End User Licence Agreement (EULA)

Please read this EULA carefully, as it sets out the basis upon which we license the Software for use.

By registering for an account within the Software from our site, you are giving your express agreement to the provisions of this EULA.

By agreeing to be bound by this EULA, you further agree that your employees and any person you authorise to use the Software will comply with the provisions of this EULA.

These Terms of Sale are in the English language only. All Contracts are governed by English Law and any disputes arising out of such Contracts are governed by the exclusive jurisdiction of the English courts regardless of where you are located.

Our Software is only available to business customers. We do not license Software for customers for personal purposes (that is, not in connection with, or for use in, their trade, business, craft, or profession). If you are not a business customer, please do not register for an account.

AGREEMENT

1. Definitions

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

"Annually" means a 365 day period from and including the Effective Date.

"**Charges**" means those amounts that the parties have agreed shall be payable by the User to the Licensor in respect of the Software per Month or Annually as set out on the Licensor's site;

"**Documentation**" means the documentation for the Software produced by the Licensor and delivered or made available by the Licensor to the User (written User guides and video training programmes);

"**Effective Date**" means the date upon which the User gives the User's express consent to this EULA, following the issue of this EULA by the Licensor, which is the date the User registers online for an account;

"**EULA**" means this End User Licence Agreement, as it may be amended from time to time;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the party affected (including 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, natural disasters, explosions, fires, floods, riots, terrorist attacks, pandemics and wars);

"**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, semi-conductor topography rights and rights in designs);

"**Licensor**" means Mark Wickersham Training International Limited, a company incorporated in England and Wales (registration number 10665464) having its registered office at 71-75 Shelton Street, Covent Garden, London, WC2H 9JQ;

"**Maintenance Services**" means the application to the Software of Updates and Upgrades;

"**Month**" means a 30 day period from and including the Effective Date;

"**Services**" means any services that the Licensor provides to the User, or has an obligation to provide to the User, under this EULA;

"**Software**" means any software accesssible by the User;

"**Software Specification**" means the specification for the Software set out in the Documentation;

"**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;

"**Support Services**" means support in relation to the use of the Software and the identification and resolution of errors in the Software, but shall not include the provision of training services whether in relation to the Software or otherwise;

"**Term**" means the term of this EULA, commencing and terminating in accordance with Clause 2;

"**Update**" means a hotfix, patch or minor version update to the Software;

"**Upgrade**" means a major version upgrade of the Software;

"**User**" means the person to whom the Licensor grants a right to use the Software under this EULA; and

2. Term

2.1. The EULA shall come into force on the Effective Date.

2.2. This EULA shall continue in force until cancellation of the account by the User or the Licensor, upon which this EULA shall terminate automatically.

2.3. Some Software is provided for free when a User subscribes to other products and services provided by the Licensor. In such cases the EULA to use that Software will terminate when the subscription to those other products and services terminates,

unless the User registers separately for a paid account, which entitles them to continue to use the Software.

3. Licence

3.1. The Licensor hereby grants to the User from the date of supply of the Software to the User until the User cancels their account, or the account is terminated, a worldwide, non-exclusive licence to:

   a) access the Software;

   b) use the Software in accordance with the Documentation; and

   c) add additional Users.

   subject to the limitations and prohibitions set out and referred to in this Clause.

3.2. The User may not sub-license and must not purport to sub-license any rights granted under Clause 3.1.

3.3. Save to the extent expressly permitted by this EULA or required by applicable law on a non-excludable basis, any licence granted under this Clause 3 shall be subject to the following prohibitions:

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

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

4. Source Code

4.1. Nothing in this EULA shall give to the User or any other person any right to access or use the Source Code or constitute any licence of the Source Code.

5. Maintenance Services

5.1. The Licensor shall provide the Maintenance Services to the User whilst the User has an active subscription and as long as the User has paid the agreed Charges.

5.2. The Licensor shall provide the Maintenance Services in accordance with the standards of skill and care reasonably expected from a leading service provider in the Licensor's industry.

