

Standard Terms and Conditions of TÜV SÜD South Asia Private Limited – TÜV SÜD Group
(hereinafter referred to as TÜV SÜD)
for E-Learning/VILT/Classroom Training/Academy



Standard Terms and Conditions for E-Learning/VILT/Classroom Training /Academy

(with information for Consumers/Customers)

By clicking on this Website for E-learning / Classroom Training / Virtual Instructor Led Training (“VILT”) and accredited Personnel Certification services, (collectively referred to as “Academy E- store”) the Customer/Consumer agree(s) to abide by these terms and conditions “Terms and Conditions”. **Note:** For accredited personnel certification services, in addition to these terms, the latest Standard Terms and Conditions for Certification, Verification, Validation, and Training Services shall also apply.

Hereinafter the contractual partner of TÜV SÜD South Asia Private Limited shall be referred to as “Customer/Consumer”, and TÜV SÜD South Asia Private Limited shall be referred to as “Academy”. The Customer/Consumer and the Academy shall be jointly referred to as “Parties” or individually as “Party”.

The Customer’s use of the Website and our services is governed by the following Terms and Conditions including applicable policies incorporated herein by way of reference. If the Customer transacts on the Website, the Customer shall be subject to such other policies that are applicable to the Website including privacy policy, disclaimers, terms and conditions, etc. and other applicable laws.

Application and structure of these Terms and Conditions

These Standard Terms and Conditions shall apply to any use by the Customer of any E-Learning Solution (“E-Learning Solution”) such as E-learning/Classroom Training/Virtual Instructor Led Training (“VILT”), (collectively referred to as “Academy E-store”) and as described in the service outlines and any commercial agreements (“Order Documents”) available in the online shop of the Academy E-store, as well as to the use of any e-modules ordered by the Customer. The use of the E-Learning Solution by the Customer may be agreed either (i) for a limited period of time as part of a Software as a Service Model (“SaaS Model”), or (ii) for an unlimited period of time, as part of a permanent transfer of the software to the Customer’s own IT infrastructure (“Purchase Model”). The relevant applicable agreed model shall be stipulated in the Order Documents. The Academy shall, in no event, be responsible for any other obligation unless expressly provided in these Standard Terms and Conditions.

Accordingly, these Standard Terms and Conditions are divided into three parts.

SECTION 1 contains special provisions that are only applicable for the SaaS Model.

SECTION 2 contains special provisions that are only applicable for the Purchase Model.

SECTION 3 contains Standard provisions that are applicable to both models.

The use of the E-Learning Solution shall apply exclusively on the basis of the following Terms and Conditions. Any terms and conditions of the Customer, that are at variance to these Terms and Conditions (if any), shall be deemed to be expressly rejected hereby and shall not be applicable. Any agreements that differ from these Terms and Conditions need to be expressly agreed in writing by the Academy in order to be valid.

PART 1 - THE SaaS MODEL

1. PROJECT SPECIFICATIONS

1.1 The main contractual obligation of the Academy under the SaaS Model is (i) providing the Customer with access to the E-Learning Solution in the version generally available at the Academy for the agreed time period, and (ii) to grant access to the e-modules booked by the Customer as part of this version of the E-Learning Solution (cf. No. 17) (hereinafter referred to as: “SaaS-Service”).

1.2 The manner of the E-Learning Solution made available as part of the SaaS Model shall be definitively set out in the Order Documents. The Academy cannot be held responsible for the

SaaS-Services provided meeting the Customer’s expectations. The Academy only hosts the SaaS-Services exclusively within India. This does not apply for the webinars offered as part of the SaaS-Services.

- 1.3 The Academy shall be solely entitled to vary the SaaS-Services, and in particular to include updates or upgrades, to the extent that such a change is necessary, in order to account for technological developments or to fix errors or problems with the SaaS-Services. In no event, the Customer shall permit or cause to permit any third party to perform any updates, upgrades, changes, or developments to the SaaS-Services through any third party.
- 1.4 The Academy shall make the SaaS-Services available to customers for use via the internet. The SaaS-Services are available 97% (ninety seven percent) of the time on average in a year (365 days). The demarcation point where the availability is measured shall be the WAN directed router output of the computer center used for providing the SaaS-Services. Maintenance times as per No. 1.7 shall be deducted when calculating the availability. The Academy shall be under an obligation to monitor the SaaS-Services and the availability of the respective servers required for the respective SaaS-Services.
- 1.5 The SaaS-Services do not include any internet access for Customers, but merely the making available of the SaaS-Services to be accessed via the internet, within the agreed availability parameters. The Customer shall not make any requests or demands in respect of provision of internet services by the Academy. A prerequisite for using the SaaS-Services shall be compliance by the Customer with the technical system requirements by the Customer. The technical system requirements for using the SaaS-Services can be accessed at <https://learning.tuvsud.com/cms/help/systemen>. In the case of updates, the Academy shall be entitled to change the technology system requirements in order to comply with the state of the art, and to notify Customers thereof as part of the release notes, however, the Academy shall ensure in doing so that two browsers that are available for free shall always be supported. The Customer shall be solely responsible for upgrading its technical system requirements at the Customer’s own cost and expense.
- 1.6 Customers must not use the SaaS-Services in a manner that would endanger the security and/or the performance of the SaaS infrastructure and in a manner that may be unlawful, illegal, fraudulent, or harmful. The Customer shall always comply with the applicable laws while using the SaaS-Services.
- 1.7 Scheduled maintenance may be carried out by the Academy during the following maintenance times: 1 (one) hour every other month, outside the core business times of the Academy. In addition to this, the Academy shall be entitled to carry out unscheduled maintenance work up to 1 (one) hour per month; the Academy shall notify the Customer a reasonable time in advance of any such unscheduled maintenance work. The SaaS-Services will not be available during any such scheduled or unscheduled maintenance work.
- 1.8 A contract shall be concluded by way of an online order of SaaS-Services in the online shop of the Academy. The Customer can add the desired E-Learning Solutions to their shopping basket. By going to the “Checkout” and agreeing to place a binding order, the Customer acquires the right to access the SaaS-Services for the agreed term, subject to payment of the invoice sent to the Customer. In the case of an online order, the Order Documents shall be transmitted via email. The Academy retains the right to raise the invoice along with applicable taxes on online order of SaaS-Services.

