection?:	Transfer mechanism / appropriate safeguards:
Amazon Web Services (AWS) (hosting and email services)	Germany	No, EEA country	Not applicable
Intercom (support chat)	Ireland	No, EEA country	Not applicable

This Schedule is deemed to have been updated after notification of the changes per article 7.1.