

# Longview eLearning Library Terms and Conditions

## **Longview eLearning Library** Additional Terms and Conditions May 2015

The foregoing terms and conditions are in addition to and hereby supplement the Longview Training Services Agreement or eLearning Subscription License Agreement (as applicable) and become a part thereof. Customer's use of and access to the eLearning Library is subject to the additional terms and conditions herein, as modified from time to time in Longview's sole discretion. Customer is encouraged to check these additional terms and conditions regularly to ensure that Customer is aware of all terms governing Customer's use of the eLearning Library. Customer's continued use of and/or access to the eLearning Library following any modifications to these additional terms and conditions shall constitute Customer's acceptance of such modified additional terms and conditions.

### **1.0 Definitions**

1.1 "Customer Data" means all electronic data or information submitted by Customer to the eLearning Library.

1.2 "Downtime" means any period of time in which the eLearning Library is not functioning in a material way or is not generally available via the Internet, other than such periods which have been previously agreed with Customer or periods of Maintenance.

1.3 "DP Act" means the Data Protection Act 1998 and Directive 95/46/EC of the European Parliament and of the Council on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of such Data.

1.4 "IPR" means any patent, patent application, copyright, moral right, trade name, trademark, service mark, trade secret, copyright, and any intellectual property applications or right to apply for registration therefor, internet domain names, logos, designs, slogans, and general intangibles of like nature, computer software programs or applications, tangible or intangible proprietary information, know-how, proprietary processes, formulae, algorithms,

or any other intellectual property right, whether registered or unregistered, and whether first made or created before or after the Effective Date.

1.5 "Maintenance" means (i) any reasonable periods for installation of updates as determined in the sole discretion of Longview and its third party supplier, (ii) any other Downtime outside the reasonable control of Longview or its suppliers, (iii) Downtime that arises out of actions or omissions of Customer, and (iv) any Downtime that arises out of Customer's use of its own hardware or software with the eLearning Library which is not part of the functionality of the eLearning Library.

1.6 "User" means an employee or consultant of Customer that is authorized by Customer to use the eLearning Library subject to the User limit set forth in the Registration Confirmation.

## **2.0 eLearning Library Access**

2.1 Customer is responsible for all computer hardware and software required to access the eLearning Library including establishing and maintaining Customer's network connectivity and sufficient bandwidth (at least 64kbps) between Customer's facilities and the Internet. Customer is responsible for the actions of all Users who obtain access to the eLearning Library, directly or indirectly by Customer. In the event of any breach of this Agreement by any User, Customer shall be fully liable for any such breach.

2.2 Access to the eLearning Library is provided based on annual subscription terms for the number of Users and eLearning content authorized pursuant to the Registration Confirmation. Customer's access to the eLearning Library shall not exceed the number of User subscriptions it has purchased as set out in the Registration Confirmation. User subscriptions may be increased during the Initial Term (as defined hereinbelow) and each annual Renewal Term (as defined hereinbelow). When any additional Users are added during the Initial Term or a Renewal Term, Customer will be invoiced and Customer shall pay a prorated amount for the remainder of the then-current Initial Term or Renewal Term, as the case may be, in order for the term of all Users to renew on a coterminous basis (on the same annual anniversary date). User subscriptions shall be provided to designated Users and not shared or used by more than one User, but Customer may re-assign User subscriptions.

2.3 Customer and its Users shall (a) use the eLearning Library only for lawful purposes; (b) not use, or authorize or permit any other person to use, the eLearning Library in any manner which infringes any law or regulation or which infringes the rights of any third party; (c) not post, link to or transmit any material, which is unlawful, threatening, libelous or otherwise tortious, abusive, malicious, defamatory, obscene, pornographic, or that contains a virus or

