

## General Terms of Business

## 1. Who we are

We are Hubken Group Ltd and our company registration number is 05029965. Our registered office is at e-Innovation Centre, Priorslee, Telford TF2 9FT.

## 2. Who we do business with

We are a business-to-business company, which means that we aren't set up to provide our **services** to consumers. If you are a consumer looking to work with us, please let us know so that we can discuss with you how we might be able to help or where you might find the services that you need.

## 3. Our agreement with you

These terms of business are our agreement with you to provide the services that we have set out in our proposal, engagement letter or statement of work that you applied for online or that have otherwise been agreed between us (the **services**).

Our business is based on these terms and they form a legally binding relationship between us and you. Because we model our business around these terms, we cannot accept any amendment to them unless it is agreed in writing. We also do not accept anybody else's terms of business.

There are terms which apply to specific **services** which you should read alongside these terms of business. You can find the terms which apply to specific **services** at <https://tob.hubkengroup.com> and, sometimes, in the schedule of work that we have given you. Please read all the terms carefully before you order the **services**. We want to work with you on an open and agreed basis, so please do raise any questions or concerns you have with us upfront.

We do not work on an exclusive basis and so nothing will prevent us from entering into agreements with anyone else which are similar to the one we have with you, or from independently developing, using, selling or licensing materials, products or services which are similar to those we provide to you.

## 4. Our fees

We will always be open and clear about our fees. We will agree these in our proposal, an invoice or on an order form or statement of work for the **services**, or in writing. Where we estimate a future fee for anything other than the services we are contracting for (for example for a renewal term) this will be given in good faith but will be subject to change and not be binding on either of us. We also charge expenses (if we have paid them or are due to pay them) at our standard rates and add VAT if it applies.

We work out all our fees on the basis that we can provide the **services** to you as planned and within the scope originally agreed. We are sure you understand that, if you need us to do any extra work or if we are not able to deliver the **services** because you don't provide us with something we need, we will have to charge extra fees for our time or inconvenience (or both). We may also have to charge you new or increased fees if any third party changes the way that they charge for or increases the cost of anything which we provide to you or which we use to provide the services to you.

Unless we agree otherwise with you, we don't give credit, so you must pay our invoices immediately. If you fail to pay any invoice within 30 days of us sending it to you, we will charge interest at a rate of 4% above the then current base rate of the Royal Bank of Scotland Plc until you pay the invoice.

Fees for training are due in full at the time of booking and all bookings are provisional until we have received cleared funds from you.

Sometimes you may have to pay a deposit or part or all of the fees for our **services** upfront. In the unlikely event that you do not agree the **services** (or use them) during the 12 months from paying the deposit or upfront payment, you will lose your payment (as long as we have acted reasonably in trying to agree the **services** with you).

From time to time third parties that we work with (including those for which we are a reseller) may increase their fees. We will try to give you warning of any increase and we will pass these increases on to you.

If we accidentally undercharge you for any **services** you will pay us the difference between what we charged you and the correct price as soon as we ask you too.

When we agree a Multi-Year Deal with you for **services** (which may include some third-party services) (the Multi-Year Services), the following (together with the other terms of our agreement) will apply:

- We will confirm the fees payable for the Multi-Year Services for the duration of the Multi-Year Deal (the Multi-Year Term), and you will be able to purchase increases to the Multi-Year Services at the same price during the Multi-Year Term (for the avoidance of doubt, this price will not apply to other services).
- You will pay the fees due for the duration of the Multi-Year Term in agreed instalments as invoiced.
- If you do purchase increases to Multi-Year Services, the **services** for the period between the date of purchase and your next invoice will be invoiced for at the time of purchase, the remainder will be added to the following invoices.
- If you terminate our agreement or if we terminate it owing to your non-payment of fees or any other material breach of our terms, all fees which would have been payable by you during the Multi-Year Term will be due immediately.
- You may not decrease or remove Multi-Year Services (or increases to Multi-Year Services) during the Multi-Year Term.
- A Multi-Year Term cannot be extended so, at the end of any Multi-Year Term, fees at our then current rate will apply to all services.

