

End User License Agreement for self-hosted digital learning packages

1. This agreement

1.1. By executing the Schedule, downloading, or receiving a link to the Software from the Grey Matter Learning Ltd ("GML") the Customer gives its express agreement to the provisions of this End User License Agreement ("EULA").

2. Interpretation

2.1. In this EULA:

- a) Title headings are for convenience only and shall not be used in its interpretation.
- b) Use of the singular includes the plural and vice versa and use of any gender includes all genders;
- c) Any reference to a "person" includes a body corporate, natural person, firm, Customership, company, corporation, association, organisation, government, state, foundation and trust (in each case whether or not having separate legal personality);
- d) Any reference to a statute, statutory provision or subordinate legislation ("legislation") shall be construed as referring to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation and to any subordinate legislation made from time to time under that provision;
- e) Unless the context otherwise requires, the words "other", "includes", "including", "for example" and "in particular" do not limit the generality of any preceding words and any words that follows them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible;
- f) Any obligation in this EULA on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- g) The Schedule forms part of this EULA and shall have effect as if set out in full in the body of this EULA. Any reference to this EULA includes the Schedule. To the extent that there is an inconsistency between the terms of the body of this EULA and its Schedule, the terms of the body of this EULA shall prevail.
- h) Reference to writing includes fax, email and other similar means of communication;

2.2. Except to the extent expressly provided otherwise, in this EULA:

- a) **"Authorised Users"** means those employees, agents and independent contractors of the Customer who are authorised by the Customer to access and use the Software under this EULA.
- b) **"GML"** means the Grey Matter Learning Ltd, a limited company registered in England and Wales (No. 06158047) at the registered office address of Switch House Suite B2, First Floor, Northern Perimeter Road, Bootle, England, L30 7PT

- c) **"Charges"** means the fees payable by Customer in advance in respect of the Initial Term and each subsequent Renewal Period, as set out in the Schedule or as otherwise notified by GML to Customer in respect of User Subscriptions as set out on the Schedule;
- d) **"Confidential Information"** means the terms of this EULA and all other information (whether commercial, financial, technical or otherwise) relating to the disclosing party, its customers and suppliers, disclosed to or otherwise obtained by the recipient party under or in connection with the Software and this EULA and which is designated as being confidential or which is by its nature clearly confidential;
- e) **"Customer"** means the person specified on the Schedule;
- f) **"EULA"** means this end user license agreement, including the Schedule, and any amendments to this end user license agreement or Schedule from time to time;
- g) **"Effective Date"** has the meaning given on the Schedule;
- h) **"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected including without limitation failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars;
- i) **"Initial Term"** means the initial term of this EULA as set out in the Schedule;
- j) **"Intellectual Property Rights"** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semiconductor topography rights and rights in designs);
- k) **"Renewal Term"** means period of 12 months commencing on the day following the last day of the Initial Term and the last day of each subsequent Renewal Term.
- l) **"Schedule"** means the document, including the invoice which sets out the Customer's order for the User Subscriptions, which may include without limitation the quantity, Charges and term of the User Subscriptions;
- m) **"Software"** means the versions of the online courses described on the Schedule is compatible with xAPI (Tin Can API), SCORM 2004, SCORM 1.2, or AICC
- n) **"Software Defect"** means a defect, error or bug in the Software having a material adverse effect on the appearance, operation, functionality or performance of the Software, but excluding any defect, error or bug caused by or arising as a result of:
- (i) any act or omission of Customer or Authorised Users;
 - (ii) a failure of Customer or Authorised Users to perform or observe any of its obligations in this EULA; and/or

(iii) an incompatibility between the Software and any other system, network, application, program, hardware or software not compatible with the Software;

o) **"Source Code"** means the Software code in human-readable form or any part of the Software code in human-readable form, including code compiled to create the Software or decompiled from the Software, but excluding interpreted code comprised in the Software;

p) **"Term"** means and the Initial Term together with any subsequent Renewal Terms;

q) **"User Subscription"** means a user subscription purchased by the Customer which entitles an Authorised User to access and use the Software to complete the relevant online course in accordance with this EULA.

3. Term

3.1. This EULA shall, unless otherwise terminated as provided in this clause 12, commence on the Effective Date and shall continue for the Initial Term. Thereafter, this EULA shall, subject to the payment of the Charges, automatically renewed for successive periods of 12 months (each a Renewal Term), unless either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Term or any Renewal Term, in which case this EULA shall terminate upon the expiry of the applicable Initial Term or Renewal Term.