2. USER RIGHTS

- 2.1 The Academy shall grant to the Customer a non-exclusive and non-transferrable right, limited to the term to use the SaaS-Services online. This shall include the right to access the SaaS-Services and to store copies of the program code, which are automatically created during such access, on the Customer’s main memory.
- 2.2 The usage right shall apply for the number of authorized users stipulated in the Order Documents. An authorized user shall be.

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named, natural person. Any change of the natural person assigned to a user account shall only be permissible with the prior consent of the Academy, such consent not to be withheld unreasonably.

- 2.3 The Customer shall not be entitled to use the SaaS-Services more extensively than explicitly permitted within the framework of these Standard Terms and Conditions and the Order Documents. In particular, the Customer shall not be entitled to (i) make the SaaS-Services accessible to third parties, other than to those explicitly permitted in these Terms and Conditions, (ii) undertake any adaptations or improvements to the SaaS-Services, or (iii) grant any sub-licenses for the SaaS-Services, or (iv) directly or indirectly, sell or commercially exploit the SaaS-Services or any of its components.
- 2.4 Insofar as the Order Documents refer to any accompanying materials, the Academy hereby grants the Customer a non-exclusive right, for the limited agreed period to electronically download and print out one paper copy thereof, and to create a backup copy, unless the Order Documents or any other written agreement/document stipulate something different.
- 2.5 The Customer shall grant to the Academy the simple, world-wide right, limited in time to the term to use customer content within the meaning of No. 5, and in particular to copy and adapt this, to make it publicly accessible, to the extent that this is necessary, in order to provide the SaaS-Services to the Customer.

3. RIGHT OF WITHDRAWAL FOR CONSUMERS

3.1 When entering a distance selling deal, consumers generally have a statutory right of withdrawal, notice of which is given by the Academy hereby as per the statutory template. Consumer means any natural person who enters into legal obligations for purposes that cannot be considered to be predominantly for trade purposes or for the purposes of their freelance, professional work. The Academy provides information on the model instruction of withdrawal at No. 3.2. Exceptions to the right of withdrawal are governed by No 11.

If the Customer withdraws from the contract within the stipulated period, the Academy will reimburse all payments received from the Customer, without undue delay and in any event not later than 7 (seven) working days from the day on which the Academy receives the Customer's notice to withdraw from the contract. Any such reimbursement shall be made by the same method of payment the Customer used for the original transaction, the Academy will not be charging any fees for this reimbursement. If there is any change in the account details, the Customer must convey it to the Academy in writing. The Academy shall not be responsible for credit to any wrong account due to wrong information furnished by the Customer. If the Customer does not receive the refund within the time prescribed herein, then the Customer can write to the Academy at elearning2@tuvsud.com.

3.2 The Academy notifies the Customer of the model withdrawal form as per the statutory requirements:

INSTRUCTION ON WITHDRAWAL

Right of Withdrawal for E-Learning

The Customer should raise refund request within 7 (seven) days of purchase of course. The refund will not be provided if the participant has accessed the content. Any refund request beyond 7 (seven) days of purchasing the course will not be accepted and no refund will be provided.

Refund request can be initiated through sending an email to customer service support at elearning2@tuvsud.com, mentioning the below details:

Name:
 Course Name:
 Date of enrollment:
 Payment Mode:
 Transaction ID:
 Amount:

The Academy reserves the right to revise the Terms and Conditions of this policy without any prior notice.

Note: All refunds will be processed within 10 (ten) working days after the refund request is approved by the Academy.

Effect of Withdrawal

Model withdrawal form

(In the event that the Customer wish to withdraw from the contract, please fill in this form and return it to us).