5.3. The Licensor may suspend the provision of the Maintenance Services if any amount due to be paid by the User to the Licensor under this EULA is overdue.

6. Support Services

6.1. The Licensor shall provide the Support Services to the User whilst the User has an active subscription.

6.2. The Licensor shall provide the Support Services in accordance with the standards of skill and care reasonably expected from a leading service provider in the Licensor's industry.

6.3. The Licensor may suspend the provision of the Support Services if any amount due to be paid by the User to the Licensor under this EULA is overdue.

7. No assignment of Intellectual Property Rights

7.1. Nothing in this EULA shall operate to assign or transfer any Intellectual Property Rights from the Licensor to the User, or from the User to the Licensor.

8. Charges

8.1. The User shall pay the Charges, which are calculated per Month or Annually.

8.2. All amounts stated in or in relation to this EULA are, unless the context requires otherwise, stated inclusive of any applicable value added taxes.

9. Payments

9.1. The User must pay any Charges to the Licensor for each Month or Annually in advance. The first payment is due on the Effective Date and subsequent payments are due on the same day of each month or year following the Effective Date.

9.2. The User must pay any Charges by debit or credit card (using such payment providers and details as are notified by the Licensor to the User). The User warrants that they have the appropriate permissions to use any payment cards used to pay the Charges.

9.3. If the User's payment fails to go through on any date that a payment is due, then the User will be notified by an automated email. A second attempt to take payment will be made 3 days after the initial attempt – if this attempt fails, the User will be notified by an automated email. A third attempt to take payment will be made 5 days after the second attempt – if this attempt fails, the User will be notified by an automated email. And a final fourth attempt to take payment will be made 7 days after the third attempt – if this fourth attempt fails, the User's account will automatically be cancelled and an automated email sent. The date on which the payment is successfully taken will not delay the date that the next payment is due, which will remain the monthly anniversary of the Effective Date. During this period the User will not be able to access the Software until payment is made and allocated by the Licensor to the account.

9.4. The date on which the payment is successfully taken will not delay the date that the next payment is due, which will remain the monthly or annual anniversary of the Effective Date.

9.5. All sums due must be paid in full without any set-off, counterclaim deduction, or withholding (except where any deduction or withholding of tax is required by law).

9.6. If a User is late making any payments under this EULA, they will be liable for interest on the overdue sum at the rate of 4% above the base lending rate of the Bank of England from time to time. Interest will accrue on a daily basis from the due date for payment until the actual date of payment of the overdue sum, whether before or after judgment.

10. Warranties

10.1. The Licensor warrants to the User that it has the legal right and authority to enter into this EULA and to perform its obligations under this EULA.

10.2. The Licensor warrants to the User that:

    a) the Software as provided will conform in all material respects with the Software Specification; and

    b) the Software shall incorporate security features reflecting the requirements of good industry practice.

10.3. The Licensor warrants to the User that the Software, when used by the User in accordance with this EULA, will not breach any laws, statutes or regulations applicable under English law.

10.4. The Licensor warrants to the User that the Software, when used by the User in accordance with this EULA, will not infringe the Intellectual Property Rights of any person under English law.

10.5. If the Licensor reasonably determines, or any third party alleges, that the use of the Software by the User in accordance with this EULA infringes any person's Intellectual Property Rights, the Licensor may, acting reasonably at its own cost and expense, procure for the User the right to use the Software in accordance with this EULA.

10.6. The User warrants to the Licensor that it has the legal right and authority to enter into this EULA and to perform its obligations under this EULA.

10.7. The Licensor's 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 any applicable law, no other warranties or representations concerning the subject matter of this EULA will be implied into this EULA or any related contract.

10.8. The Licensor shall not be liable under the warranty above if the Software fails to operate as a result of any modification, variation or addition to the Software not performed by the Licensor of caused by any abuse, corruption or incorrect use of the Software, including use of the Software with equipment or other Software which is incompatible.

