

TERMS AND CONDITIONS

1. Definitions and Interpretation

- 1.1 In this Agreement (except where the context otherwise requires) the following words and expressions shall have the following meanings:

"Agreement" means these terms and conditions, any Order Form and the attached Schedules;

"Client End Training Product" means Client's training materials comprising materials created by Client or licensed by Client from third parties and the Service (or extracts from the Service) licensed by Video Arts to Client pursuant to this Agreement; and **"Client End Training Products"** refers to all of them;

"Client LMS" means Client's learning management system, on which the Service is hosted by Client and with which the Service interacts (as applicable);

"Commencement Date" has the meaning given to it in the Order Form;

"Intellectual Property Rights" means all patents, copyright and related rights (including rights in computer software and websites), database rights, design rights, trade marks, service marks, trade names, domain names, rights in reputation, rights in undisclosed or confidential information (such as knowhow, trade secrets and inventions (whether patentable or not)) and other rights of a like nature (whether registered or unregistered) and all applications for such rights as may exist anywhere in the world;

"Licence Fee" means the licence fee payable for the right to access and use the Service as set out in the Order Form and payable in accordance with the Order Form and Clause 8;

"Offline Files" means files of the Video Arts Content which the Client is provided with by Video Arts;

"ON Demand" means the provision of a streaming link to a streaming site to access the Video Arts Content which is set up and controlled for the Client by Video Arts (either ON Demand or ON Demand +);

"Order Form" means the form provided by Video Arts which sets out the terms of the Licence to the Client for use of the Service during the Term (including any renewal period), including any appendices thereto;

"Party" means Video Arts or Client as the case may be (and "Parties" will be construed accordingly) and reference to a Party includes reference to its successors and permitted assigns;

"Property" has the meaning given to it in Clause 9.1;

"Renewal Date" has the meaning given to it in the Order Form;

"Schedules" means Schedule 1 Service Availability for the Video Arts Delivered Service and Schedule 2 Data Processing Activities;

"SCORM Files" means the SCORM files which the Client is provided with to access the Video Arts Content;

"Service" has the meaning given to it in the Order Form;

"Streaming Link" means the Client is provided with access to the Video Arts Content via a streaming link as iframe or QR codes;

"Term" has the meaning given to it in Clause 2;

"Territory" has the meaning given to it in the Order Form;

"Users" means Client's officers, employees, agents, consultants and contractors engaged on a formal basis by Client;

"Video Arts Content" has the meaning given to it in the Order Form;

"Video Arts Delivered Service" means the Service made available to Client by Video Arts via SCORM Files, Streaming Link and/or Video Arts Play Platform;

"Video Arts Play Platform" means the Video Arts Play platform via which the Client is provided with access to the Video Arts Content; and

"Working Day" means any day from Monday to Friday during the hours of 9.00am and 5pm (UK time) but excluding Bank Holidays and any other designated national holidays in England.

- 1.2 In the case of a conflict or ambiguity the order of precedence for this Agreement shall be and the documents attached to it or referred to in this Agreement shall be as follows:

1.2.1 the Order Form;

1.2.2 this document including the Schedules.

2. Term

- 2.1 Unless otherwise stated in the Agreement or unless and until terminated earlier in accordance with the Agreement, the Term (and any permissions granted) is one (1) year from the Commencement Date and will automatically renew for additional one (1) year periods from the Renewal Date, unless one Party gives the other not less than forty five (45) days prior notice to expire at the end of the then-current term for the Service.

3. Parties' Obligations

- 3.1 In consideration of the payment of the Licence Fee by Client to Video Arts in accordance with this Agreement, Video Arts will grant Client the Licence to use the Service for the Term of this Agreement as further set out in the Order Form and in Clause 4 of this Agreement.

- 3.2 Client will:

3.2.1 pay the Licence Fee in accordance with the Order Form and Clause 8;

3.2.2 advise Video Arts of any breach of the Agreement by Client; and

3.2.3 comply with all applicable laws, statutes, regulations and codes of conduct.

