

## Learning Management System (LMS)

### **Terms of Service**

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**THIS AGREEMENT** is dated 1st January, 2019

## **PARTIES**

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| <p>(1) V-cube (Thailand) Co.,Ltd. incorporated and registered in 622 Emporium Tower, Room No.114 Floor 10/1,8 Sukhumvit Road, Klongton, Klongtoey ,Bangkok, 10110 Thailand. , herein referred as Supplier.</p> <p>(2) “Customer” means a legal entity or individual that applies for the Services in accordance with these Terms.</p> <p>(3) “Customer Content” means all data, text, images, sounds, computer programs</p> | <p>(A) WIZLEARN TECHNOLOGIES PTE LTD has developed Wizlearn Learning Management System herein referred as “Services” which makes it available to users of the service via the Customers’ internet network on an annual recurring contractual basis for the purpose of continued learning and assessment.</p> <p>(B) The Customer wishes to use the Supplier's services for its business operations.</p> <p>(C) The Supplier has agreed to provide the services and the Customer has agreed to subscribe and pay for the Supplier's services subject to the terms and conditions of this agreement.</p> |
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## **BACKGROUND**

## **AGREED TERMS**

### **2. INTERPRETATION**

- 2.1. The definitions and rules of interpretation in this clause apply in this agreement.

**Authorised Users:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services.

**Business Day:** any day which is not a Saturday, Sunday or public holiday in Thailand.

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

**Customer Data:** the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer’s use of the Services.

**Effective Date:** the date of this agreement.

**Initial Subscription Term:** 12 months from the Date of the System first Go Live

**Normal Business Hours:** 9.00 am to 6.00 pm local Thailand time, each Business Day.

**Renewal Period:** the period described in clause 10.1.

**Services:** the subscription services provided by the Supplier to the Customer under this agreement.

**Software:** the software applications provided by the Supplier as part of the Services.

**Subscription Term:** has the meaning given in clause 10.1.

**User Subscriptions:** the user subscriptions purchased by the Customer and any additional user subscriptions purchased pursuant to clause 3.2 and/or reduced pursuant to clause 3.3 by the Customer from time to time, which entitle Authorised Users to access and use the Services in accordance with this agreement.

**Virus:** anything or any device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, Trojan Horses, viruses and other similar things or devices.

- 2.2. Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 2.3. Words in the singular shall include the plural and vice versa.
- 2.4. A reference to one gender shall include a reference to the other genders.
- 3. USER SUBSCRIPTIONS**
- 3.1. In relation to the [Authorised Users](#), the Customer undertakes that:
- the maximum number of [Authorised Users](#) that it authorises to access and use the Services shall not exceed the number of User Subscriptions it has purchased from time to time;
  - each [Authorised User](#) shall keep a password for his use of the [Services](#) and shall keep his password confidential.
- 3.2. The Customer shall not intentionally access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - facilitates illegal activity;
  - depicts sexually explicit images;
  - promotes unlawful violence;
  - is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or
  - causes damage or injury to any person or property.
- 4. ADDITIONAL/ REDUCTION OF USER SUBSCRIPTIONS**
- 4.1. The Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number and the Supplier shall grant access to the Services to such additional Authorised Users in accordance with the provisions of this agreement under Schedule 1.
- 4.2. If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall provide additional User Subscription.
- The Customer may, at any time after the Initial Subscription Term, reduce the number of User Subscriptions purchased. If the Customer wishes to reduce the number of User Subscriptions, the Customer shall notify the Supplier in writing. The parties shall negotiate in good faith for a reduction of the Subscription Fees in the event of such reduction.
- 5. SERVICES**
- 5.1. The Supplier shall, during the Subscription Term, provide the Services to the Customer on and subject to the terms of this agreement.
- 5.2. The Supplier shall provide the Services to meet the standard of performance with a system availability level of at least NINETY-EIGHT PERCENT (98%) for the Subscription Term.
- 5.3. The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours.
- 6. CUSTOMER DATA**
- 6.1. The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 6.2. If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:
- the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf;
  - the Supplier shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Customer from time to time; and
  - each party shall take appropriate technical and organisational measures

against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

## 7. SUPPLIER'S OBLIGATIONS

7.1. The Supplier undertakes that the [Services](#) will be performed in accordance with (i) the Proposal; (ii) the Services description; and (iii) the highest industry and professional standards.