11. Acknowledgements and warranty limitations

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

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

11.3. The User acknowledges that the Software is only designed to be compatible with that software specified as compatible in the Software Specification; and the Licensor does not warrant or represent that the Software will be compatible with any other software.

11.4. The User acknowledges that the Licensor will not provide any legal, financial, accountancy or taxation advice under this EULA or in relation to the Software; and,

except to the extent expressly provided otherwise in this EULA, the Licensor does not warrant or represent that the Software or the use of the Software by the User will not give rise to any legal liability on the part of the User or any other person.

12. Limitations and exclusions of liability

12.1. To the maximum extent permitted by any applicable law, the Licensor excludes its liability under this EULA.

12.2. 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 English law; or

   d) exclude any liabilities that may not be excluded under English law.

12.3. The limitations and exclusions of liability set out in this Clause 12 and elsewhere in this EULA:

   a) are subject to Clause 12.1; and

   b) 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.

12.4. The Licensor will not be liable to the User in respect of any losses arising out of a Force Majeure Event.

12.5. The Licensor will not be liable to the User in respect of any loss of profits or anticipated savings.

12.6. The Licensor will not be liable to the User in respect of any loss of revenue or income.

12.7. The Licensor will not be liable to the User in respect of any loss of business, contracts or opportunities.

12.8. The Licensor will not be liable to the User in respect of any loss or corruption of any data, database or software.

12.9. The Licensor will not be liable to the User in respect of any special, indirect or consequential loss or damage.

12.10. The total liability of the Licensor to the User under this EULA in respect of any event or series of related events shall not exceed the total amount paid and payable by the User to the Licensor under this EULA in the 30-day period preceding the commencement of the event or events.

13. Termination

13.1. The Licensor may terminate this EULA at any time and for any reason immediately upon giving to the User written notice of termination.

13.2. The User may terminate this EULA at any time and for any reason immediately upon giving to the Licensor written notice of termination

13.3. If the EULA is terminated part way through a month or a year, the User can request a refund of that month or year's subscription, which the Licensor may or may not agree, wholly at their discretion. If a refund is not requested or agreed, the User will be able to use the Software until the end of the month or year for which they have already paid the Charges.

14. Effects of termination

14.1. Upon the termination of this EULA, all of the provisions of this EULA shall cease to have effect, save that the following provisions of this EULA shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 3.2, 3.3, 4.1, 7.1, 10, 11, 12, 14, 15.1, 15.2, 15.5, 15.7, 15.8 and 16

14.2. Except to the extent that this EULA expressly provides otherwise, the termination of this EULA shall not affect the accrued rights of either party.

14.3. For the avoidance of doubt, the licences of the Software in this EULA shall terminate upon the termination of this EULA; and, accordingly, the User must immediately cease to use the Software upon the termination of this EULA.

14.4. Immediately following the termination of this EULA, the User must:

   a) return to the Licensor or dispose of as the Licensor 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.

15. General

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

15.2. 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).

15.3. Any and all personal data is processed in accordance with the Licensor's Privacy Notice, which is available on its sites.

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

15.5. The User hereby agrees that the Licensor may assign the Licensor's contractual rights and obligations under this EULA to any successor to all or a substantial part of the business of the Licensor from time to time. The User must not without the prior written consent of the Licensor assign, transfer or otherwise deal with any of the User's contractual rights or obligations under this EULA.

15.6. 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.

15.7. Subject to Clause 15.1, this EULA (together with any terms referred to herein) 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.

15.8. This EULA shall be governed by and construed in accordance with English law.

15.9. The courts of England shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this EULA.

16. Interpretation

16.1. In this EULA, a reference to a statute or statutory provision includes a reference to:

   a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

   b) any subordinate legislation made under that statute or statutory provision.

16.2. The Clause headings do not affect the interpretation of this EULA.

16.3. In this EULA, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

16.4. In this EULA, the terms "written" or "in writing" include email.