4. The Service

- 4.1 Video Arts shall provide, on the terms of this Agreement, the Service. Subject to Clause 4.2, the Service shall include the Video Arts Content as set out in the Order Form. The Video Arts Content/Service will be provided to Client via the Access Method set out in the Order Form for Client to make available to Client's Users in accordance with this Agreement (and where applicable for Client to host on Client's servers). The Client will ensure that its Users can access the Service via the Client's intranet/network/Client LMS (as applicable).

- 4.2 From time to time and at its sole discretion, Video Arts shall have the right to add to, modify, or remove any of the Video Arts Content provided in the Service without liability under this Agreement and if it does so it shall use reasonable endeavours to replace any Video Arts Content with an equivalent where possible. Video Arts will notify Client in advance of any forthcoming modifications, deletions etc., in order for Client to instruct Users to complete any courses which may only be part completed

- 4.3 The Service is provided on an 'as is' basis without warranties of any kind, either express or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose or that the operation of the Service or access to the Service will be uninterrupted or error free. Video Arts and its suppliers make no warranty about the suitability of the Service for any purpose and do not warrant that the Service will meet the Client's requirements. Client understands and agrees to bear any

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risk associated with Client's Users' access to the internet in connection with use of the Service.

- 4.4 Client acknowledges and agrees that Video Arts is not responsible for any content that comes to Client from third parties other than Video Arts.
- 4.5 The Video Arts Content/Service provides advice and training in a variety of business practices. Client acknowledges, however, that the advice is general in nature, and Client is solely responsible for the operation of its' business, and the decision to implement any practices featured in the Video Arts Content/Service.
- 4.6 Video Arts will notify Client in advance of any scheduled maintenance or repair activities which will mean the Service is unavailable for a period of 24 hours or more during a Working Day. Routine maintenance and upgrades will be carried out outside of Working Hours so far as is possible, however, Video Arts shall be entitled to carry out emergency maintenance, repairs, reconfigurations or upgrades at any time in its sole discretion.
- 4.7 If the Access Method for the Video Arts Content/Service is via SCORM Files, Streaming Link or Video Arts Play Platform only, Video Arts agrees to provide the Video Arts Content/Service to Client in accordance with the Service Availability parameters set out in Schedule 1 to this Agreement.
- 4.8 Where the Video Arts Content/Service is provided to Client via ON Demand or Offline Files, the Client is solely responsible for ensuring that the Client and the Users can access the Video Arts Content/Service.

5. Licence

- 5.1 All licences granted under this Agreement shall be personal to Client and Client shall not assign them to any third party.
- 5.2 Video Arts grants to Client the Licence during the Term, unless terminated earlier, to:
 - 5.2.1 use the Service in accordance with this Agreement;
 - 5.2.2 use the Service in conjunction with Client's training requirements including, where applicable, the creation of Client End Training Products, subject to the terms of this Agreement;
 - 5.2.3 in the Territory, and solely for the purposes of the Client providing training to Users and in accordance with this Agreement.
- 5.3 Video Arts Content from the Service, including that contained in the Client End Training Products, may only be viewed by Users. Client shall not charge a fee for access to, or use of, the Service or Client End Training Products by Users nor advertise the Service or Client End Training Products outside of Client's organisation. For the avoidance of doubt, this clause does not affect any internal cross charging for use of the Service.
- 5.4 Client shall not use or include the Service (or any part of the Service) in any products, documents or materials other than as specified in this Agreement.
- 5.5 Client will be responsible for acquiring any licenses and paying any fees in relation to public performance rights in any music included in the Video Arts Content/Service as required by the Performing Right Society, Mechanical Copyright Protection Society or any other similar body arising from the exercise by Client of Client's rights under this Agreement. For the avoidance of doubt, public performance use relates to use of the Video Arts Content/Service at for example a seminar where more than one User is present. If the Video Arts Content/Service is to be used by one User for private study/training, such a licence would not be required.