other hostile computer program, or which constitutes, or encourages the commission of, a criminal offence, or which infringes any IPR of any person which may subsist under the laws of any jurisdiction; (d) not interfere or attempt to interfere with the integrity of the eLearning Library; (e) not attempt to gain access to third-party data contained on the eLearning Library; (f) keep secure any identification, password and other confidential information relating to Customer's User accounts and shall notify Longview immediately of any known or suspected unauthorized use or breach of security, including loss, theft or unauthorized disclosure of Customer's User's password(s) or other security information; (g) observe the procedures which Longview may from time to time prescribe for the eLearning Library; (h) make no use of eLearning Library which is in the sole opinion of Longview detrimental to other customers; (i) not make the eLearning Library available to anyone other than Users; and (j) procure that all email is sent in accordance with applicable legislation in a secure manner. Customer agrees to be fully liable and responsible for any breach of any eLearning Library terms and conditions caused by the acts or omissions of its Users.

2.4 Customer acknowledges that Longview will from time to time during the term be required to temporarily reduce or interrupt access to the eLearning Library to conduct Maintenance.

2.5 By submitting Customer Data to the eLearning Library, Customer shall be solely responsible for the accuracy, quality, integrity, legality and reliability of Customer Data and of the means by which it acquired Customer Data. Customer grants to Supplier and its direct and indirect third party suppliers as necessary in connection with the eLearning Library a non-exclusive, worldwide limited right and license to use the Customer Data to the extent needed to give effect to the Customer's use of the eLearning Library.

2.6. While Longview and its suppliers will use reasonable precaution to ensure the integrity and security of the eLearning Library and their connectivity to the Internet, Longview and its direct and indirect suppliers do not guarantee that the eLearning Library will be free from unauthorised access or hackers and shall be under no liability for the authorised or unauthorised interception or dissemination of any materials or information or the non-receipt or misrouting of any such materials or information.

2.7 Except as expressly permitted herein, Customer's Users' use rights are non-transferable, non-assignable, and non-sub-licensable.

2.8 Customer will not be granted access to either the source or object code of the eLearning Library.

### **3.0 eLearning Library Restrictions**

3.1 Over and above the restrictions set forth in the Agreement and save to the extent expressly permitted by applicable law, Customer will not allow any third party to, and will not: (a) reverse engineer, decompile, translate, disassemble or attempt to discover any source code or underlying ideas or algorithms of the eLearning Library, (b) transfer, sell, lease, lend, disclose, use for timesharing or service bureau purposes, or permit web or other access by third parties to the eLearning Library or any portion thereof or otherwise commercialise the eLearning Library or any portion thereof, (c) use, provide, or allow others to use Service for the benefit of any third party, (d) use Service or allow the transfer, transmission, export, or re-export, of the eLearning Library or portion thereof, in violation of any export control laws or regulations of the United States, United Kingdom or any other jurisdiction; (e) copy, frame or mirror any part of the eLearning Library other than for Customer's own internal business purposes, or (f) access the eLearning Library to copy its features, functions or graphics.

3.2 Longview and its licensors retain ownership of and all other rights in the eLearning Library. Other than as expressly set forth herein, nothing in this Agreement grants Customer any right, title, license or interest in or relating to the eLearning Library, and Longview and its Licensors reserve all rights, title and interest in and to the eLearning Library and its confidential information, including all related IPRs.

3.3 Customer agrees to maintain the copyright, trademark, and other notices that appear on the eLearning Library on all associated media.

#### 4.0 Term and Termination

4.1 The term of Customer's license use and access the eLearning Library pursuant to this Agreement shall commence on the Effective Date and shall continue for an initial term of twelve (12) months (the "Initial Term"). Unless cancelled by either party upon sixty (60) days prior written notice prior to the expiration of the Initial Term or the then-current Renewal Term, as applicable, and unless otherwise terminated pursuant to the terms of this Agreement, the license to use and access the eLearning Library will automatically renew for additional 12-month periods (each a "Renewal Term") at Longview's then-current rates, due annually in advance. If this Agreement is for a trial license, then this license shall be for the trial period set forth in the Registration Confirmation.

