

Section 1

GENERAL TERMS AND CONDITIONS

POTENTIALPLUS and CLIENT agree that the following terms and conditions shall apply to each Licence granted or Programme(s) or Service(s) provided hereunder.

I. DEFINITIONS

- 1.1 "Programme(s)" shall mean the training courses with associated intellectual property owned or distributed by POTENTIALPLUS and their associates for which the CLIENT is granted a Licence pursuant to this Agreement and related documentation. In addition such contact as is required by phone, email or letter for extended Programme(s) between an Individual and the Trainer.
- 1.2 "Service(s)" shall mean any work that is not part of a Programme(s) provided with associated intellectual property owned or distributed by POTENTIALPLUS and their associates for which the CLIENT is granted a Licence pursuant to this Agreement and related documentation.
- 1.3 "Commencement Date" shall mean the date on which the Programme(s) or Service(s) are due to start at the CLIENT's site or such other mutually agreed location and can only be confirmed when a signed contract is received and will be shown on the Order Form. Any changes or postponements initiated by the CLIENT may incur additional charges and can only be accepted with the express written agreement of POTENTIALPLUS.
- 1.4 "Order Form" shall mean POTENTIALPLUS's standard form for ordering Programme(s) and Service(s). When completed and signed by both parties, the Order Form together with this Agreement shall document the Programme(s) and Service(s), which are to be provided under this Agreement. Each Order Form governed by the terms of this Agreement, constitutes a distinct Programme(s) or Service(s) independent of any other Programme(s) or Service(s).
- 1.5 "Price List" shall mean POTENTIALPLUS's standard fee schedule that is in effect when the CLIENT orders a Programme(s) or any other Service(s).
- 1.6 "Specification" shall mean the Documentation, which sets out the facilities provided by the Programme(s) and Service(s).
- 1.7 "Trainer" shall mean POTENTIALPLUS employees or associates who deliver the Programme(s) or Service(s) material. The designated trainer for your Programme(s) or Service(s) is as shown on the Order Form, however, POTENTIALPLUS reserve the right to substitute an alternative Trainer in the unlikely event of any of un-foreseen circumstances or illness affecting the designated Trainer.
- 1.8 "Individual" shall mean an employee, associate or agent of the CLIENT who as a delegate is in receipt of a POTENTIALPLUS Programme(s) or Service(s) paid for by the CLIENT.

1.9 "Train the Trainer" shall mean where an Individual from the CLIENT is trained to deliver a Programme(s) within an agreed business group.

II. PROGRAMME LICENCE

2.1 Rights granted

All materials are the intellectual property of POTENTIALPLUS. During the delivery of the Programme(s) or Service(s), POTENTIALPLUS will transfer knowledge and technology to the Individual, which is protected by a licence. This licence allows the Individual the following use.

2.1.1 POTENTIALPLUS hereby grants to CLIENT a non-exclusive, non-transferable licence for each Individual who is in receipt of Programme(s) or Service(s) to use the intellectual property imparted as follows:

- a. the Individual may use the intellectual property whilst they are employed by the CLIENT;
- b. the Individual may make copies of Programme(s) documentation for their own use at different work locations, the documentation shall be subject to the provisions of this Agreement and all POTENTIALPLUS titles, trademarks, copyrights and restricted notices shall be reproduced on such copies.

2.2 Transfer and assignment

2.2.1 The rights granted herein are personal to the Individual delegate of the CLIENT, are restricted for use solely by the Individual who is a delegate of the CLIENT and may not be assigned or transferred to a third party without the previous written consent of POTENTIALPLUS. CLIENT shall not disclose nor make available the Programme(s) or Service(s) or any part thereof to any third party in any form, without POTENTIALPLUS's prior written consent.

2.3 Documentation

POTENTIALPLUS shall provide each Individual of the CLIENT who undertakes a Programme(s) or receives Service(s) with relevant Documentation as specified in the Price List. Copying of such Documentation, any guides or CD's and/or other reference materials is not permitted, unless stated otherwise in this Agreement or POTENTIALPLUS consents in writing to such copying.