6. The Service - Use & Access

General

- 6.1 Client is solely responsible for use of the Service by Client and Client's Users. Where applicable, Client to issue user names and passwords to its' Users. (Alternatively, and where applicable, Video Arts will issue user names and passwords to the Client for Client's users). Client is solely responsible for all activities that occur under such user names for access to and use of the Service pursuant to this Agreement.
- 6.2 Client will not, and shall ensure that Client's Users do not, use the Service, or any content forming part of the Service for illegal or inappropriate purposes.
- 6.3 Client will not, and shall ensure that Client's Users do not, (nor attempt to) interfere with or disrupt the proper operation of Video Arts' software, hardware, systems or networks or the Service, including (but not limited to) not knowingly or negligently transmitting files that may interrupt, damage, destroy or limit the functionality of any computer software, hardware, systems or networks, including corrupted files or files that contain viruses, Trojans, worms, spyware or other malicious content.
- 6.4 Client will not, and shall ensure that Client's Users do not, attempt to gain unauthorised access to Video Arts' computer system or the computer system(s) of any other user to which Client does not have access rights.
- 6.5 Client will not, and shall ensure that Client's Users do not, take any action which does or may cause the Service or Video Arts' services to Users to be interrupted or degraded.
- 6.6 Client will not, and shall ensure that Users do not, copy, record, edit, alter or otherwise interfere with the content and materials (including without limitation the Video Arts Content) on the Service, including by use of video capture software, editing or altering by separating sound or music from vision or removing any content in a way which impairs the integrity of the content and materials on the Service.
- 6.7 Client and Client's Users shall not be entitled to save or copy any content from the Service for personal use or re-sale. The Video Arts Content/Service will be provided to Client via the Access Method as set out in the Order Form for Client to make available to Client's Users in accordance with this Agreement (and where applicable for Client to host on the Client' LMS). The Client will ensure that its Users can access the Service via the Client's intranet/network/Client LMS (as applicable).
- 6.8 Client will not reverse engineer, disassemble or otherwise attempt to derive source code for the Property in whole or in part except to the extent expressly permitted by law.
- 6.9 Client is responsible for ensuring that a back-up copy is made of any Client End Training Products or any other training materials that Client creates using the Service. Video Arts does not accept responsibility for any content or document which is lost or corrupted due to user error, transmission failure or error or for any other reason.
- 6.10 Video Arts reserves the right to suspend or terminate access to the Service at any time if Video Arts suspects any infringement of use as stipulated in this Agreement.

Gaining Authorised Access

- 6.11 Access to the Service may be subject to the use of user names and passwords (or such other authentication methods as may be used from time to time by Video Arts). Client shall not, and shall ensure that Client's Users do not, disclose any user names or passwords to or provide access to the Service to any third parties.
- 6.12 If Video Arts believes that there is likely to be a breach of security or misuse of the Service, Video Arts may require Client to change Client's and/or Client's Users' user name and/or password or suspend access to the Service. Video Arts reserves the right to edit, amend or issue new user names or require a change of user name or password at any time by giving notice to Client. Video Arts also reserves the right to suspend access to the Service if a breach of

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security or misuse is not addressed within 24 hours of identification.

7. Termination

- 7.1 Either Party may terminate this Agreement immediately upon written notice to the other where the other Party is in material or continuing breach of any of the terms of this Agreement and fails to remedy such breach (if capable of remedy) within 30 days of receiving written notice of the breach from the terminating Party.
- 7.2 Either Party may terminate this Agreement immediately on giving notice in writing if the other Party is or becomes insolvent within the meaning of section 123 Insolvency Act 1986 (or any event analogous to this in a jurisdiction other than England & Wales) occurs in respect of the other Party.

Consequences of Termination

- 7.3 Upon expiry or termination of this Agreement:
- 7.3.1 Client shall (and shall ensure that Client's Users shall) cease to use or have access to the Service and its contents (including without limitation the Video Arts Content);
- 7.3.2 Client shall cease to offer Client End Training Products incorporating any content or materials (including without limitation the Video Arts Content) from the Service to Users; and
- 7.3.3 Client shall return to Video Arts or delete or destroy all copies of any content or materials (including without limitation the Video Arts Content) from the Service in Client's possession.
- 7.4 Termination or expiry of this Agreement howsoever caused shall not affect the rights of either Party under this Agreement which may have accrued up to the date of termination or expiry.