If any fees owed by Customer are 10 days or more overdue, Longview may, without limiting its other rights and remedies, suspend Customer's access to the eLearning Library until such amounts are paid in full, save where the applicable Fees are subject to a reasonable and good-faith dispute and Customer is cooperating diligently to resolve the dispute.

4.2 Longview reserves the right to terminate this license for the eLearning Library in its sole discretion for any reason or no reason upon providing written notice to Customer. In the event that Customer has pre-paid for access to the eLearning Library and Longview terminates this license for the eLearning Library for convenience and not due to a Customer breach, then Longview will provide a prorated refund of fees paid for such unused access to the eLearning Library for the remaining period of time following any such termination by Longview for such unused access to the eLearning Library, notwithstanding anything to the contrary in the Agreement. Otherwise, the fees for the eLearning Library are non-refundable.

4.3 Upon termination of this Agreement for any reason, Customer shall cease all use of the eLearning Library. Upon request by Customer made within fifteen (15) days of the date of termination, Longview shall provide Customer with access to a downloadable file of Customer Data in Comma Separated Values (CSV) format. Following this fifteen (15) day period, Longview may delete all Customer Data from the eLearning Library and shall, unless otherwise required by law, have no obligation to maintain or provide any Customer Data thereafter.

## **5.0 DATA PROTECTION**

5.1 Customer agrees to refrain from providing to Longview any sensitive personal information, and Customer shall only provide to Longview such names, titles and contact information for Customer and its Users as is reasonably necessary in connection with the Registration Confirmation and in providing Customer and its Users with access to the eLearning Library. Notwithstanding the foregoing, Customer consents to Longview and its suppliers acting as data processor (as defined in the DP Act) of any Customer Data which is personal data (as defined in the DP Act). Customer hereby fully acknowledges and agrees that the foregoing consent includes a consent to transmit such personal data outside of the country for which Customer and/or its Users may reside, including to countries with data protection laws that are not as protective as Customer's and/or its Users' country of domicile. Longview shall handle Customer's personal information in accordance with Longview's privacy policy located at <http://www.longview.com/privacy-policy>.

5.2 By submitting any Customer Data which is personal data to the eLearning Library, Customer acts as data controller and shall have sole responsibility for the accuracy, quality, integrity, legality and reliability of such personal data and of the means by which it acquired such personal data. Where Longview processes personal data on Customer's and/or its Users' behalf and in accordance with Customer instructions, Customer undertakes that it shall have all permissions necessary to do so from the data controller and/or data subject and that Longview's processing will not be in breach of the DP Act. Customer warrants that it will comply with the DP Act in collecting, compiling, storing, accessing and using Customer Data in connection with this Agreement, including Customer and its Users' use of the eLearning Library.

## **6.0 AUDIT**

Customer agrees to allow a mutually acceptable independent certified accountant to audit and analyze Customer's compliance with the terms of this Agreement. Any such audit shall be permitted by Customer within 14 days of Longview's written request during normal business hours and at times mutually agreed upon by Customer and Longview. Audits shall be made no more frequently than once every 12 months, and shall not unreasonably interfere with Customer's business activities. In the event of any discrepancy in Customer's authorized use of the eLearning Library that is detected in any such audit conducted by Longview, Customer agrees to pay to Longview all fees and costs in performance of such audit in addition to payment of all fees and charges due for any and all use in excess of what is authorized pursuant to this Agreement.

## **7.0 INDEMNIFICATION**

Customer shall defend and indemnify Longview against: (a) any claim, demand, suit or proceeding made or brought against Longview by a third party alleging: (i) facts that, if true, would constitute a violation by Customer of its obligations as data controller under the DP Act; or (ii) that the Customer Data, or Customer's use of the eLearning Library in violation of this Agreement, infringes or misappropriates the IPRs of a third party, and (b) any damages awarded by a final court decision or to be paid pursuant to a final binding out-of-court settlement to which Longview is a party, and for legal fees incurred by Longview in connection with any such claim, demand, suit or proceeding.