

SCHEDULE 1

Terms of use for iLearn@adp online services by Customer

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1. DEFINITIONS

You or Your: The person, firm, corporation or other organisation entering into this agreement with us by accepting these terms. Where the context so requires, you or your includes your Authorised Users.

Us, We, or Our: ADP Dealer Services UK Limited, our affiliates, subsidiaries and any holding companies.

Authorised Users: includes without limitation any person whose principal place of work is one of your Sites and who has been sent log in details by us.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 6.

Services: includes Hosting Services and provision of Training, as the context requires.

Hosting Services: includes the services we provide to allow you to access and use the Software, including hosting set-up and ongoing services.

Software: The software provided by us or by our suppliers which enables you to use the Services, including data schemas, data models, databases and the like.

Subscriber Data: The data input by you (and any Authorised User) for use in conjunction with the Training. Subscriber Data includes your annotations to the Training, which are maintained via the Hosting Services.

Subscription Fee: The subscription fee for the Services to be provided under this agreement, as specified in our invoice relating to this agreement.

Subscription Period: The period in respect of which a Subscription Fee is payable for any Service, as specified in our invoice relating to this agreement.

Training: Training provided by us to you under this agreement as specified in the Subscription Fee invoice.

Your Sites: All sites, offices and locations that you and we have agreed are covered by this agreement and are listed in schedule 1.

2. AUTHORITY AND LICENCE FOR USE OF TRAINING

- 2.1 We authorise you and your Authorised Users to use the Training for which you agree to pay us the Subscription Fee.
- 2.2 This authority and licence starts when you enter into this agreement and ends:
- (a) if the Subscription Period expires without your agreeing to renew this agreement on the terms and Subscription Fee then applying; or
 - (b) if this agreement is terminated under clause 9.
- 2.3 You may
- (a) Search, view material containing Training for your own use;
 - (b) Access the Training while away from your principal place of work.

3. AUTHORITY AND LICENCE FOR USE OF HOSTING SERVICES

- 3.1 We hereby grant you on the terms and conditions of this agreement a non-exclusive, non-transferable licence to access the Software through the Hosting Services and to use the Software solely for your business purposes (and for the avoidance of doubt, nothing in this agreement grants to you any rights whatsoever in or relating to the source code of the Software);
- 3.2 You shall not store, distribute or transmit any material through the Hosting Services that is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
- 3.3 You shall not:
- (a) attempt to duplicate, modify, disclose or distribute any portion of the Software; or
 - (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form any of the Software, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or
 - (c) use the Software or Hosting Services to provide hosting services to third parties, without our prior written consent; or
 - (d) transfer, temporarily or permanently, any rights or obligations under this agreement, or
 - (e) attempt to obtain, or assist others in obtaining, access to the Software, other than as provided under this paragraph.
- 3.4 We confirm we have all the rights in relation to the Software that are necessary to grant all the rights we purport to grant under the terms of this agreement.

4. YOUR OBLIGATIONS

- 4.1 You will take reasonable steps to ensure that Authorised Users comply with the terms of use of the Services in this agreement and do not:
- (a) copy, print out or otherwise reproduce any Training nor any material relating to part of the Services, except as permitted under this agreement or authorised by us in writing;

