

OPUS PHARMACY SERVICES LIMITED'S – SOFTWARE LICENCE AND SERVICES AGREEMENT –JANUARY 2017

1 INTERPRETATION

1.1 Words shall have the following meanings:

Agreement means these Terms

Fee means the Software Fee, Services Fee and/or any other agreed fees identified and payable by the Customer to Opus;

Intellectual Property Rights means all patents, copyrights, design rights, trade marks, service marks, trade secrets, know-how, database rights, rights in data and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world;

Secure Network means a network only accessible to Authorised Users whose identities are authenticated by the Customer (and Opus if it so requires at its option) at the time of login.

1.2 The headings in this Agreement do not affect its interpretation. Save where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this Agreement.

1.3 Unless the context otherwise requires:

1.3.1 references to Opus and the Customer include their permitted successors and assigns;

1.3.2 references to statutory provisions include those statutory provisions as amended or re-enacted; and

1.3.3 references to any gender include all genders.

1.4 Words in the singular include the plural and in the plural include the singular.

2 LICENCE AND TERM

2.1 In consideration of the applicable Fees paid by the Customer to Opus, Opus grants to the Customer a non-exclusive non-transferable licence for each Authorised User to use the Software for the applicable Licence Period in accordance with clause 3 below.

3 USE OF THE SOFTWARE

- 3.1 The Customer shall ensure that use of the Software is restricted to Authorised Users employed by Authorised Organisations. During the term of this Agreement the Customer shall only permit use of the Software for the purpose of providing education and training for Authorised Users via a Secure Network. This includes allowing Authorised Users to print selected portions of web content accessible by them when using the Software for their personal use but not for wider distribution.
- 3.2 The Customer shall not, and shall ensure that the Authorised Users or Authorised Organisations whom it permits to use the Software do not, sell, resell, redistribute, publish or otherwise make the Software available (including without limitation any content it contains or displays) in any manner or any media to anyone else.
- 3.3 The Customer may not use the Software other than as expressly specified in this Agreement without the prior written consent of Opus in its sole discretion and the Customer acknowledges that additional fees may be payable on any change of use approved by Opus.
- 3.4 The Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer, or as otherwise expressly permitted by applicable law. The Customer has no right to use any Software source code.
- 3.5 In relation to assignment and sublicensing:
- 3.5.1 the Customer has no right to sub-license or to assign the benefit or burden of this licence in whole or in part and by novation or otherwise, or to allow the Software to become the subject of any charge, lien or encumbrance without the prior written consent of Opus.
- 3.5.2 Opus may sub-license, assign, charge or otherwise transfer any of its rights or obligations under this Agreement, provided it gives written notice to the Customer of any sub-licence, assignment, charge or other transfer. The Customer shall at its own expense on request from Opus do all things and execute all documents as reasonably required by Opus to give effect to the foregoing.
- 3.5.3 The Customer shall provide Opus with monthly reports detailing the number of Authorised Users and any other information concerning this Agreement reasonably requested by Opus. Opus shall provide a certificate of completion to each Authorised User that in Opus's sole opinion satisfactorily completes the e- learning course.

The Customer shall:

- 3.5.4 not permit more than the permitted number of Authorised Users to access the Software in total;

- 3.5.5 prevent sharing of login details; and
- 3.5.6 keep proper and accurate records of Authorised Users and Authorised Organisations and permit Opus to inspect and have access to such records and any other records kept pursuant to this Agreement and to the computer equipment (including that of any third party) on which the Software is being kept or used, for the purposes of ensuring that the Customer is complying with the terms of this Agreement, provided that Opus provides seven days written notice to the Customer of such inspections, which shall take place at reasonable times.

3.6 In order to operate satisfactorily the Software must be used with SCORM 1.2. Opus shall notify the Customer of, and the Customer shall at its own expense meet, any other minimum system requirements or technical requirements.

4 FEES

4.1 The Customer shall pay to Opus the Fees (including expenses) as set out in the order confirmation plus any applicable VAT. All sums payable under this Agreement are exclusive of VAT, for which the Customer shall be responsible for paying.