— To TÜV SÜD South Asia Private Limited, Gulmohar Plaza, 4th floor, above ICICI Bank, lane adjacent to corporate office, Plot No. 1A, Gulmohar Park, ITI Road, Aundh, Pune – 411007, E-Mail: info.in@tuvsud.com , Tel.+91 2066848484

— I/We(*) hereby give notice that I/We (*) withdraw from my/our (*) contract of sale for the purchase of the following good (*)/ the provision of the following service (*)

Ordered on (*)/received on (*)

— Name of Consumer(s)
 — Address of Consumer(s)
 — Signature of Consumer(s) (only where this notification is effected on paper)
 — Date (*)

Delete as appropriate.

Right of Withdrawal for Classroom Training/VILT:

The Customer can reschedule the course opted for 2 (two) times within 3 (three) months due to unforeseen reasons, subject to such unforeseen reason(s). Further rescheduling will not be allowed, and no refund will be paid in such a case. Likewise, the request for rescheduling of the course opted for must be made 7 (seven) days prior to commencement of such course. The Customer opting for rescheduling cannot opt for adjustment of fees against new course later.

The cancellation/withdrawal request email with valid reasons will be accepted up to [7 (seven)] days prior to commencement of the course. Such request can be initiated through sending an e-mail to customer service support at training.in@tuvsud.com mentioning the below details:

Name:
 Course Name: Date
 of enrollment:
 Payment Mode:
 Transaction ID:
 Amount:

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The Customer can adjust the fees already paid in relation to the course opted for against any new course of the Customer's choice which is available with the Academy. Such adjustment is allowed only once.

On receipt of the content/course material by the Customer, no refund will be paid, and, in this case, the Customer is entitled for one reschedule of the same course for which the Customer has opted originally.

If the Customer has started attending the course, withdrawal/ cancellation and refund thereof is not allowed. However, the Customer can opt for one reschedule of the course opted for.

On acceptance and approval of the refund request, the refund amount will be credited to the Customer's account from payment providers within 10 (ten) working days. No refunds will be made in cash and all refunds will be in Indian Rupees. The refunds shall be made by the same method of payment the Customer used for the original transaction. If there is any change in the account details, the Customer must convey it to the Academy in writing. The Academy shall not be responsible for credit to any wrong account due to wrong information furnished by the Customer. If the Customer does not receive the refund within the time prescribed herein, then the Customer can write to the Academy at training.in@tuvsud.com.

Any withdrawal/refund request must be made by the Customer within a period of 2 (two) months of the payment of course fees. No refund request will be considered and processed if it is made after 60 (sixty) days of payment of the course fees. However, in such a case, the Customer can avail and enroll for any other course made available by the Academy and the course fees already paid by the Customer shall be adjusted against the new course opted by the Customer.

The withdrawal/cancellation policy mentioned in relation to E-Learning or for any other services, is not applicable to Customer availing Classroom Training / VILT.

The Academy reserves the right to modify/amend/replace the above provisions at any time, as deemed fit it, without any prior notice to the Customer.

3.3 The Academy would like to point out that the right of withdrawal in respect of delivery of digital content that is not delivered on physical data carriers expires, once the Academy has commenced performing the contract, after the Consumer:

- i. having expressly agreed, that the Academy should commence performance before the expiry of the withdrawal period, and
- ii. where the Consumer has further confirmed that it is aware of the fact that such consent leads to a loss of its right of withdrawal as soon as performance of the contract is commenced.

4. TERM AND TERMINATION

4.1 Termination of contract for failure to become effective.

If the contract has not become effective within 2 (two) months after the date of contract signature i.e., effective date, either Party may, by not less than twenty-two (22) days written notice to the other Party, declare the contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

4.2 Expiration of contract: The contract shall expire when services have been completed and all payments have been made.

4.3 Termination by the Academy

The Academy may terminate the contract, by not less than fifteen (15) working days' written notice to the Customer, in case, the Customer fails to pay any money due to the Academy pursuant to the contract within fifteen (15) working days after receiving written notice from the Academy that such payment is overdue.

4.4 **Payment upon Termination**

Upon termination of the services i.e., provision of SaaS Services/Academy E-Store, and modules, the Customer shall promptly make the following payments to the Academy:

- i. remuneration for services performed prior to the effective date of termination, other expenses, provisional sums and contingency for expenditures actually incurred prior to the effective date of termination; and
- ii. in case of suspension of works by the Customer, the payments of works successfully completed by the Academy shall not be suspended due to Customer's default/ failure.

5. CUSTOMER CONTENT

5.1 Customer Content shall mean all content or data uploaded to the IT infrastructure used for providing the SaaS-Services (hereinafter "**SaaS-Infrastructure**") by a Customer or any user authorized by that Customer (such data and content hereinafter referred to as "**Customer Content**").

5.2 The Customer shall not be permitted to upload Customer Content which:

- i. infringes any rights (including intellectual property rights) of thirdparties.
- ii. are in contravention of applicable law.
- iii. would lead to the Academy being in contravention of applicable law, or which would be likely to lead to such a situation.
- iv. would negatively affect the security of the SaaS-Services, or would be likely to do so; or
- v. would negatively affect the performance of the SaaS-Services.