2.4 Unauthorised Use

If unauthorised use is made of the information gained from Programme(s), or POTENTIALPLUS has reasonable grounds for suspecting that it has occurred, and such use is attributable to the act or default of the CLIENT, its individual, servant or agents, then without prejudice to POTENTIALPLUS's other rights and remedies, CLIENT will be liable to pay POTENTIALPLUS such sums as POTENTIALPLUS would have received had POTENTIALPLUS entered into an Agreement with such unauthorised user. Any such charge shall be in accordance with POTENTIALPLUS's then prevailing Price List.

2.5	<p>Right to Copy Programme Licence</p> <p>The CLIENT can only acquire a Right to Copy Programme Licence if the Train the Trainer Programme has been completed. The right to copy the Programme(s) is restricted to the version of the Programme(s) already licensed by CLIENT at the time the Train the Trainer is completed. The number of Individuals who can be Licensed under the Train the Trainer Programme shall be limited annually by the agreed number of Individuals to be trained under the Right to Copy Programme Licence as specified on the prevailing Price List.</p>	<p>Charge of 50% of Programme(s) or Service(s) fees.</p> <p>Cancellation of Programme(s) or Service(s) more than 30 working days before the Commencement Date. Charge of 25% of Programme(s) or Service(s) fees.</p>
III.	Payment Provisions	
3.1	<p>Fees and Prices</p> <p>Licence fees or charges for any Programme(s), material or Service(s) supplied hereunder shall be as specified on an Order Form, or on a valid written quotation from POTENTIALPLUS, or in the absence of any of the foregoing, shall be POTENTIALPLUS's standard prices and fees specified in the Price List from time to time.</p>	3.5 Taxes
3.2	<p>Expenses</p> <p>Travelling will be charged at the per-mile rate shown on the Order Form or at cost for other methods of transport. Air travel will when possible use flexible tickets (to ensure changes and refunds can be made) unless the CLIENT advises us to the contrary. Accommodation including meals will be charged at cost.</p>	<p>Prices and fees include import duty (when applicable) in effect on the date of invoice by POTENTIALPLUS. Prices and fees are exclusive of, and CLIENT is responsible for, all other duties or taxes. Value Added Tax shall be charged at the rate in effect on the date of the invoice.</p>
3.3	<p>Invoicing and Payment</p> <p>An invoice for 100% of the Programme(s) or Service(s) and delegate fees or charges shall be issued 30 days prior to the Commencement Date for each Programme(s) or Service(s) for the CLIENT; this is due for immediate payment. Further invoice(s), including incurred expenses, will be issued upon completion of each stage of the Programme(s) or Service(s) and are due for payment within 30 days. Any amount payable by CLIENT to POTENTIALPLUS hereunder which remains overdue after the due date, shall be subject to a late payment charge (as specified on the invoice), on a day to day basis from the original due date of 4% per annum above the average Base Rate of the London Clearing Banks in force from time to time. The receipt or request for payment of such amounts shall not prejudice any of POTENTIALPLUS's rights in respect of failure to pay on the due date.</p>	<p>IV. Term and Termination</p> <p>4.1 Term</p> <p>Each licence granted hereunder shall remain in effect perpetually (if not otherwise specified on the order form) or unless terminated as provided in Clauses 4.2 and 4.3 hereof.</p> <p>4.2 Termination by CLIENT</p> <p>CLIENT may terminate this Agreement or any licence granted hereunder at any time.</p> <p>4.3 Termination by POTENTIALPLUS</p> <p>POTENTIALPLUS may terminate this Agreement or any licence granted hereunder (a) upon CLIENT's breach of this Agreement or any licence granted hereunder and if CLIENT fails to remedy such breach within 15 days following receipt of written notice specifying the breach, or (b) if the CLIENT makes an offer to make an assignment for the benefit of its creditors or commences winding up proceedings otherwise than voluntarily for the purposes of amalgamation or reconstruction or if a Receiver or Administrator (including provisional Administrator) is appointed over all or part of the CLIENT's property.</p> <p>4.4 Effect of Termination</p> <p>Termination of this agreement or any licence shall not limit nor restrict either party from pursuing any other remedies available to it, including but not limited to injunctive relief where appropriate. Such termination shall not relieve CLIENT of its obligations to pay all fees and charges that may have accrued prior to such termination.</p>
3.4	<p>Cancellation</p> <p>In the event of the CLIENT cancelling any contracted Programme(s) or Service(s) or part of any contracted Programme(s) or Service(s), cancellation charges will be due, variable on the notice of cancellation, as follows:</p> <p>Cancellation of Programme(s) or Service(s) less than 20 working days before the scheduled Commencement Date. Charge of 100% of Programme(s) or Service(s) fees.</p> <p>Cancellation of Programme(s) or Service(s) 20-30 working days before the Commencement Date.</p>	<p>V. Warranties, Remedies, Limitation</p> <p>5.1 Warranties and Exclusive Remedies</p> <p>5.1.1 POTENTIALPLUS warrants that it has the right to market and licence the Programme(s) and Service(s) as provided herein.</p> <p>5.2 Limitation on Warranties</p>