4.2 If the Customer fails to pay any amount payable by it under this Agreement, Opus shall be entitled to charge the Customer interest on the overdue amount, payable by the Customer forthwith on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate provided for under the Late Payment of Commercial Debts (Interest) Act 1998, as amended by the Late Payment of Commercial Debts Regulations 2013. Without limitation to its other rights and remedies, if Opus does not receive payment when due it may restrict or terminate access to the Software in its sole discretion.

5 COMPUTER MISUSE ACT

The Customer agrees (and shall ensure that the Authorised Users and Authorised Organisations agree and consent) that the Software may contain mechanisms for creating records of access made to the Software and the login details of users for security purposes and for monitoring usage and fraud (including access by more than the authorised number of Authorised Users) and that such mechanisms will create records within the host environment accessible to Opus upon audit.

6 OPUS' WARRANTIES AND LIMITS OF LIABILITY

6.1 Opus warrants that the Software will function reasonably satisfactorily for a period of 90 days after the Commencement Date. If the Customer notifies Opus in writing of any defect or fault in the Software in consequence of which it fails to function satisfactorily, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of this Agreement or its technical specifications, or for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by Opus, Opus may, at Opus's option, do one of the following:

- 6.1.1 repair the Software; or

- 6.1.2 replace the Software; or
- 6.1.3 terminate this Agreement immediately by notice in writing to the Customer and refund any of the Software Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,

provided the Customer provides all the information that may be necessary to assist Opus in resolving the defect or fault, including sufficient information to enable Opus to re-create the defect or fault.

- 6.2 Opus does not warrant that the use of the Software will be uninterrupted or error-free.
- 6.3 The Customer accepts sole responsibility for the selection of the Software and/or Services to achieve its intended results. The Customer is responsible for ensuring that its own software and systems and internet connections are compatible for use with the Software unless otherwise agreed.
- 6.4 Opus has no reason to believe that there are any inaccuracies or defects in the information contained in the Software, however Opus makes no representation and gives no warranty as to the accuracy of the information contained in the Software and accepts no liability for loss suffered or incurred by the Customer or Authorised Users or anyone else as a result of their direct or indirect reliance on information contained in the Software. Opus shall have no liability for indirect or consequential loss or damage however arising as a result of this Agreement.
- 6.5 Opus warrants that it is entitled to enter this Agreement and will provide any Services under this Agreement with reasonable care and skill. All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality or fitness for purpose.
- 6.6 Except as expressly stated in clause 6.7:
 - 6.6.1 Opus shall have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer including without limitation any Authorised User or Authorised Organisation), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
 - (a) special damage even though Opus was aware of the circumstances in which such special damage could arise;
 - (b) loss of profits;
 - (c) loss of anticipated savings;
 - (d) loss of business opportunity;

- (e) loss of goodwill;
- (f) loss of data;

provided that this clause 6.6.1 shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of this clause or any other claims for direct financial loss that are not excluded by any of categories (a) to (f) inclusive of this clause 6.6.1;

- 6.6.2 subject to clause 6.7, the total liability of Opus for any and all claims, damage, loss, costs or expenses, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall in no circumstances exceed a sum equal to the aggregate Fees payable to Opus under this Agreement; and
- 6.6.3 the Customer agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) Opus shall have no liability otherwise than pursuant to the express terms of this Agreement.

6.7 The exclusions in clause 6.6 shall apply to the fullest extent permissible at law, but Opus does not exclude liability for death or personal injury caused by the negligence of Opus, its officers, employees, contractors or agents; for fraud or fraudulent misrepresentation; for breach of the obligations implied by section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982 which cannot be excluded by law; or for any other liability which may not be excluded by law.

7 INTELLECTUAL PROPERTY RIGHTS

7.1 The Customer acknowledges that all Intellectual Property Rights in the Software (including without limitation any e-learning materials contained within or accessible using the Software) belong and shall belong to Opus or its licensors. The Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of this Agreement. In particular, all Intellectual Property Rights in data acquired by or on behalf of Opus relating to use of the Software (such as student data and results gathered concerning use of online materials) shall belong exclusively to Opus.