8. Remuneration

- 8.1 Client shall pay Video Arts the Licence Fee due under this Agreement within 30 days of the date of invoice in accordance with the Payment Terms set out in the Order Form.
- 8.2 Recurring Licence Fees accrue from the Commencement Date until the end of the month in which a termination of the Service takes effect.
- 8.3 Video Arts may increase or adjust the basis for calculating the Licence Fee for the next renewal term for the Service by providing Client with not less than forty five (45) days written notice to expire at the end of the then current Term for the Service. The Licence Fee will be payable as increased or adjusted during the next renewal term for the Service.
- 8.4 Payments shall be made in pounds sterling.
- 8.5 All payments required to be made under this Agreement are stated exclusive of Value Added Tax which, if applicable, shall be paid in addition at the rates prevailing from time to time.
- 8.6 If Client fails to pay when due any amount payable by Client under this Agreement, Video Arts will be entitled but not obliged to charge Client statutory interest on the overdue amount from the due date up to the date of actual payment, after as well as before judgment, (currently being at the rate of eight per cent per annum plus the Bank of England based rate, as may be updated from time to time). Such interest will accrue on a daily basis, will be compounded quarterly and will be payable by Client on demand.
- 8.7 If Client fails to pay when due any amount payable by Client under this Agreement, Video Arts will be entitled but not obliged to suspend access to the Service from the due date up to the date of actual payment.

9. Intellectual Property

- 9.1 Client acknowledges that all Intellectual Property Rights in the Service including the Video Arts Content and any other content and materials (as applicable) (regardless of whether these are used with Client End Training Products) and the Video Arts website, including any software forming part thereof, (the "**Property**") are owned by Video Arts or Video Arts' licensors. Any licences granted by Video Arts to Client are non-exclusive and non-transferable, to use the Intellectual Property Rights in the Property only as specified in this Agreement. For the avoidance of doubt, Video Arts shall not own the Intellectual Property Rights in the Client End Training Products, except to the extent that the Client End Training Products include the Property of Video Arts.

- 9.2 Client shall not in any manner damage or impair any of Video Arts' Intellectual Property Rights, and shall use Client's best efforts to protect Video Arts' Intellectual Property Rights from infringement by Users or third parties as follows:

Client shall, at Client's own cost and with Video Arts prior written approval, implement digital rights management and other technological protection measures (including but not limited to water marking the Service, including any Client End Training Products) to ensure that the Service and any Client End Training Products are used within the scope of the rights granted to Client in this Agreement;

Client shall ensure that the measures adopted above in conjunction with the exploitation of the Service and any Client End Training Products as allowed by this Agreement are sufficient to ensure that Client and Client's Users are not able to copy, transfer, communicate or exploit the Service or any Client End Training Products in any way other than as permitted by this Agreement;

Client shall ensure that Client's Users do not remove, bypass, circumvent, neutralise or modify any of the digital rights management and other technological protection measures used for the Service and any Client End Training Products;

The Parties shall regularly review the effectiveness and viability of the digital rights management and other technological protection measures used for the Service and Client End Training Products.

- 9.3 Client will notify Video Arts promptly of any actual, threatened or suspected infringement by Client or any of Client's Users or any other person or company of Video Arts' Intellectual Property Rights in the Property of which Client may become aware and shall use Client's reasonable endeavours to assist Video Arts to prosecute any infringement of Video Arts' Intellectual Property Rights by third parties.
- 9.4 Client will indemnify, defend and hold harmless Video Arts and keep Video Arts indemnified from and against any loss of any nature suffered by Video Arts in the event of any infringement of any Intellectual Property Rights (whether belonging to Video Arts or Video Arts' licensors) by Client or Client's Users. Such indemnity shall include all losses, costs and expenses incurred by Video Arts as a consequence of any such claim.
- 9.5 Client will not take any steps to register any Intellectual Property Rights in relation to the Property or the Property as incorporated in the Client End Training Products.
- 9.6 Video Arts agrees to indemnify, defend and hold harmless Client and keep Client indemnified from and against any and all claims made against Client alleging that the normal use of the Service permitted under this Agreement infringes the Intellectual Property Rights of a third party. Such indemnity will include the losses, reasonable costs and expenses incurred by Client as a consequence of such claim.
- 9.7 Client agrees to indemnify Video Arts and keep Video Arts indemnified from and against any and all claims made