The warranties stated above are exclusive and in lieu of all other warranties, whether express or implied, including the implied warranties of merchantability and fitness for a particular purpose.

VI. **Indemnity and Limitation of Liability**

6.1 Injury and Death

POTENTIALPLUS shall indemnify CLIENT for direct injury or death caused by defects in the Programme(s) or by the negligence of its employees in connection with the performance of the Services or duties hereunder.

6.2 Property Damage

POTENTIALPLUS shall indemnify CLIENT for direct damage to property caused by defects in the Programme(s) or by the negligence of its employees in connection with the performance of the Services or their duties hereunder. POTENTIALPLUS's total liability under this Agreement shall be limited to One Hundred Thousand Pounds Sterling (£100,000) for any one event or connected events.

6.3 Exclusion of Consequential Loss

In no event shall either party be liable for any indirect or consequential losses (including but not limited to loss of profits, revenue, data or staff) incurred by either party or any third party, whether in an action in contract or tort and even if the other party had been advised of the possibility of such.

VII. **Non-Disclosure**

By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). Confidential Information shall be limited to the Programme(s) and all information clearly marked as confidential.

A party's Confidential Information shall not include information which: (a) is or becomes part of the public domain through no act or omission of the other party; or (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; or (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the other party without breach of this Agreement.

The parties agree both during the term of this Agreement and for a period of three years after termination of this Agreement and of all licences granted hereunder, to hold each other's Confidential Information in confidence. The parties agree not to make each other's Confidential Information available in any form to any third party or to use each other's Confidential Information for any purpose other than the implementation of this Agreement.

VIII. **General**

8.1 Notice

All notices, including notices of change of address, required to be sent hereunder shall be in writing and shall be deemed to have been given when posted to the first address listed above or in the relevant Order Form (if to CLIENT) or to the POTENTIALPLUS address above (if to POTENTIALPLUS).

8.2 Severability

In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

8.3 Waiver

The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

8.4 Entire Agreement

This Agreement constitutes the entire Agreement between the parties and supersedes all previous agreements or representations whether, written or oral, with respect to the Programme(s) and Service(s) specified herein. This Agreement may not be modified or amended except in writing signed by a duly authorised representative of each party.

It is expressly agreed that any terms or conditions of CLIENT's purchase order shall be superseded by the terms and conditions of this Agreement and Order Form.

8.5 Construction

Headings have been included for convenience only and shall not be used in constructing any provision of this Agreement.

8.6 Governing Law

This Agreement shall be subject to the exclusive jurisdiction of the English Courts and shall be governed by and interpreted in accordance with English Law. The CLIENT hereby agrees to submit to the exclusive jurisdiction of the English Courts.

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