5.3 Upon request, the Customer shall delete any Customer Content that is in breach of No. 5.2 from the SaaS-Infrastructure within a reasonable period, such period to be set by the Academy as per its sole discretion. Depending on the severity of the threat posed by the content or data in breach of No. 5.2 to the SaaS-Services or to the Academy, in individual cases a demand to delete these immediately may be considered a reasonable period of time. The Academy shall be entitled to delete any content and data from the SaaS-Infrastructure, if the Customer fails to do so within the time period communicated by the Academy. There is no need to stipulate a period within which the content needs to be removed, if the Academy were to risk more than just trivial losses if such content was not removed immediately. In such a case, the Academy shall be entitled to delete the relevant Customer Content directly without prior notice or intimation to the Customer.

5.4 In the event that the Customer should upload Customer Content to the SaaS-Infrastructure which are in breach of No. 5.2, then the Customer shall indemnify the Academy against any and all claims, damages, liabilities, infringement of intellectual property rights of any third party/person asserted against the Academy resulting from this and shall bear the costs resulting therefrom. This shall also include reasonable legal costs.

5.5 The Academy shall not accept any responsibility for the content of Customer Content. There shall be no obligation on the part of the Academy to check the content and data supplied in respect of their lawfulness including accuracy or completeness of such Customer Content.

6. DEFECTS LIABILITY, MAINTENANCE AND SUPPORT

6.1 The rights of the Customer in cases of material and legal defects shall be governed by the legal provisions.

6.2 Moreover, the Academy provides the Customer with 1st and 2nd level support during working days (excluding Saturdays/ Sundays/ Public

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holidays) from 09:00 to 15:00 IST. The details in respect of the respective support services shall be stipulated in the Order Documents.

- 6.3 Customers shall exclusively have the email address elearning2@tuvsud.com available to them to report errors. Where it is necessary to establish contact by telephone, the Academy will establish contact with the Customer.

7. REMUNERATION

- 7.1 The Customer shall pay the agreed remuneration to the Academy for using the SaaS-Services. The details in respect of the respective remuneration agreed shall be stipulated in the Order Documents.
- 7.2 Unless there is anything different agreed between the Parties, the remuneration agreed between the Parties shall be in respect of 1 (one) month of SaaS-Services being provided, and shall be due at the beginning of each month and payable within 30 (thirty) working days from such due dates.

8. SUBJECT TO CHANGE

- 8.1 Where the SaaS Model is agreed between the Customer and the Academy, the Academy shall reserve the absolute right to change these conditions of use in the future. The Academy shall notify the Customer of any such changes no less than 6 (six) weeks before any such changes are due to come into effect, and shall send a copy of the amended Terms and Conditions to the email address provided at registration, highlighting the changes.
- 8.2 If the Customer does not agree to the changes, then the Customer shall be entitled to object to these changes within 6 (six) weeks after becoming aware of these. In the event that the Customer does not object to the amended conditions and continues to use the SaaS-Services after the time period for registering an objection has passed, then the new conditions of use shall be deemed to have been effectively agreed upon expiry of the objection period. In the event that the Customer objects within the time period given, the contract shall continue in effect unchanged. The Academy shall indicate these consequences in the notice. Further, the Academy reserves the right to reject the objections made by the Customer.
- 8.3 Where the changes or amendments are not unreasonable for a Customer who is a commercial Customer, bearing in mind the interests of the Academy, then No. 8.2 shall not apply and the new conditions of use shall apply immediately upon expiry of the period as per No. 8.1.
- 8.4 The provisions of this No. 8 shall also apply for any changes to the SaaS-Services themselves, provided that these are not already covered by No. 1.3. Where the SaaS-Services themselves are amended, however, the Customer shall have no right to object under section 8.2, but rather in this case the Customer has a special right of termination which may be exercised with immediate effect within the period stipulated.

SECTION 2 - PURCHASE MODEL

9. PROJECT SPECIFICATIONS

- 9.1 The main contractual obligation of the Academy as part of the Purchase Model shall be to (i) provide the Customer with the software necessary for using the E-Learning Solution (the “**E-Learning Software**”) in executable, compiled form on a data carrier, or to make a download option available and to grant the respective usage rights, and (ii) to make the modules agreed in the Order Documents available to the Customer within the setting of the E-Learning Software. Source codes are not part of the delivery. The Academy will return/deliver the source code (in addition to sub-clause (i) and (ii) mentioned herein) to such Customers who have provided their content to the Academy for content development or where Academy is providing SME support to the Customers in relation to their content.

- 9.2 The manner of the E-Learning Software shall be definitively set out in the Order Documents. The Academy cannot be held responsible for the E-Learning Software meeting the Customer's expectations.

- 9.3 A prerequisite for using the E-Learning Software shall be compliance by the Customer with the technical system requirements by the Customer. The technical system requirements for using the E-Learning Software are set out in the Order Documents. In the case of updates, the Academy shall be entitled to change the technology system requirements in order to comply with the state of the art, and to notify Customers thereof as part of the release notes. The Customer shall be solely responsible for upgrading its technical system requirements at its own cost and expense.