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against Video Arts alleging that any of the Client End Training Products infringe the Intellectual Property Rights of a third party. Such indemnity will include the losses, costs and expenses incurred by Video Arts as a consequence of such claim.

10. Limitation of Liability

- 10.1 Nothing in this Agreement will affect either Party's liability for death or personal injury resulting from any act, omission or negligence of that Party or its officers, agents, employees or sub-contractors, nor for fraudulent misrepresentation.
- 10.2 Neither Party shall be liable to the other for any claim to the extent that the same is or can be characterised as a claim for (or arising from):
- 10.2.1 loss of profits or anticipated savings;
 - 10.2.2 loss of goodwill or injury to reputation;
 - 10.2.3 loss of business opportunity;
 - 10.2.4 losses suffered by third parties; or
 - 10.2.5 indirect, consequential or special loss or damage regardless of the form of action, whether in contract, strict liability or tort (including negligence) and regardless of whether Video Arts or Client (as the case may be) knew or had reason to know of the possibility of the loss, injury or damage in question.
- 10.3 Save as provided in Clauses 9.4, 9.6 and 9.7 above (claim of infringement of Intellectual Property Rights), each party's aggregate liability to the other in respect of all losses, damages, costs, expenses or claims arising out of or in connection with this Agreement (whether for breach of contract, in negligence or any other tort, under statute or otherwise at all, or in respect of any indemnities given) shall not exceed, for each event or connected series of events, 150% of the Licence Fee paid by Client to Video Arts in the 12 months immediately preceding the claim.

11. Confidentiality

- 11.1 The Parties recognise that under this Agreement they may receive each other's trade secrets and the confidential or proprietary information of the other Party. All information belonging to or relating to a Party including information concerning business plans, customers, supplies, services, intellectual property and financial results received by the other Party as a result of entering into or performing this Agreement which is designated as confidential by the disclosing Party or is otherwise clearly confidential in nature constitutes 'confidential information'.
- 11.2 Each Party agrees not to use confidential information for any purpose other than the purpose for which it is supplied under this Agreement.
- 11.3 The obligations in this Clause 11 will survive the termination of this Agreement for a period of five years or, in respect of a particular item of confidential information, until such earlier time as that item of confidential information reaches the public domain other than through the receiving Party's own default.

12. Data Protection

- 12.1 In the Agreement:
- 12.1.1 **"controller", "data subject", "personal data", "Personal Data Breach, processing and "processor"** shall have the meanings given to them in the Data Protection Legislation
 - 12.1.2 **Data Protection Legislation** means all applicable laws, regulations and regulatory rules which govern the processing of Personal Data including: (i) the Data Protection Act 2018, the UK GDPR (meaning 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 (the General Data Protection Regulation) as it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act of 2018), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended) and any subsequent legislation enacted and duly in force from time to time and (ii) all guidance issued by regulatory authorities including the Information Commissioner's Office relating to use of personal data which is binding on Video Arts or Client;