- (b) make any part of the Training or of the Services available to anyone whose principal place of work is not one of your organisation's sites, except as permitted under this agreement or authorised by us in writing;
 - (c) alter any part of the Training or Services; or
 - (d) purport to assign or otherwise dispose of your rights under this agreement.
- 4.2 You will take reasonable steps to ensure that nobody other than Authorised Users access the Training or Services using accounts created with the specific authorised username and password.
- 4.3 You acknowledge and agree that we and our licensors own all intellectual property rights in the Software, the Training and the Services. Except as expressly stated in this agreement, this agreement does not grant you any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, Training, Services or any related documentation.
- 4.4 Subject to clause 5 (Our obligations), you will defend, indemnify and hold us harmless against claims, actions, proceedings, losses, damages, expenses and all costs arising out of or in connection with your use of the Software or Services, provided that:
- (a) you are given reasonable notice of any such claim;
 - (b) we provide reasonable co-operation to you in the defence and settlement of such claim, at your expense; and
 - (c) you are given sole authority to defend or settle the claim.
- 4.5 You are responsible for configuring your information technology, computer programmes and platform in order to access the Services. Notwithstanding clause 5.5, you should use your own virus protection software.
- 4.6 You shall fully indemnify and hold us harmless from and against any and all claims, losses, obligations, liabilities, costs and/or expenses whatsoever (including, without limitation legal costs and expenses) arising out of or in connection with any act or omission by you that results in any virus, trojan, worm or similar type program or code being introduced to our computer system which results in loss or damage of any kind to us, our customers and/or our suppliers.
- 4.7 By submitting any individual's personal information to us or our service providers and agents, you agree, and confirm your authority from such other individual, to our collection, use and disclosure of such personal information in accordance with relevant data privacy legislation.

5. OUR OBLIGATIONS

- 5.1 We warrant that you will not infringe any third party intellectual property rights by using the Training and we will indemnify you against losses, costs or expenses you may incur as a result of any claim that the use by you of the Training infringes any third party intellectual property rights, provided you notify us without delay of any such claim being made. This warranty and indemnity are unlimited but do not extend to claims in respect of Software.
- 5.2 In relation to any part of the Software owned by us we shall defend you against any claim that your use of the Software infringes any United Kingdom patent, copyright, trade mark, database right or right of confidentiality, and shall indemnify you for any amounts awarded against you in judgment or settlement of such claims, provided that:
- (a) we are given prompt notice of any such claim;
 - (b) you provide reasonable co-operation in the defence and settlement of such claim, at our expense; and

- (c) we are given sole authority to defend or settle the claim.
- 5.3 In the defence or settlement of the claim, we may at our discretion obtain for you the right to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this agreement without liability to you. We shall have no liability if the alleged infringement is based on:
- (a) a modification of the Software by anyone other than us; or
 - (b) your use of the Software in a manner contrary to the instructions given to you by us; or
 - (c) your use of the Software after notice of the alleged or actual infringement from us or any other person.
- 5.4 The foregoing states your sole and exclusive rights and remedies, and our entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 5.5 We will take reasonable steps to ensure that Software and data files we supply to you as part of the Service are virus-free.
- 5.6 We will use our reasonable endeavours to ensure that Subscriber Data is maintained securely and is properly backed-up. In the event of any loss or damage to Subscriber Data, your sole and exclusive remedy shall be that we use our reasonable endeavours to restore the lost or damaged Subscriber Data from the latest back up of such Subscriber Data. We shall not be responsible for any loss, destruction, alteration or disclosure of Subscriber Data caused by any third party (except those third parties sub-contracted by us to perform services related to Subscriber Data maintenance and back-up).
- 5.7 We will use our reasonable endeavours to ensure that the Services are provided continuously and that access to our website is not interrupted by any event within our control. We will notify you in advance of planned downtime, which, if reasonably practicable, will be scheduled outside normal United Kingdom office hours.

6. CONFIDENTIALITY

- 6.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party; or
 - (b) was in the other party's lawful possession before the disclosure; or
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 6.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 6.3 Each party shall use its best endeavours to ensure that the other's Confidential Information to which it has access is not disclosed or distributed in violation of the terms of this agreement.

- 6.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party (except, in our case, those third parties sub-contracted by us to perform services related to Subscriber Data maintenance and back-up).
- 6.5 You acknowledge that the Software is our Confidential Information.
- 6.6 We acknowledge that the Subscriber Data is your Confidential Information.
- 6.7 This paragraph shall survive termination of this agreement, however arising.