- 9.4 Where the Customer is given the opportunity as part of the E-Learning Software to upload content to the infrastructure of the Academy or sub-contractors of the Academy, No. 5 shall apply accordingly.

- 9.5 A contract shall be concluded by way of an online order of E-Learning Software in the online shop of the Academy. The Customer can add the desired E-Learning Solutions to their shopping basket. By selecting “go to checkout” and confirming the order, a contract of sale is entered into between the Customer and the Academy in respect of the E-Learning Solutions selected. In the case of an online order, the Order Documents shall be transmitted via email. The Academy retains the right to raise the invoice along with applicable taxes on online order of E-Learning Software.

10. USER RIGHTS

- 10.1 The Academy shall grant to the Customer a non-exclusive right, during the term of the contract, to use the E-Learning Software for their internal business purposes. This shall include the installation, loading and executing the E-Learning Software in any IT environment. The Customer may create copies of the E-Learning Software to the extent that this is necessary for the contractual use thereof and a reasonable number of backup copies only after obtaining prior written consent of the Academy in respect of the same. The Customer shall not be entitled to copy, sell, assign, convey, transfer or otherwise commercially exploit the E-Learning Software for any reason whatsoever.
- 10.2 The usage right entitles the Customer to use the E-Learning Software for an employees authorized by the Customer and approved by the Academy. To clarify: This is one, uniform right of use, rather than an unlimited multitude of individual usage rights. However, the Customer shall be prohibited from using the E-Learning Software in order to train external persons or any other entity unless something different has been agreed by the Parties in the Order Documents or any other agreement/document.
- 10.3 The Customer shall not be entitled to use the E-Learning Software more extensively than explicitly permitted within the framework of these Standard Terms and Conditions and the Order Documents. In particular, the Customer shall not be entitled to (i) carry out any adaptations or improvisations or modifications to the E-Learning Software, ii) rent the E-Learning Software to third parties, or (iii) grant any sub-licences for the E-Learning Software.
- 10.4 Upon payment of the remuneration due, the Academy shall grant the Customer a non-exclusive right, for the agreed term, to use the materials made available to them as per the Order Documents for their internal business purposes, and to make a backup copy thereof only after prior written consent of the Academy.

11. RIGHT OF WITHDRAWAL FOR CONSUMERS

- 11.1 Term Nos. 11.2 and 3 contain the withdrawal notifications for cases where the E-Learning Software is made available by way of a download. Exceptions to the right of withdrawal are governed by Nos. 11.1i, and 0. The Model withdrawal form is available at No. 3.2

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INSTRUCTION ON WITHDRAWAL

Right of Withdrawal for E-Learning content on subscription basis.

Terms and Conditions applied:

- All the E- Learning modules shared will be copyrights of the Academy.
- Any modification or download of the content is prohibited.
- Any change request in the content will be charged extra based on the scope of change request.
- Only SCORM files will be shared with limited time validity.
- The E- Learning modules once shared and hosted on the Customer LMS cannot be replaced until it is having an error or technical issue during the course access.
- Courses once sold and hosted on LMS cannot be replaced with new course, and will be charged separately.
- TUV SUD South Asia will not be responsible for any technical issue pertaining to Customer LMS.
- The above-mentioned cost is exclusive of Goods and Service Tax (“GST”).

GST will be charged @ 18% as per Government of India regulations.

The refund is not possible, in the case once the purchase of course is made, as all the course are provided as demo to the customer prior to the purchase of the content to ensure the customer requirements and meet their set internal parameters.

Withdrawal is only valid and possible if it is made within [7] days of purchasing the E-Learning Software and modules.

Technical service support can be reached at elearning2@tuvsud.com.

Effect of Withdrawal

If the Customer withdraws from the contract within the stipulated period, the Academy will reimburse all payments received from the Customer, not later than 7 (seven) days from the day on which the Academy receives the Customer’s notice to withdraw from the contract. Any such reimbursement shall be made by the same method of payment the Customer used for the original transaction, unless anything different was specifically agreed with the Customer; the Academy will not be charging any fees for this reimbursement.

Notwithstanding anything contained in these Terms, the Customers who have provided their content to the Academy for content development or where Academy is providing SME support to the Customers in relation to their content shall not be entitled to withdraw or claim refund.

- i. The right of withdrawal shall not apply in contracts for the delivery of computer software.
- 11.2 Where the product is made available by way of download, the provisions in No. 3 shall apply.

12. DEFECT AND LIMITATIONS

- 12.1 The rights of the Customer in cases of material and legal defects shall be governed by these Terms and Conditions.
- 12.2 In the case of purchasing the E-Learning Software on a data carrier the limitation period for raising claims in relation to defects shall begin to run on the date of delivery, where the purchase is made by way of download, the limitation period shall begin to run at the time the download option is made available to the Customer and the Customer is notified thereof.
- 12.3 The Academy warrants, that the E-Learning Software materially corresponds to the description in the Order Documents, provided it

is used in the manner contractually agreed (including in particular the stipulations as per No. 9.3). The Customer acknowledges that software is never entirely free from errors and/or glitches. For this reason, where there is only a minor discrepancy between the actual properties of the E-Learning Software and the stipulations in the Order Documents, this shall not give rise to any claims for defects by the Customer.

