

# Licence Agreement

Last updated 11 June 2019

## PLEASE READ THESE TERMS CAREFULLY

This Operam Academy Licence Agreement (the "Agreement") governs your paid subscriptions for the Operam Academy Hosted Services and is between you (the "Customer" or "you") and Operam Limited (the "Provider", "us" or "we"). By executing an online order, you are "accepting" and "agreeing" to the terms of this Agreement for your paid Subscription Term.

### Agreed Terms

#### 1. Definitions

##### 1.1 In this Agreement:

"Consumer" means a natural person who, in entering into this Agreement, is acting for purposes that are outside his business. Therefore, if goods are supplied only for the Customer's business purposes, the Customer is not a consumer. A company cannot be a consumer.

"Hosted Services" means the services that will be made available by the Provider to the Customer via the internet in accordance with this Agreement which consists of access to eLearning courses, access to eKnowledge collections, provision of new and updated Learning Material, availability of a Mobile App (IOS & Android), and CPD Certificates for completed courses;

"Learning Material" means all courses, videos and documents available on the Platform;

"Mobile App" means the mobile application known as eFrontLearning that is made available through the Google Play Store and the Apple App Store, via which the Platform and Learning Material can be accessed;

"Platform" means the platform supplied by Epignosis UK Limited (the "Platform Provider"), including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

"Subscription Term" means the duration of this Agreement;

"Supported Web Browser" means the current release from time to time of Microsoft Internet Explorer, Google Chrome or Apple Safari, via which the Platform and Learning Material can be accessed.

#### 2. Grant and Scope of Licence, Minor Changes, Updates and Payment

2.1 In consideration of you agreeing to abide by the terms of this Agreement, the Provider hereby grants to you a non-exclusive, non-transferable licence to use the Hosted Services on the terms of this Agreement for a period of one calendar year, subject to annual renewal under Clause 2.8 and until terminated in accordance with this Agreement. The Subscription Term shall be the duration of this Agreement.

2.2 We may update the Hosted Services or Platform at any time without providing warning to you. The Hosted Services may be unavailable for a reasonable period enable us or the Platform Provider to perform scheduled maintenance, apply security updates or apply any other updates to the Hosted Services.

2.3 We shall use reasonable endeavours to ensure that the Hosted Services are available for a reasonable period during each calendar month.

2.4 The Hosted Services may be upgraded to reflect changes in the Platform.

- 2.5 The price of the Hosted Services will be the price indicated on the order pages when you placed your order.
- 2.6 We shall be entitled to increase the price of the Hosted Services at our sole discretion at each annual renewal set out in Clause 2.8 below
- 2.7 Subject to Clause 2.10, payment must be received within 7 days of this Agreement and access will only be given to the Hosted Services after payment is received.
- 2.8 We will provide you 14 days' notice prior to the expiry of this Agreement, being one calendar year from the date of this Agreement and then every calendar year thereafter for each Renewal Term. This notice shall set out the date of expiry of this Agreement, the price of the Hosted Services if renewed ("Renewal Fee") and any intended changes to the terms of this Agreement if renewed ("Renewal Terms").
- (a) If we receive notice from you prior to the expiry of this Agreement that you do not wish to renew this Agreement, this Agreement shall terminate at the date of expiry of this Agreement. All access to the Hosted Services shall terminate on expiry of this Agreement.
  - (b) If we do not receive notice from you prior to expiry of this Agreement, this Agreement shall renew for a period of one calendar year from the date of expiry of this Agreement on the same terms as this Agreement subject to incorporation of the Renewal Fee and Renewal Terms, if any ("Renewal Term").
  - (c) The provisions of Clause 2.8 to 2.10 shall apply at the expiry of each annual Renewal Term.
- 2.9 If you are a Consumer, the cooling period at Clause 7.1 below shall apply at the beginning of each Renewal Term.
- 2.10 You shall be responsible for paying the Renewal Fee within 14 days of the commencement date of the Renewal Term failing which we shall be entitled to terminate this Agreement on 7 days' notice.
- 2.11 This Agreement entitles you to the number of registered users indicated on the order page when you placed your order ("Registered User"). Each Registered User shall have an email address using a domain owned by the company. The Registered Users shall have access to the Hosted Services for the Subscription Term. Such access is personal to the registered user and should not be shared with any other individual or third party. You warrant that you shall ensure each Registered User shall comply with Clause 2.11 and Clause 3 of this Agreement and you shall indemnify us for any loss, damage, claims and expenses directly or indirectly arising from or caused by a breach by any of the Registered Users of Clause 2.11 and/or Clause 3 of this Agreement. We shall provide access to the registered users within a reasonable time of receiving their contact details from you. You shall not be entitled to change the registered users after they have been provided access to the Hosted Services.