7. DISCLAIMER

- 7.1 We give you no warranty or assurance, except as set out in clause 5 above. We declare and you acknowledge that all implied warranties and conditions are excluded to the maximum extent permitted by law
- 7.2 Our policy is to conduct our business at all times in a professional manner and to best practice standards. We use all endeavours to maintain Training up to date and to develop our Services to meet subscribers' needs. However, you should note in particular:
 - (a) The Training is not intended to constitute a definitive or complete statement of the iLearn@adp program, nor is any part of it intended to constitute advice for any specific situation.
 - (b) The Training includes archived information and resources, which may be incorrect or out of date.
 - (c) We give you no warranty or assurance that the Services and our means of delivering them are compatible with your software or computer configuration.
 - (d) We may change part or all of any Service at our discretion.

8. LIABILITY

- 8.1 This paragraph sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:
 - (a) any breach of this agreement;
 - (b) any use made by you of the Services or the Software or any part of them; and
 - (c) any representation, statement or tortious act or omission (whether negligent or otherwise) arising under or in connection with this agreement.
- 8.2 Except as expressly and specifically provided in this agreement:
 - (a) you assume sole responsibility for results obtained from the use of the Software and the Services by you, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided by you in connection with the Services, or any actions taken by us at your direction; and
 - (b) all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.
- 8.3 Nothing in this agreement excludes our liability:
 - (a) for death or personal injury caused by our negligence; or
 - (b) for fraud or fraudulent misrepresentation.
- 8.4 Subject to clause 8.3 above:

(a) we shall not be liable for any loss of profits, loss of business, depletion of goodwill and/or similar losses or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising; and
(b) our total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the price paid by you for the Services during the 12 months preceding the date on which the claim arose.

- 8.5 Under this paragraph, our liability includes that of any company in our group and our and their respective agents, employees and sub-contractors, you includes any other party claiming through you and loss or damage includes any losses, damages, costs or expenses whatsoever or howsoever arising in connection with the Service, whether under this agreement or other agreement or in consequence of any misrepresentation, misstatement or tortious act or omission, including negligence.
- 8.6 We shall have no liability to you under this agreement if we are prevented from or delayed in performing our obligations under the agreement or from carrying on business by acts, events, omissions or accidents beyond our reasonable control, including without limitation default of sub-contractors, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or communications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, terrorist action or storm.

9. TERMINATION

- 9.1 This agreement will terminate if you or we are in material breach of any of its terms and if the breach is not remedied within the period of thirty working days after written notice of it has been given to the party in breach. If we are in material breach as a result of circumstances within our control, you will be entitled to pro-rated return of the Subscription Fee.
- 9.2 On termination of this agreement for any reason:
- (a) all licences granted under this agreement shall immediately terminate;
 - (b) subject to the exceptions in this sub-paragraph, you will take reasonable steps to delete the Software and the Training from your electronic media, including your intranet and electronic storage devices so that you no longer have an electronically functional copy of the Software or any part of the Training. You are not required to delete or destroy official ADP documents containing Training that were provided prior to termination;
 - (c) we may destroy or otherwise dispose of any of the Subscriber Data in our possession unless we receive, no later than ten days after the effective date of the termination or expiry of this agreement, a written request for the delivery to you of a print-out of the then most recent back-up of the Subscriber Data. We shall use reasonable commercial efforts to deliver the print-out to you within 30 days of receipt of such a written request, provided that you have, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). You shall pay all reasonable expenses incurred by us in delivering such print-out; and
 - (d) termination shall not affect or prejudice the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination.

10. GENERAL PROVISIONS

- 10.1 The rights provided under this agreement are granted to you only, and shall not without our prior written consent be considered granted to any subsidiary or holding company. You may not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under this agreement.
- 10.2 This agreement is not intended to benefit anyone other than the parties to it and, in particular, no term of this agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.
- 10.3 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.
- 10.4 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 10.5 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 10.6 This agreement and the Subscription Fee invoice constitute the entire agreement and understanding of the parties and supersede any previous agreement between the parties relating to the subject matter of this agreement. Each of the parties 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 made or not) of any person (whether party to this agreement or not) other than as expressly set out in this agreement. The only remedy available to it for breach of the agreement shall be for breach of contract under the terms of this agreement.
- 10.7 English law governs this agreement and the parties submit to the non-exclusive jurisdiction of the English courts.

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