- 12.4 Any defects must be reported by the Customer in a comprehensive and detailed form, setting out all information relevant for identifying and analysing any defects. In particular, the steps taken that resulted in the defect occurring, the appearance and the effect of the defect need to be included.
- 12.5 Any claims for defects by the Customer shall be invalid if the Customer changes the E-Learning Software, or has it changed by third parties, or where it is used in conjunction with products/hardware/software that are not stated to be compatible by the Academy and/or are not approved by the Academy, or if the E-Learning Software was neglected, misused, or if the Customer failed to comply with documentation and instructions supplied by the Academy for using the E-Learning Software.
- 12.6 In the event that the E-Learning Software does have defects, the Academy shall, in the first instance, be entitled to rectify any such defects. Such rectification may be affected, at the choice of the Academy, either by correcting the E-Learning Software itself, or by redelivering the entire E-Learning Software or individual parts thereof. Any such corrections may be carried out by instructions to the Customer, either in writing or by telephone, by remote data transmission or by sending data carriers with correction software. In such cases the Customer shall follow the instructions, enable the remote data processing, and to install the correction software immediately after receipt of delivery - where appropriate on a test system first. A workaround solution shall similarly be considered rectification, if deemed fit by the Academy. The Customer shall reasonably assist the Academy with its services for curing the defects, in particular the Customer shall provide all necessary information, documentation and working materials in good time.
- 12.7 Where a Customer claims that there is a defect in the E-Learning Software, and where, as part of the work and analysis done by the Academy, it transpires that the defect complained about by the Customer did not result from a defect of the E-Learning Software, and where this was the culpable fault of the Customer, then the Academy shall be entitled to invoice the Customer for the time and effort expended as part of its work, as per the service price lists of the Academy as current from time to time. The Customer agrees to make payment of such amounts raised by the Academy within 7 (seven) days of raising such invoice.
- 12.8 In the event that the first attempt at rectification is unsuccessful, the Customer shall grant a reasonable further period for rectification to be affected. If it is not possible to effect rectification within this additional period either, the Customer shall be entitled to assert a reduction in price, or, where this is the responsibility of the Academy, to withdraw from the contract subject to providing a written notice to that effect.
- 12.9 No rights to claim defects shall arise where a defect is the result of the Customer using the E-Learning Software in a way that goes beyond the use permitted under these Terms and Conditions.

13. REMUNERATION

The Customer shall pay the agreed remuneration to the Academy for using the E-Learning Software. The details in respect of the respective remuneration agreed shall be stipulated in the Order Documents.

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14. MAINTENANCE AND UPDATES

- 14.1 In the case of the Purchase Model the Parties may agree maintenance services by the Academy in a separate written maintenance agreement. In such a case the Academy shall supply services to remedy errors in the E-learning Software as per the provisions of No. 6.2, including for the version of the E-Learning Software purchased in the Purchase Model for the duration of the term of the maintenance agreement.
- 14.2 Furthermore, the Academy may make the new version of the E-Learning Software available to the Customer from time to time. In the event that the Customer fails to comply with this obligation, the Academy shall be under no obligation to resolve defects, unless those defects would not have been remedied by installing the new version.
- 14.3 If the Customer does not enter into a maintenance agreement, the Customer can order an update service through the Order Documents. By using the update service, the Customer acquires the right to receive such updates to the E-Learning Software from the Academy as have been made available generally.
- 14.4 The relevant applicable remuneration owed by the Customer shall be stipulated in the Order Documents.

15. SPECIAL CONDITIONS FOR APP USERS

- 15.1 Where the E-Learning Software is made available to the Customer as an app, or where access to the E-Learning Software is through an app, then the following additional provisions shall apply in respect of that app.
- 15.2 Where the Customer uses the app to access the SaaS Model, No. 2 shall apply in respect of the usage rights to the app. If the app is made available to the Customer as part of the Purchase Model, then No. 10 shall apply in respect of the Customer's rights in relation to the app.
- 15.3 The app offer is available via mobile applications for mobile telephones or tablets, operating Apple IOS or Android. The Academy may, at its own discretion, decide to also make it accessible via other operating systems.
- 15.4 The app may contain third-party content, which may be marked accordingly by the Academy. The Academy does not check whether third-party content is complete, correct or lawful, and the Academy accepts no liability, nor does it grant any warranty in respect of whether any third-party content is complete, correct, lawful or up to date. This shall also apply in respect of the quality of third-party content, its suitability for a certain purpose, and shall also apply in respect of any third-party content linked to on external websites. The Customer agrees to not raise any claims against the Academy in respect of any third-party content contained in the app for any reason whatsoever.
- 15.5 The app may contain links to external websites of third parties, the content of which the Academy has no influence over. Accordingly, it is not possible for the Academy to accept any liability for any such external content. Responsibility for the content of the linked pages shall rest with the respective provider or operator of the website in question. The Customer understands and agrees that the Academy cannot be reasonably expected to monitor the content of linked pages.
- 15.6 The Customer shall be responsible themselves for obtaining the technological requirements for use (e.g., internet connection, mobile phone connection), and shall do so at their own expense.
- 15.7 To the extent that the app includes the possibility of in-app purchases, the Customer has the option of purchasing additional modules or media content via the in-app purchase function, directly via the Apple App Store, or, as the case may be, Google Play.