7.2. The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier. If the Services do not conform to the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Should the Supplier fails to rectify any breach of the undertaking set out in clause 6.1 within the prescribed notice period, the Customer shall be entitled to terminate this Agreement forthwith and for avoidance of doubt, the supplier shall refund the Customer (for work left undone) or the Customer shall pay the Supplier (for work done) on a pro-rated. Notwithstanding the foregoing, the Supplier:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; nor that the Services, or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

(Except to the extent where such delays, delivery failures, or any other loss or damage is caused by the wilful misconduct or a negligent act or omission of the Supplier or its personnel)

7.3. The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

## 8. CUSTOMER'S OBLIGATIONS

The Customer shall use its best endeavour to:

- (a) provide the Supplier with:
  - (i) all necessary co-operation in relation to this agreement; and
  - (ii) all necessary access to such information as may be required by the Supplier;
 in order to render the [Services](#).
- (b) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (c) be solely responsible for procuring and maintaining its network connections and telecommunications links for its system, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## 9. SERVICE LEVEL AGREEMENT

9.1. The Supplier will provide the support coverage from Monday to Friday, 08:00am to 6:00pm (excluding public holidays).

9.2. The Service Level Agreement is as follows:

- (a) Severity Level 1 (Critical)
  - (i) Business and financial exposure - The problem causes the System to be unable to perform its functions. The problem has major security implications.
  - (ii) Work Outrage - The Application/Content failure causes the client to be unable to work or perform some significant portion of their job.
  - (iii) Number of Clients Affected - The Application/Content failure affects 70 % of clients
  - (iv) Workaround - There is no acceptable workaround to the problem (i.e., the job cannot be performed in any other way).

- (v) Response Time – Within three (3) hours during office hour.
- (vi) Resolution Time - Within one (1) working days
- (b) Severity Level 2 (High)
  - (i) Business and financial exposure - The problem affects part or parts the System for which there are no existing alternatives for by-passing the problem.
  - (ii) Work Outrage - The Application/Content failure causes the client to be unable to work or perform some significant portion of their job.
  - (iii) Number of Clients Affected - The Application/Content failure affects 50% of clients.
  - (iv) Workaround - There is no acceptable workaround to the problem (i.e., the job cannot be performed in any other way).
  - (v) Response Time - Within six (6) hours during office hour.
  - (vi) Resolution Time - Within seven (7) working days.
- (c) Severity Level 3 (Medium-Low)
  - (i) Business and financial exposure - The problem affects part or parts the System for which there are existing alternatives for by-passing the problem
  - (ii) Work Outrage - The Application/Content failure causes the client to be unable to perform some small/minor portion of their job, but they are still able to complete most other tasks. May also include questions and requests for information.
  - (iii) Number of Clients Affected - The Application/Content failure affects 30% of clients.

- (iv) Workaround - There is an acceptable and implemented workaround to the problem (i.e., the job can be performed in some other way).
- (v) Response Time - Within eight (8) hours during office hour.
- (vi) Resolution Time - Within ten (10) working days.

## 10. CONFIDENTIALITY

- 10.1. 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;
  - (b) was in the other party's lawful possession before the disclosure;
  - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - (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.
- 10.2. 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.
- 10.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 10.4. The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

10.5. This clause 9 shall survive termination of this agreement, however arising.

## 11. TERM AND TERMINATION

11.1. This agreement shall, unless otherwise terminated as provided in Clause 6.2 and this clause 10, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

11.2. Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this agreement without liability to the other if:

- (a) the other party commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within seven (07) days of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party.

11.3. On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) the Supplier shall not destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no

later than ten days after the effective date of the termination of this agreement, a written request for the destruction or disposal of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days from the date of Termination, provided that the Customer has, at that time, paid all undisputed fees and charges outstanding at and resulting from termination.

- (d) The Supplier shall refund the Customer (for work left undone) or the Customer shall pay the Supplier (for work done) on a pro-rated basis.

## 12. FORCE MAJEURE

12.1. The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, accident, breakdown of plant or machinery, fire, flood, storm, provided that the Customer is notified of such an event and its expected duration.

## 13. GOVERNING LAW AND JURISDICTION

13.1. This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of Thailand.

13.2. The parties irrevocably agree that the courts of Singapore have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

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**14. SUB-CONTRACT, ASSIGNMENT, TRANSFER**

The Supplier shall not sub-contract, transfer or assign this agreement or any part of this agreement without the prior written consent of the Customer. The Supplier shall be responsible for the acts, defaults, neglects or omissions of any assignee or subcontractor, their agents, servants or workmen as fully as if they were the acts, defaults, neglects or omissions of the Supplier.

**15. ENTIRE AGREEMENT**

This agreement and the Proposal under this agreement embodies all the terms and conditions agreed upon amongst the parties as to the subject matter of this agreement and supersedes and cancels in all respects all previous agreements and undertakings amongst the parties with respect to the subject matter hereof whether such be written or oral.