- 12.2 Video Arts acknowledges that in its provision of the Video Arts Content via the Video Arts Play Platform and ON Demand only pursuant to this Agreement it may have access to and process Personal Data. The background and details of the processing of Personal Data under this Agreement in relation to Video Arts Content provided via the Video Arts Play Platform and ON Demand only are set out in Schedule 2.
- 12.3 For the purposes of this Agreement, the Parties acknowledge and agree that the Client is the Controller and Video Arts is the Processor of that Personal Data. The Parties shall each comply with their respective obligations imposed upon them under the Data Protection Legislation.
- 12.4 In respect of its processing of Personal Data as a Processor under this Agreement in relation to the Video Arts Content provided via the Video Arts Play Platform and ON Demand, Video Arts shall:
- 12.4.1 only process Personal Data in accordance with the Client's written instructions and for the purposes of performing the services under this Agreement and for no other purpose;
 - 12.4.2 for the duration of the Term, maintain in place appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful processing and against accidental loss or destruction of, or damage to, the Personal Data. Video Arts shall implement the security measures listed in Schedule 2 to this Agreement;
 - 12.4.3 be entitled to process Personal Data outside the European Economic Area solely for the purposes of performing the services under this Agreement, subject to Video Arts ensuring that any processing of Personal Data outside the European Economic Area is covered by a framework recognised by the relevant authorities as providing an adequate level of protection of the Personal Data and to Video Arts taking reasonable steps to ensure that appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful processing and against accidental loss or destruction of, or damage to, the Personal Data are in place;
 - 12.4.4 when requested by the Client, provide reasonable co-operation to enable the Client to comply with any request by a data subject to exercise any of their rights under the Data Protection Legislation, including the right to subject access, and/or responding to any enquiry made, or investigation or assessment of processing initiated by any regulatory authority (including the Information Commissioner's Office) in respect of the Personal Data;
 - 12.4.5 ensure that Personal Data is not made available by default to all personnel of Video Arts or of any authorised subcontractor and that only such personnel as are required to do so in order to meet Video Arts' obligations under this

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- Agreement shall have access to the Personal Data. Video Arts shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data;
- 12.4.6 be entitled to appoint third parties to process the Personal Data for the purposes of performing the services under this Agreement and for no other purpose. Video Arts shall procure that any third party appointed to process the Personal Data does so in accordance with Video Arts' obligations under this Agreement and Video Arts must be responsible directly to the Client for any failure by the third party to process Personal Data accordingly; and
- 12.4.7 provide such information as is reasonably required by the Client to enable the Client to satisfy itself as to Video Arts' compliance with its obligations under this Agreement, and shall permit the Client, its employees or authorised agents or advisers (on reasonable notice and during normal working hours) reasonable access to any relevant premises, to audit Video Arts' compliance with its obligations under this Agreement, and to inspect the procedures and measures referred to in this clause. The Client shall:
- 12.4.7.1 observe Video Arts' procedures relating to the protection of confidential information about any clients or customers of Video Arts; and
- 12.4.7.2 take all reasonable steps to minimise disruption to Video Arts' business during such audit.
- 12.5 Video Arts shall notify the Client without undue delay after becoming aware of a Personal Data Breach which affects the Personal Data processed under this Agreement.
- 12.6 Video Arts shall take all steps as reasonably required by the Client, and provide all reasonable assistance to the Client, in order for the Client to deal with any Personal Data Breach notified in accordance with Clause 12.5, including where relevant notification to the Information Commissioner's Office and notification to individual data subjects.
- 12.7 Upon expiry or termination of this Agreement (for whatever reason) and at other times when requested to do so by the Client, Video Arts must, at the choice of the Client, either:
- 12.7.1 deliver up to the Client all Personal Data in its then current format and such other format as the Client may require; or
- 12.7.2 delete all Personal Data and confirm such deletion to the Client within ten (10) days of the Client's instruction.
- 13. Publicity**
- 13.1 No public announcement or public circular (including a media release) relating to the subject matter of this Agreement will be made unless it has first been agreed in writing between the Parties.
- 13.2 Notwithstanding Clause 13.1 above Video Arts shall be permitted to identify Client by name as a client of Video Arts and shall be permitted to include Client's name and logo, in any marketing material which Video Arts produces.
- 14. Entire Agreement**
- 14.1 This Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes any previous agreement, understanding, representations or negotiation between the Parties relating to such matters.
- 14.2 Each Party acknowledges and agrees that in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement.
- 15. Variation**
- 15.1 No variation of this Agreement shall be valid unless it is in writing and signed by a duly authorised representative of each Party.
- 16. Waiver and Remedies**
- 16.1 Any failure to exercise or any delay in exercising a right or remedy provided by this Agreement or at law or in equity shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement shall not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.
- 17. Third Party Rights**
- 17.1 No term of this Agreement is intended to confer a benefit on, or be enforceable by, any person who is not a party to this Agreement whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 18. No Partnership**
- 18.1 Nothing in this Agreement is intended to create an agency relationship, a partnership or joint venture of any kind between the Parties.
- 19. Transfer**
- 19.1 Subject to Clause 19.2 below, neither Party may assign, sub-contract or transfer in any way any of its rights, liabilities and/or obligations under this Agreement on a temporary or permanent basis to any third party without the prior written consent of the other.
- 19.2 Video Arts may sub-contract the performance of any of its obligations under this Agreement, or assign the benefit of this Agreement, to a third party.
- 20. Severability**
- 20.1 If any part of this Agreement is found by a court of competent jurisdiction or other competent authority to be invalid or unenforceable then such part shall be severed from the remainder of this Agreement which shall remain valid and enforceable to the fullest extent permitted by law.
- 21. Notices**
- 21.1 Notices shall be in writing and signed by or on behalf of the notifying Party and shall be delivered by:
- 21.1.1 personal delivery, or
- 21.1.2 pre-paid first class post or recorded delivery or registered post;
- to the address and for the attention of the relevant Party set out in the Order Form; or
- 21.1.3 by email to the email address and for the attention of the relevant Party set out in the Order Form.
- 21.2 Any such notice will be deemed to have been received:
- 21.2.1 if delivered personally, at the time of delivery;
- 21.2.2 in the case of pre-paid first class post or recorded delivery or registered post, 48 hours from the date of posting if from and to an address in the United Kingdom or Northern Ireland and five days from the date of posting if from and to an address elsewhere; and