SECTION 3 - GENERAL PROVISIONS

16. CONTRACT PARTNER, RESTRICTIONS ON SUPPLY

The Customer's contract partner and operator of the E-Learning Solution is TÜV SÜD South Asia Pvt. Ltd., TÜV SÜD House, Off Saki Vihar Road, Saki Naka, Andheri (East), Mumbai- 400072., Customers can contact the Academy on the below email id: Email:elearning2@tuvsud.com

17. MODULES AND MATERIALS CONTAINED THEREIN

- 17.1 The Academy makes it possible for the Customer to use the modules booked by them as part of an E-Learning Solution. It shall be made clear in the respective Order Documents which modules the Customer booked.
- 17.2 Where the modules contain copyrighted materials, the Customer shall be granted a non-exclusive right to use these to the extent that this is necessary for the contractual use of the module as per the Terms and Conditions stipulated herein.

18. CONDITIONS FOR REMUNERATION AND PAYMENT

All prices are exclusive of GST. Invoices shall become payable within 30 (thirty) days once invoice is received by the Customer and GST will be paid at actual.

19. LIABILITY

- 19.1 The Academy undertakes to exercise due care and skill in the provision of SaaS-Services, E-Learning Software, modules, and accepts no responsibility unless the same is proven in a court of competent jurisdiction.
- 19.2 The total liability of the Academy to the Customer in respect of any claim for loss, damage or expense of any nature and howsoever arising shall be limited, in respect of any one event or series of connected events, to an amount equal to the fees paid to the Academy under the contract (excluding GST thereon) whether the Academy's liability is based in contract, tort, equity, at law, and/or otherwise, howsoever arising.
- 19.3 The Academy shall have no liability to the Customer for claim for loss, damage or expense unless arbitral proceedings are commenced within 1 (one) year after the date of the performance by the Academy of the service/provision of SaaS-Services, E-Learning Software, and modules which give rise to the claim or in the event of any alleged non-performance within 1 (one) year of the date when such service should have been completed.
- 19.4 The Academy shall not be liable to the Customer nor to any third party:
 - (a) for any loss, damage or expense arising from (i) a failure by Customer to comply with any of its obligations herein (ii) any actions taken or not taken on the basis of the reports or the certificates; and (iii) any incorrect results, reports or certificates arising from unclear, erroneous, incomplete, misleading or false information provided to TÜV SÜD, (iv) any breach of the Terms and Conditions by the Customer.
- 19.5 The Customer further agrees to hold harmless and indemnify the Academy and its officers, employees, agents or subcontractors against all claims (actual or threatened) by any third party for loss, damage or expense of whatsoever nature including all legal expenses and related costs and howsoever arising (i) in relation to the performance, purported performance or non-performance, of the services relating to SaaS-, E-Learning Software, and modules (ii) out of or in connection with the Customer's product, process or service (including, without limitation, product liability claims).
- 19.6 The Customer understands and agrees that in no event, shall the Academy be liable for any special, direct, indirect, or consequential.

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damages, in the event of misuse of SaaS-Services, E-Learning Software, and modules provided.

19.7 Additional Services

Where the Parties have agreed on the provision of any supplementary services in the Order Documents (e.g. customizing, creating animations, making films, creating quizzes, or setting up and carrying out webinars) by the Academy, the provisions of this No. 0 shall apply to those services. The provision of any such supplementary services attracts a separate fee and shall only be due if this is explicitly agreed in the Order Documents. The specifics can be found in the Order Documents; if it is not specified further therein, then the services shall be charged by time and material expended on the basis of the general hourly rates of the Academy.

19.8 Neither Party shall have any entitlement to a contract for such services being entered into.

19.9 Unless specifically stipulated otherwise in the Order Documents, the Academy shall have an obligation to act to perform such additional services but does not guarantee any concrete success.

19.10 Moreover, the Academy generally grants the Customer the non-exclusive right to use the work results typically produced when performing the services for and at the request of the Customer (including the right to use these publicly), to reproduce these, to make them publicly accessible and to copy them to the extent that is required for this, and to exploit them, unless stipulated otherwise in the Order Documents.

19.11 Where the Academy produces work results for the Customer that concern the general personal rights of persons in the Customer 'scamp, in particular the Customer's employees (e.g., because these participate in instructional films), it shall be the responsibility of the Customer to ensure that the relevant permissions are granted by the persons involved. The Customer shall indemnify the Academy against any claims arising from any breach of the abovementioned obligation.

19.12 In the event that the supplementary services as per the Order Documents require the participation of the Customer or require the Customer to provide any infrastructure (e.g., in the case of webinars), the Customer shall take on such participation and making available of such infrastructure at its own cost and expense as the sole responsible person as a main contractual obligation. In the event that the Customer fails to participate or to make infrastructure available, this shall release the Academy from its obligation to provide the services concerned. This shall not affect any further claims of the Academy.