7.2 Opus undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession, or use of the Software (or any part thereof) in accordance with the terms of this Agreement infringes the UK Intellectual Property Rights of a third party (**Infringement Claim**) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Infringement Claim. For the avoidance of doubt, clause 7.2 shall not apply where the Infringement Claim in question is attributable to possession, use, development, modification or maintenance of the Software (or any part thereof) by the Customer other than in accordance with the terms of this Agreement.

7.3 Clause 7.2 is conditional on:

- 7.3.1 the Customer notifying Opus in writing, as soon as reasonably practicable, of any Infringement Claim of which it has notice;
- 7.3.2 the Customer not making any admission as to liability or compromise or agreeing to any settlement of any Infringement Claim without the prior written consent of Opus, which consent shall not be unreasonably withheld or delayed; and
- 7.3.3 Opus having, at its own expense, the conduct of or the right to settle all negotiations and litigation arising from any Infringement Claim and the Customer giving Opus all reasonable assistance in connection with those negotiations and such litigation at Opus's request and expense.

7.4 If any Infringement Claim is made, or in Opus's reasonable opinion is likely to be made, against the Customer, Opus may at its sole option and expense:

- 7.4.1 procure for the Customer the right to continue using the Software (or any part thereof) in accordance with the terms of this Agreement; or
- 7.4.2 modify the Software so that it ceases to be infringing; or
- 7.4.3 replace the Software with non-infringing software; or
- 7.4.4 terminate this Agreement immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,

provided that if Opus modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in clause 6.1 and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of this Agreement been references to the date on which such modification or replacement was made.

8 TERMINATION

8.1 Either party may terminate this Agreement at any time on written notice to the other if the other is in material breach of any of the terms of this Agreement and either that breach is incapable of remedy, or the other party fails to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach.

8.2 Termination by either party in accordance with the rights contained in clause 8 shall be without prejudice to any other rights or remedies of that party accrued prior to termination.

8.3 On termination for any reason including expiry of the Agreement term:

- 8.3.1 all rights granted to the Customer under this Agreement shall cease;
- 8.3.2 the Customer shall cease all activities authorised by this Agreement;

8.3.3 the Customer shall immediately pay to Opus any sums due to Opus under this Agreement; and

8.3.4 the Customer shall immediately delete from its systems and procure the deletion from the systems of any sublicensees and return to Opus all other copies of the Software then in its possession, custody or control and, at the request of Opus a responsible officer of the Customer shall certify to Opus in terms reasonably required by Opus that it has done so.

9 FORCE MAJEURE

No party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any cause beyond its control including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion. For the avoidance of doubt, nothing in clause 9 shall excuse the Customer from any payment obligations under this Agreement or from liability for any act or omission of any of its subcontractors or sublicensees which put Customer in breach of this Agreement.

10 CONFIDENTIALITY AND PUBLICITY

10.1 Each party shall, during the term of this Agreement and thereafter, keep confidential all, and shall not use for its own purposes nor without the prior written consent of the other disclose to any third party any, information of a confidential nature (including, without limitation, trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any Authorised Users, unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Agreement, or subsequently comes lawfully into the possession of such party from a third party.

10.2 The terms of this Agreement are confidential and may not be disclosed by the Customer without the prior written consent of Opus.

10.3 The provisions of clause 10 shall remain in full force and effect notwithstanding termination of this Agreement for any reason.

11 WAIVER

No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.

12 SEVERABILITY

If any provision of this Agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions shall not be prejudiced.

13 AMENDMENTS

Any amendment, waiver or variation of this Agreement shall not be binding on the parties unless set out in writing, expressed to amend this Agreement and signed by or on behalf of each of the parties.

14 THIRD PARTY RIGHTS

No term of this Agreement is intended to be enforceable by any person who is not a party to this Agreement. For the avoidance of doubt the Customer agrees that it shall be liable for any act or omission of its sublicensees which put it in breach of this Agreement.

15 NOTICES

Any notice required to be given pursuant to this Agreement shall be in writing, and shall be sent to the other party at the address set out for such party in this Agreement. Notices shall be sent by first-class mail. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting.

16 ENTIRE AGREEMENT

This Agreement contains the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

17 GOVERNING LAW AND JURISDICTION

This Agreement, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and submitted to the exclusive jurisdiction of the English courts.

END