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21.2.3 if sent via email, one (1) Working Day after transmission.

22. Governing Law and Jurisdiction

This Agreement will be governed by and construed in accordance with English law and each Party submits to the non-exclusive jurisdiction of the courts of England and Wales

SCHEDULE 1
SERVICE AVAILABILITY (Excluding Service provided by Offline Files)

Video Arts will use its reasonable endeavours to provide the Service delivered via SCORM Files, Streaming Link, ON Demand and/or the Video Arts Play Platform (the "Video Arts Delivered Service") with average Availability of 99% for each calendar month. Availability means the Client's ability to utilize the Video Arts Delivered Service during the relevant month and is calculated as follows:

$$x = (y - z)/y * 100\%$$

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x	is the Availability during such month
y	is the total number of hours in such month minus the number of hours during such month that the Client is unable to utilize the Video Arts Delivered Service because of scheduled maintenance for the Video Arts Delivered Service as to which the Client has been notified by Video Arts at least seven days in advance via email; a Force Majeure Event; non-performance of hardware, software, and other equipment that is not provided by Video Arts or under control of Video Arts for use in conjunction with the Video Arts Delivered Service (except as such non-performance is directly or indirectly caused by Video Arts).
z	is the number of hours in such month during which the Client is unable to utilize the Video Arts Delivered Service (other than for reasons in the definition of "y" above); provided that Video Arts has been notified or is otherwise aware (or reasonably should be aware) of the Client's inability to utilize the Video Arts Delivered Service.

In the event that the Video Arts Delivered Service is unavailable for less than 99% of a calendar month due to a failure by Video Arts, Video Arts will extend the Term by an equivalent number of days to those when the Video Arts Delivered Service was unavailable. By way of an example, if the digital library was unavailable on 23 and 24 December and these dates were not dates on which essential maintenance and upgrades had been scheduled in advance, the Term would be extended by 2 days.

The above remedy is the Client's sole remedy and Video Arts' entire liability in the event of Video Arts' failure to provide Availability to the Client of at least ninety nine percent (99%) during the relevant calendar month. The Client must make Video Arts aware that they are not able to use the Video Arts Delivered Service. The Client must make any claim within 10 working days of the end of the month in respect of which a claim is being made.