20. CONFIDENTIALITY

20.1 The (confidential) information the Customer receives from the Academy shall be treated as confidential by the Customer and may only be used for the purposes stipulated in the Order Documents. Confidential information may not be reproduced without the consent of the Academy, nor may it be passed on to third parties, either directly or indirectly.

20.2 The Customer shall only disclose confidential information to those persons within their organisation as require such knowledge in order to carry into effect the purpose stipulated in the Order Documents. The Customer shall notify such persons of this confidentiality clause and shall oblige them to comply with the provisions thereof.

20.3 The Customer shall protect any confidential information obtained from the Academy with the same level of care the Customer applies to its own business and trade secrets, but in any event shall treat them with at least the level of care to be expected from a prudent business person.

20.4 The Customer shall be released from their obligation to treat information as confidential where:

- (a) such confidential information is public knowledge at the time of disclosure;
- (b) such information enters the public realm after disclosure without the recipient having breached their duty of confidentiality;
- (c) at the time of disclosure such information was demonstrably already in the possession of the recipient and can be proved by the Customer's written records; or
- (d) such information is received lawfully from a third party at the same time as or after disclosure, and where such third party was entitled in respect of the disclosing party to pass on such information.

21. COMPLIANCE

Customer hereby confirms its awareness of the TÜV SÜD Code of Conduct, available online at: https://www.tuvsud.com/en-in/-/media/global/pdf-files/code-of-ethics/tvsvd_code_of_conduct_brochure_en_230308.pdf

22. EXPORT CONTROL AND EMBARGOES

22.1 TÜV SÜD does not have the obligation to provide services in due time to the extent that and for as long as such provision of services would result in violations of export control and embargo restrictions. In such a case, TÜV SÜD agrees to notify the customer without undue delay in written form about the fact that services may not be provided (impediment to performance).

22.2 In the event that TÜV SÜD is prevented from timely provision of services because permits, licenses or other official procedures imposed by restrictions under export control and embargo law need to be obtained, the delivery and completion deadlines agreed by TÜV SÜD and the customer with binding effect shall be adequately extended by the duration of the delay caused thereby. In such a case, TÜV SÜD agrees to notify the customer without undue delay in textual form about the delay.

22.3 Where the impediment to performance pursuant to Section 22.1 or the delay pursuant to Section 22.2 lasts longer than six months beyond the date of initial notification of the customer by TÜV SÜD, either party has the right to rescind the contract. In case of contracts for the performance of continuing obligations, either party has the right to terminate the contract instead. The customer may not assert any additional claims based on Sections 22.1 and 22.2, including, but not limited to, claims for damages.

22.4 The customer has the obligation to observe the export control and embargo law restrictions, as applicable and in effect at the time, when making use of or passing on services provided by TÜV SÜD. The customer has the obligation to obtain any permits or licenses that may have to be obtained from the competent authorities, if and where necessary. In case of a violation of export control and embargo restrictions by the customer, TÜV SÜD has the right to rescind the contract. In case of contracts for the performance of continuing obligations, TÜV SÜD has the right to terminate the contract instead.

22.5 To the extent requested to do so, the customer has the obligation to provide TÜV SÜD, without undue delay, with any and all information on the intended use, final recipient and end use of the services to be provided by TÜV SÜD, including, without limitation, the obligation to issue or and all claims that may be asserted against TÜV SÜD by authorities or other third parties on the

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**23. PLACE OF JURISDICTION, PLACE OF PERFORMANCE,
APPLICABLE LAW**

Unless specifically agreed otherwise, all disputes arising out of or in connection with these Standard Terms and Conditions shall be governed by the laws of India and Courts at Mumbai shall have the jurisdiction over the same.

All disputes, claims and questions whatsoever which shall arise during the continuance of the contract or construction or the application thereof or any clause or anything herein contained or as to any other matter in any way relating to these presents or mutual rights, duties or liabilities under these presents shall, if agreed to, be referred to an independent arbitrator. The said arbitration shall be governed by the rules of Arbitration and Conciliation Act, 1996 or any amendment thereof, by one arbitrator appointed by the Academy. The arbitration shall take place in Mumbai and be conducted in the English language. The expenses of arbitration shall be borne by both the parties equally.

24. MISCELLANEOUS

- 24.1 Any set-off shall only be possible in respect of undisputed claims, or in respect of such claims as have already been determined as valid in a legally binding manner.
- 24.2 In the event that individual provisions of these Terms and Conditions should be or become invalid or unenforceable, either in their entirety or in part, then this shall not affect the validity of the remaining provisions. The same shall apply in cases where there is an omission in the Terms and Conditions.
- 24.3 The Parties undertake to agree such a new provision in place of the invalid or ineffective or unenforceable provisions as most closely resembles, to the extent this is legally possible, what the parties would have intended at the time of entering into Terms & conditions if they had thought of that point at the time.
- 24.4 The Academy shall be under no obligation to perform the services under these Terms& conditions itself and shall be free to effect performance of some or all services by way of sub-contractors.