## 5. Cancellation

We hope that you will never have to cancel any of our **services** and we don't provide any refunds or credits for cancellation.

If you do cancel any training or consultancy **services**, we will charge you for any expenses that we have paid or are due to pay in relation to that session.

## 6. The way in which we work

We take providing our **services** seriously and will deliver these with reasonable skill and care, politely and in line with your reasonable policies and procedures (if we are visiting your premises).

While we will try to deliver the **services** in a timely way, any deadlines we agree with you will only be estimates, which will not be legally binding.

In providing many of our **services**, we rely on your co-operation and the information that you give to us. We cannot be responsible for any mistake or delay which results from incomplete or inaccurate information from you or anyone who is working with you or from you not doing something which we need you to do.

Any advice that we give you is very specific to the set of circumstances under which it is given. We cannot guarantee any particular result from that advice (particularly not any increase in business or efficiency) and you should not take our advice as applying to any situation other than the one under which it was given.

We understand that many of the **services** will be delivered using the internet or other electronic methods of delivery. This means that we have to accept that we are using a medium which has built-in risks and we cannot guarantee the security or integrity of any electronic communication or material sent or received as part of the **services**. We do scan our email correspondence and other media with antivirus software but cannot guarantee that any transmission will be free from infection or corruption, error-free or uninterrupted and we accept that you cannot guarantee that this will be the case for anything you send to us.

We will usually state, in a schedule, other document or by email, any exclusions to the **services** we have agreed to provide. Please read these carefully and make sure that you are familiar with them as they are not included in the price we have quoted and, if we do agree to provide them, we will charge for them separately.

We will not accept any form of bribery and corruption and we regulate all our commercial relationships in line with the Bribery Act 2010.

We may suspend any of our **services** to you if:

- you fail to pay any fee which is due to be paid to us by you;
- providing the service is disrupted by any event outside of our control;
- providing the service becomes commercially or technically unrealistic for us;
- providing the service would have a negative effect on providing any service or part of service to any other person or organisation; or
- any other person or organisation takes malicious action including any denial-of-service attack or other cyber-attack whether on your site, our site or infrastructure or the site or infrastructure of any other third party. (A denial of service attack is one where it is so severe, the service cannot cope and access to it is denied.)

If the cause of the suspension does not stop or we cannot sort the issue causing it out with you (working together), within seven days of the suspension starting, we will be entitled to

end our agreement with you, following which we will have no further legal responsibility to you.

If we suspend any services for any reason the period of time for which we have agreed to provide those services will continue to run and your obligations under our agreement (including your obligation to pay us) will not be affected by the suspension.

We do not have to provide any **services** which we consider to be illegal, immoral or commercially or technologically unrealistic or which we would consider not to be sensible in the circumstances. In these cases, you will not be entitled to a refund of any fees paid if we refuse to perform any **services** under this clause unless the **services** have been specifically agreed in writing by us.

Occasionally we may discontinue a **service**. If we do so and there is a similar **service** or another tier of the same **service** available we will move you on to that **service** or tier. There will be no extra charge for the new **service** or tier until your agreement is renewed or extended (when additional charges may apply). If there is no similar **service** or tier available we will let you know and will refund any amount you have paid for any **service** you do not receive.

If we enhance a **service** there will be no extra charge for the enhanced service until your agreement is renewed or extended (when additional charges may apply).

## 7. What we need from you

The price of our **services** and these terms are based on you working together with us which means you agree to the following.

You will give us complete, accurate and timely information that we need, and co-operate with us to make sure we can provide the **services** in an uninterrupted way and in line with any timetable we have agreed with you. If you aren't able to do this, we can increase the price.

You will be responsible for any commercial strategic decisions you make and not rely on any information we have provided in that decision-making process unless we specifically agree that you may.