SCHEDULE 2
DATA PROCESSING ACTIVITIES

(Where the Video Arts Content is accessed via Video Arts Play Platform and/or ON Demand only)

This Schedule 2 sets out the details of the processing activities to be carried out by Video Arts under this Agreement in relation to the Video Arts Content accessed via Video Arts Play Platform and/or ON Demand only.

Nature and purpose of the processing:

Supply of Video Arts Content via ON Demand and/or Video Arts Play Platform. Video Arts processes the Personal Data in connection with the grant of log in permissions to Data Subjects to access and use the Video Arts Content via Video Arts Play Platform and/or ON Demand.

Duration of processing:

During the Term of the Agreement.

Categories of Data Subjects:

Employees of the Client

Types of Personal Data:

Name and email address and, if applicable, Customer ID number

Security measures and steps to be applied for the storage and transfer of Personal Data:

Video Arts shall implement the following:

- 1) Organisational management and dedicated staff responsible for the development, implementation and maintenance of Video Arts' information security program.
- 2) Audit and risk assessment procedures for the purposes of periodic review and assessment of risks to Video Arts' organisation, monitoring and maintaining compliance with Video Arts' policies and procedures, and reporting the condition of its information security and compliance to internal senior management.
- 3) Data security controls which include at a minimum, but may not be limited to, logical segregation of data, restricted (e.g. role-based) access and monitoring, and utilisation of commercially available and industry standard encryption technologies for Personal Data that is:
 - a) transmitted over public networks (i.e. the Internet) or when transmitted wirelessly; or
 - b) at rest or stored on portable or removable media (i.e. laptop computers, CD/DVD, USB drives, back-up tapes).
- 4) Logical access controls designed to manage electronic access to data and system functionality based on authority levels and job functions, (e.g. granting access on a need-to-know and least privilege basis, use of unique IDs and passwords for all users, periodic review and revoking/changing access promptly when employment terminates or changes in job functions occur).
- 5) Password controls designed to manage and control password strength, expiration and usage including prohibiting users from sharing passwords and requiring that Video Arts' passwords that are assigned to its employees: (i) be at least eight (8) characters in length, (ii) not be stored in readable format on Video Arts' computer systems; (iii) must be changed every ninety (90) days; must have defined complexity; (v) must

have a history threshold to prevent reuse of recent passwords; and (vi) newly issued passwords must be changed after first use.

- 6) System event logging and related monitoring procedures to proactively record user access and system activity
- 7) Physical and environmental security of data center, server room facilities and other areas containing Personal Data designed to: (i) protect information assets from unauthorised physical access, (ii) manage, monitor and log movement of persons into and out of Video Arts facilities, and (iii) guard against environmental hazards such as heat, fire and water damage.
- 8) Operational procedures and controls to provide for configuration, monitoring and maintenance of technology and information systems according to prescribed internal and adopted industry standards, including secure disposal of systems and media to render all information or data contained therein as undecipherable or unrecoverable prior to final disposal or release from Video Arts' possession.
- 9) Change management procedures and tracking mechanisms designed to test, approve and monitor all changes to Video Arts' technology and information assets.
- 10) Incident / problem management procedures designed to allow Video Arts to investigate, respond to, mitigate and notify of events related to Video Arts' technology and information assets.
- 11) Network security controls that provide for the use of enterprise firewalls and layered DMZ architectures, and intrusion detection systems and other traffic and event correlation procedures designed to protect systems from intrusion and limit the scope of any successful attack.
- 12) Vulnerability assessment, patch management and threat protection technologies and scheduled monitoring procedures designed to identify, assess, mitigate and protect against identified security threats, viruses and other malicious code.
- 13) Business resiliency/continuity and disaster recovery procedures designed to maintain service and/or recovery from foreseeable emergency situations or disasters.

Video Arts reserves the right to revise the security measures set out in this Schedule at any time, without notice, so long as any such revisions will not materially reduce or weaken the protection provided for Personal Data that Video Arts processes in the course of providing the Services to the Client.