3.2. The Initial Term and each subsequent Renewal Term shall each constitute a separate Subscription Term.

3.3 The Charges for each Renewal Term will be increased in line with the UK Consumer Price Index (CPI)

4. Grant

4.1. Subject to the Customer purchasing User Subscriptions from GML and the other terms and conditions of this EULA, GML grants Customer a non-exclusive, non-transferable right to:

a) install the Software on systems operated by Customer;

b) permit Authorised Users to use the Software during the Subscription Term solely for the Customer's internal business operations, subject to the limitations and prohibitions set out herein.

c) receive legislative and other updates to the Software from time to time during the Subscription Term.

4.2. The Client may not sub-license and must not purport to sub-license any rights granted under Clause 4.1.

4.3. Save to the extent expressly permitted by this EULA or required by applicable law on a non-excludable basis, any rights granted under Clause 4.1 shall be subject to the following prohibitions:

a) Customer must not sell, resell, rent, lease, loan, supply, publish, distribute or redistribute the Software;

b) Customer must not alter, edit or adapt the Software; and

c) Customer must not decompile, de-obfuscate or reverse engineer, or attempt to decompile, de-obfuscate or reverse engineer, the Software.

d) Customer shall be responsible for the security of copies of the Software supplied to it under this EULA and shall use all reasonable endeavours (including all reasonable security measures) to ensure that access to such copies is restricted to persons authorised to use them under this EULA.

4.4. Customer agree to supervise Authorised Users and control their access and use of the Software and ensure that the Software is used in accordance with the terms of this EULA. Customer shall have the same responsibility for the activities of Authorised Users as if the activities were directly those of Customer. Any act or omission of an Authorised User which would be a breach of this EULA if performed by Customer shall be a breach by Customer of this Agreement.

4.5. Customer undertakes that the maximum number of Authorised Users that it authorises to access and use the Software shall not exceed the number of User Subscriptions it has purchased from time to time.

4.6. Customer undertakes that it will not agree, allow, permit, acquiesce to or suffer any person other than an Authorised User to use or access the Software.

4.7. Customer undertakes that it will not agree, allow, permit, suffer or acquiesce to any User Subscription being used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Software.

4.8. Customer agree that, in the event that the number of Authorised Users that it authorises, allows or suffers to access and use the Software exceeds the number of User Subscriptions it has purchased from time to time, then the Customer shall pay to GML an amount equal to the Charges multiplied by the Excess Number of Users. Where the Excess Number of Users is equal to the number of Authorised Users less the number of User Subscriptions it has purchased.

4.9. At the commencement of this EULA the number of User Subscriptions purchased by Customer shall equal the number set out in the Schedule. Subsequent to the commencement of this EULA Customer may from time to time purchase additional User Subscriptions.

4.10. Each User Subscription shall expire at the end of the applicable Subscription Term;

4.11. Upon the commencement of each Renewal Term the number of User Subscriptions purchased by Customer shall equal the number set out in the Schedule.

5. Source Code

5.1. Nothing in this EULA shall give to the Customer or any other person any right to access or use the Source Code or constitute any license of the Source Code.

6. No assignment of Intellectual Property Rights

6.1. Nothing in this EULA shall operate to assign or transfer any Intellectual Property Rights from the GML to the Customer, or from the Customer to the GML.

7. Charges

7.1. Unless otherwise agreed in the Schedule, GML shall invoice Customer for the Charges at the commencement of the Initial Term and each subsequent Renewal Term.

7.2. Customer must pay the Charges to the GML within 30 days following the receipt of each invoice.

7.3. Customer must pay the Charges by bank transfer using such payment details as are notified by GML to Customer from time to time.

7.4. If Customer does not pay any amount properly due to GML under this EULA, the GML may:

a) charge Customer interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or

b) claim interest and statutory compensation from the User pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

8. Warranties

8.1. GML warrants to Customer that it has the legal right and authority to enter into this EULA and to perform its obligations under this EULA.

8.2. GML warrants to Customer that the Software, when used by Customer and Authorised Users in accordance with this EULA, will not breach any laws, statutes or regulations applicable under English law.

8.3. GML warrants to Customer that the Software, when used by Customer and Authorised Users in accordance with this EULA, will not infringe the Intellectual Property Rights of any person.

8.4. If GML reasonably determines, or any third party alleges, that the use of the Software by Customer in accordance with this EULA infringes any person's Intellectual Property Rights, GML may acting reasonably at its own cost and expense:

a) modify the Software in such a way that it no longer infringes the relevant Intellectual Property Rights; or

b) procure for Customer the right to use the Software in accordance with this EULA.

8.5. Customer warrants to the GML that it has the legal right and authority to enter into this EULA and to perform its obligations under this EULA.

8.6. All of the parties' warranties and representations in respect of the subject matter of this EULA are expressly set out in this EULA. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this EULA will be implied into this EULA or any related contract.

9. Acknowledgements and warranty limitations

9.1. Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this EULA, the GML gives no warranty or representation that the Software will be wholly free from defects, errors and bugs.