You will provide reasonable access to your premises and/or systems to enable us to deliver the services and will ensure that you hold any third-party licenses required for such access.

You will tell us beforehand if any website or software you need us to work with is not using standard code and give details of the differences between the code used and the standard code.

You will pay our invoices and expenses on time and in full. If you don't, we can suspend any or all of the **services** until you make the payment.

We hope that you won't have a problem with any of the things listed above. If you fail to keep to any of the above, we can suspend providing the **services** for as long as we feel is appropriate and recover any losses or expenses that we have paid or are due to pay as a result. If we do suspend the **services** for any reason, we will not be responsible for any loss or inconvenience this causes you, but we will try to work with you to reach a point where the **services** can be continued.

You must make sure that there is always someone available who is authorised to instruct us and act on your behalf in relation to the **services** and to authorise others to deal with us. Where appropriate, you will make sure that you always have an administrator for any website. We do not have to take instructions or work on behalf of any person you have not authorised if we haven't confirmed their authority in writing.

For the **services** to be performed properly and for any site or software to run at its best, you need to make sure that your hardware, systems, software and other infrastructure is suitable and up to date. We will not be responsible for any slow running, poor performance or issues with display or accessibility which result from your failure to keep your hardware, software and infrastructure suitable and up to date.

## 8. Confidential information

If either you or we receive confidential information from the other, we will take steps necessary to protect the confidentiality of that information both during and after providing the **services**. We consider confidential information to include, but not be limited to, your information and our costs to be confidential information.

We don't consider our relationship with you to be confidential and we may reveal this fact to existing clients or possible new clients. If we provide **services**, pre-sales information or demonstrations to you that are related to Totara software we also have to release to Totara Learning Europe Limited certain information about you, which we will do without any legal responsibility to you.

Neither of us will be prevented from revealing confidential information which:

- is or becomes public knowledge (unless of course it became public knowledge as a result of breaking these terms);
- became known to us through third party without any condition of confidentiality attached;
- we have to reveal by law or where we are ordered to by a court; or
- is revealed to our professional advisors or any regulator.

## 9. Intellectual property rights and software

Our intellectual property is very important to us and we have and will retain all copyright and other intellectual property rights in everything we develop, design or create before we provide the **services** or during the course of the services unless we agree otherwise with you in writing. You have the right to use this intellectual property as long as you are paying for the services.

In relation to any information, artwork, documents, software or anything else that you provide to us, these will remain yours and you promise that you have all rights to provide it and that it will not infringe (affect in a negative way) the intellectual property rights of any third party. You agree to indemnify us (protect us against) against losses, costs, damages or expenses that we have paid or are due to pay as a result of you breaking this promise and you agree to allow us to use these things in order to provide the services.

Moodle is open-source software which is licensed under the General Public Licence (GPL). You can get details of the GPL at <https://www.gnu.org/licences/gpl.html>. If you decide to

distribute any work done under this licence by us for you it must be distributed under and subject to the terms of the GPL.

The Totara Platform is licensed under the Totara Product License and Subscription Agreement which you can find here: <https://www.totara.com/license>. Any work done under this licence by us for you must be distributed under and subject to the terms of this license.

If you have any questions about how this licence works, we would be happy to talk to you about it.

Subject to the use limitations set out in these terms, the terms for the specific services, our proposal or on an invoice, you have a non-exclusive, non-transferable licence to allow authorised users to access our **services** and to use it only for your business purposes for the term of the agreement. You may not access all or any part of our **services** to create a product or service which competes with any of our **services**;

We cannot guarantee that our **service** will not contain any errors or that your access to it will be uninterrupted.

## 10. Our legal responsibility and liability to you

We work out our fees based on the following limits of our legal responsibility which will apply in relation to providing the **services**.

We are insured and will maintain insurance cover against losses we may suffer as a result of us breaking our contract with you, breaking our duty to you, or any fault or negligence in connection with the services.