### 3. Restrictions

- 3.1 Except as expressly set out in this Agreement or as permitted by any local law, you undertake to:
- (a) not copy the Learning Material, except where such copying is incidental to normal use of the Hosted Services;
  - (b) not rent, lease, sub-license, loan, translate, merge, adapt, vary, alter or modify, the whole or any part of the Hosted Services nor permit the Hosted Services or any part of it to be combined with, or become incorporated in, any other programs;
  - (c) not disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Hosted Services nor attempt to do any such things;
  - (d) not permit any person apart from the registered users to access or use the Hosted Services;
  - (e) not use the Hosted Services to provide services to third parties;

- (f) not republish or redistribute any Learning Material hosted on the Platform;
- (g) use reasonable endeavours, including reasonable security measures, to ensure that no unauthorised person may gain access to the Platform apart from the registered users;
- (h) not use the Platform in any way that causes, or may cause, damage to the Platform or impairment of the availability or accessibility of the Hosted Services;
- (i) not use the Hosted Services:
  - I. in any way that is unlawful, illegal, fraudulent or harmful; or
  - II. in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

#### **4. Intellectual Property Rights**

- 4.1 You acknowledge that all intellectual property rights in the Learning Material throughout the world belong to us, that rights in the Learning Material and Platform are licensed (not sold) to you, and that you have no intellectual property rights in, or to, the Learning Material or Platform other than the right to use the Hosted Services in accordance with the terms of this Agreement.
- 4.2 You acknowledge that you have no right to have access to the Learning Material or Platform in source code form other than as expressly provided in this Agreement.

#### **5. Warranty**

- 5.1 We warrant that the Learning Material and Platform will, when properly used on a Supported Browser or Mobile App for which it was designed, perform substantially in accordance with the terms of this Agreement;
- 5.2 We will provide you with reasonable support within a reasonable time if you report a defect or fault to us via [support@operamacademy.com](mailto:support@operamacademy.com).
- 5.3 The warranty in this Clause 5 does not apply:
  - (a) if the defect or fault in the Learning Material and Platform results from you having altered or modified the Learning Material and Platform;
  - (b) if the defect or fault in the Learning Material and Platform results from you having used the Learning Material and Platform in breach of the terms of this Agreement;
- 5.4 Where applicable, this warranty is in addition to your legal rights as a consumer in relation to Hosted Services that is faulty or not as described.

#### **6. Our Responsibility for Loss or Damage Suffered by You**

- 6.1 We are responsible to you for foreseeable loss and damage caused by us. If we fail to comply with these terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking this Agreement or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time this Agreement was made, both we and you knew it might happen.
- 6.2 We do not exclude or limit in any way our liability to you where it would be unlawful to do so. This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors or for fraud or fraudulent misrepresentation.
- 6.3 We are not liable for business losses. If you use the Hosted Services for any commercial, business or resale purpose we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

6.4 You acknowledge that the Hosted Services has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the Hosted Services meet your requirements.

## **7. Termination**

7.1 If you have entered this Agreement as a Consumer, you may terminate this Agreement within 14 days of the date of purchase. We shall refund any payments received under this Agreement to you. This clause shall not apply if you use the Hosted Services and/or have entered into this Agreement as part of a business.

7.2 We may terminate this Agreement immediately by written notice to you if you commit a material or persistent breach of this Agreement which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so.

7.3 Upon termination for any reason:

- (a) all rights granted to you under this Agreement shall cease;
- (b) you must cease all activities authorised by this Agreement; and
- (c) you must immediately delete or remove all Learning Material from all computer equipment in your possession and immediately destroy or return to us (at our option) all copies of the Learning Material in your possession, custody or control and, in the case of destruction, certify to us that you have done so.

7.4 Either party may terminate this Agreement by giving written notice of termination to the other party if:

- (a) the other party:
  - I. is dissolved;
  - II. ceases to conduct all (or substantially all) of its business;
  - III. is or becomes unable to pay its debts as they fall due;
  - IV. is or becomes insolvent or is declared insolvent; or
  - V. convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party; or
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement).

## **8. Communications Between Us**

8.1 If you are a Consumer, if you wish to contact us in writing, or if any condition in this Agreement requires you to give us notice in writing, you can send this to us by emailing [support@operamacademy.com](mailto:support@operamacademy.com). We will confirm receipt of this by email response.

8.2 If we have to contact you or give you notice in writing, we will do so by email to the address you provided when placing your order.

## **9. How We May Use Your Personal Information**

9.1 Under data protection legislation, we are required to provide you with certain information about who we are, how we process your personal data and for what purposes and your rights in relation to your personal data and how to exercise them. This information is provided in our [Privacy Policy](#) and it is important that you read that information.

## **10. Other Important Terms**

10.1 We may transfer our rights and obligations under these terms to another organisation. We will always tell you in writing if this happens and we will ensure that the transfer will not affect your rights under the Agreement.

10.2 You may only transfer your rights or your obligations under this Agreement to another person if we agree in writing.

10.3 This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

10.4 Each of the paragraphs of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

10.5 If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.

10.6 Which laws apply to this contract and where you may bring legal proceedings. These terms are governed exclusively by English law and you can bring legal proceedings in respect of this Agreement in the English courts.