9.2. Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this EULA, the GML gives no warranty or representation that the Software will be entirely secure.

9.3. Customer acknowledges that the Software is only designed to be compatible with xAPI (Tin Can API), SCORM 2004, SCORM 1.2, or AICC, and the GML does not warrant or represent that the Software will be compatible with any other standard.

10. Limitations and exclusions of liability

10.1. Nothing in this EULA will:

- a) limit or exclude any liability for death or personal injury resulting from negligence;
- b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- c) limit any liabilities in any way that is not permitted under applicable law; or
- d) exclude any liabilities that may not be excluded under applicable law, and, if a party is a consumer, that party's statutory rights will not be excluded or limited by this EULA, except to the extent permitted by law.

10.2. The limitations and exclusions of liability set out in this Clause 10 and elsewhere in this EULA govern all liabilities arising under this EULA or relating to the subject matter of this EULA, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this EULA.

10.3. The GML will not be liable to Customer in respect of any losses arising out of a Force Majeure Event; loss of profits or anticipated savings; loss of revenue or income; loss of business, contracts or opportunities; loss or corruption of any data, database or software; special, indirect or consequential loss or damage.

10.4. The liability of the GML to Customer under this EULA in respect of any event or series of related events shall not exceed the total amount paid and payable by Customer to the GML under this EULA in the 12 month period preceding the commencement of the event or events.

11. Confidential information

11.1. The parties recognize that, in connection with the performance of this EULA, each party (in such capacity, the "Owner") may disclose Confidential Information to the other Party (the "Recipient").

11.2. The Recipient agrees not to use any Confidential Information of the Owner for any purpose other than in the performance of its obligations under this EULA and will not disclose any such Confidential Information, except (a) to its employees and independent contractors bound by confidentiality obligations no less stringent than those contained herein and who are reasonably required to have the Confidential Information in connection with the Recipient's performance of its obligations and rights under this EULA; (b) to its agents, representatives, lawyers and other advisers bound by confidentiality obligations no less stringent than those contained herein and who have a need to know such Confidential Information; and (c) pursuant to, and to the extent of, a request or order by a governmental authority, provided that the Recipient has first given Owner notice of such request or order and otherwise cooperates with the Owner in seeking a protective order against the disclosure of such Confidential Information. The Recipient agrees to take all reasonable measures to protect the secrecy and confidentiality of,

and avoid disclosure or unauthorized use of, the Owner's Confidential Information, but in any event shall exercise the degree of care exercised by a reasonable business person in the protection of its valuable confidential information. Without limitation to the foregoing, each party shall advise the other party immediately in the event that it learns or has reason to believe that any person who has had access to the Confidential Information of the other party has violated or intends to violate the terms of this EULA, and that party shall, at its own expense, cooperate with such other party in seeking injunctive or other equitable relief against any such person.

12. Termination

12.1. Either party may terminate this EULA immediately by giving written notice of termination to the other party if:

- a) the other party commits any material breach of this EULA, and the breach is not remediable;
- b) the other party commits a material breach of this EULA, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
- c) the other party persistently breaches this EULA (irrespective of whether such breaches collectively constitute a material breach).

12.2. GML may terminate this EULA immediately by giving written notice to Customer if:

- a) any amount due to be paid by Customer to the GML under this EULA is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
- b) the GML has given to Customer at least 7 days' written notice, following the failure to pay, of its intention to terminate this EULA in accordance with this Clause 12.2.

13. Effects of termination

13.1. The termination of this EULA shall not affect the accrued rights of either party.

13.2. For the avoidance of doubt, the license of the Software in this EULA shall terminate upon the termination of this EULA; and, accordingly, Customer and Authorised Users must immediately cease to use the Software upon the termination of this EULA.

13.3. Within 10 Business Days following the termination of this EULA, Customer must:

- a) return to the GML or dispose of as GML may instruct all media in its possession or control containing the Software; and
- b) irrevocably delete from all computer systems in its possession or control all copies of the Software.

14. Non-waiver and severability

14.1. No breach of any provision of this EULA shall be waived except with the express written consent of the party not in breach.

14.2. If any provision of this EULA is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this EULA will continue in effect. If any unlawful and/or unenforceable

provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

15. Variation and whole agreement

15.1. This EULA may not be varied except by a written document signed by or on behalf of each of the parties.

15.2. Subject to Clause 15.1 this EULA shall constitute the entire agreement between the parties in relation to the subject matter of this EULA, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

16. Assignment

Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this EULA.

17. Contracts (Rights of Third Parties) Act 1999

This EULA is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this EULA are not subject to the consent of any third party.

18. Governing law and jurisdiction

This EULA is governed by and shall be construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.