We will not have any liability to you for or in relation to our services which is more than the fees and expenses you have paid to us for the service leading to your claim in the 12 months immediately before the relevant claim.

If we have any liability for or in relation to any third-party services this liability will be no more than the amount you paid to us for such third-party services. This does not affect any claim you may have against the provider of such third-party services.

This limit does not apply to our liability for personal injury or death caused by our negligence, fraud or any other circumstance where we cannot, as a matter of law, limit liability. In these circumstances, there will be no limit. It also does not apply to any losses for which we are insured. In such a case the limit shall be the limit of our cover under the relevant insurance policy.

We have no liability to you for any indirect or consequential loss you suffer under any circumstances. Also, we will not be liable under any circumstances for any loss of revenue, loss of profits, loss of data, loss of goodwill and loss of business.

We will not be liable for any costs, claims, damages or expenses which are caused by using the software against our instructions, or for modifications or changes to the software by anyone other than us or our authorised contractors or agents.

We will have no liability for:

- any disruption to the **services** or problems with the software or other issues resulting from you modifying or configuring your website;



- any disruption to the **services** or problems with the software resulting from any change to or new release of the Moodle or Totara software your website relies on (but, if this does happen, we will take reasonable steps to make sure that any change or new release causes as little disruption to the **services** as possible);
- any disruption to the **services** or problems with the software or other issues resulting from you modifying or failing to maintain, update or upgrade your equipment (including, but not limited to, computers, routers and modems) and/or any software (including, but not limited to, operating systems and/or web browsers);
- any aspect of the **services** provided by the ecommerce service provider including any problems you experience in relation to processing payments, fraud or payments being charged back to you; or
- any use of or defect in the software; or
- any use of the **services** or software with third-party products not supplied and/or recommended by us.

It is important that you understand that you must make your own assessment of the suitability and performance of any software which you buy or license on our recommendation. And, we will have no liability in terms of the suitability or performance of that software or any warranties in relation to it.

How the software operates depends on the technology on which it runs and any excessive use of **our software** or **services** may result in your equipment running slowly or not responding. We will have no liability for this, whether access to the relevant website is provided by us, or it is hosted by you or by someone else.

## 11. Data protection

We take our data-protection responsibilities seriously and will process your information in line with **data-protection legislation**, the terms of our entry on the Data Protection Register (registered number Z8922894) our privacy notice and the standard **Data Processing Agreement** which are both here <https://tob.hubkengroup.com>

## 12. Reseller agreements

If we resell, provide access to or refer you to any services provided by another provider (third-party services), you may have to accept terms and conditions or enter into an agreement with them which governs the way in which you are able to use their services (third-party agreement).

You must keep to the conditions of any third-party agreement. By accepting the third-party services, you agree to be bound by the terms of those agreements. We will not be liable to you under any circumstance for any loss or damage you suffer as a result of buying and/or using the third-party services if you have a third-party agreement. You must make any claims for any alleged problem with the third-party services, to the third-party provider, in line with the conditions of their agreement with you.

If there is no third-party agreement and we have charged you for the services, other than where we collect money on behalf of anyone else (such as Totara), we will be liable to you in relation to any third-party services as though they were services provided by us.



### 13. Employing our staff

Our staff are very important to us and you agree that you won't, at any time while we are providing **services** to you and for six months after we have finished providing the **services**, try to encourage them away from us or employ or try to employ any person who is our employee or subcontractor of **services**. If you do, you agree to pay us, when we demand, 35% of their current yearly salary. We will use an annualised equivalent fee if a subcontractor is concerned. So, for example, if we are paying a contractor £1,000 a week, we would use £52,000 as the basis for working out the equivalent fee.

### 14. Engaging with our staff

In the interest of the welfare of our staff we expect you to be polite, cooperative and courteous towards them at all times. If you are not, we will be entitled to cancel or suspend any **service** that we are offering (including leaving your premises or the premises of anybody else), in which case you will not be entitled to any refund for such **services**. We will not be obliged to continue to provide the **services** until one of our Directors is comfortable that any abusive or uncooperative behaviour has ended and will not happen again.

### 15. Ending our relationship

Either we or you may end the agreement between us if the other has broken any of the fundamental terms set out in it. If the problem cannot be solved, the agreement can end immediately. If the problem can be solved, the side at fault must be given 14 days to put the matter right before the agreement can be ended. All notices must be in writing and sent to our or your address and marked for the attention of a director or the contact who has been responsible for commissioning the **services** with us.

Either one of us may end the agreement immediately if the other becomes insolvent, has an administrator or receiver appointed, or stops or threatens to stop trading. We may also suspend our **services** if one of these events applies to you.

We may end the agreement if you fail to pay any fees or expenses you owe us for more than 60 days from the date they are due.

If the agreement is ended (other than by you under this clause 15) you shall, at the time the agreement ends, pay to us all fees, charges, expenses and other sums which were due at the time of the agreement ending and which you would have had to pay if the agreement had remained in place for the whole of its agreed duration.

### 16. General conditions

No person who is not a party to this agreement will have any right to enforce any of its terms.

We may need to transfer or subcontract some or any of our rights or obligations under the agreement and we will have the right to do so. You may only transfer or subcontract your rights or obligations if you get our written permission.

Neither of us will be liable to the other for failing to perform, or any delay in performing, our and your obligations under this agreement if this is due to causes outside our or your reasonable control. However, we and you will work together to overcome the failure or delay as soon as is reasonably possible.

If any of the terms shown here are not valid or cannot be enforced, all of the other terms will continue with full force and effect.

If either of us decide not to enforce any right under these terms, it will only apply if it is in writing and only to the circumstances under which it is given.

We are entering into an agreement with you and are not relying on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person relating to the agreement, other than as set out in writing in this document.

This agreement (and providing the **services**) is governed by the laws of England and Wales and any dispute will be dealt with by the English courts.

## 17. Acting as an agent

Sometimes we may act as an agent for a third party arranging, at your request, the provision of services by them. Where this is the case, we will tell you we are acting as their agent and we will have no responsibility for the services they provide.

## 18. Your data

You own all rights, title (ownership of) and interest in and to all of your data and will have responsibility for the legality, reliability, accuracy and quality of that data.

We will follow our archiving procedures for your data as described in our Moodle or Totara Service definition. If your data is lost or damaged, your only remedy is that we will do all we reasonably can to restore the lost or damaged data from the latest backup we have of your information. We will not be responsible for any loss, destruction, alteration or release of your data caused by anyone else. (However, this does not apply to those companies we have subcontracted to carry out services related to maintaining your information. In this case, we will only be responsible for up to seven days from the date on which the data was backed up.)

## 19. Totara Platform services

We can only support and provide **services** related to Totara software if you have a current Totara subscription under the terms of the Totara Product License and Subscription Agreement (which you can find here: <https://www.totara.com/license>) which you have purchased through us.

If your subscription comes to an end, we will continue to provide **services** for which you have paid. However, we will not provide any further **services** after that point until you agree a new Totara subscription with us.

Access to code updates of the Totara Platform software depend on you having an appropriate current subscription purchased through us. We will invoice you for subscription fees, and will send the fees due to Totara on your behalf.

If the agreement between you and us for the **services** comes to an end, these subscription fees will not be refunded and, in the case of Multi-Year Services, you will have to pay for the services you would have received for the rest of the Multi-Year Term.

In these circumstances, although the agreement between you and us for the **services** will have ended, you will if your Totara subscription is fully paid up, continue to be eligible for updates to the Totara software for the rest of your subscription.

You need a current Totara subscription for each site for which the Totara Platform software is used other than those used only for test purposes. You must pay the required subscription in full for the:

- number of Active users
- version of the Totara software
- features accessible by you

In addition, you must agree to the subscription policies of Totara Learning Europe Limited.