

CONDITIONS

I. DEFINITIONS

In these Conditions, save where the context otherwise requires, the following words shall have the following meanings - “we”, “us” and “our” means Skillsarena Limited (English Company No: 04221642); “you” means the Customer named in the relevant Customer Licence Agreement to which these Conditions are attached; “Customer Licence Agreement” means the agreement (of which these Conditions form part) signed between us and you allowing you and Candidates access to the Website; “Website” means the secure areas of our website www.skillsarena.com; “Software” means software provided by us to you and Candidates electronically to install on Equipment which allows access to the Website from which we provide the Services; “Candidate Terms” means the terms upon which access to the Website is allowed to you and Candidates and which are displayed on the Website. Expressions used in the Customer Licence Agreement shall have the same meanings in these Conditions as given to them there.

2. LICENCE

- 2.1 In consideration of the Access Fee which you will pay to us in respect of each Access Period, we hereby grant to you and Candidates a non-exclusive, non-transferable licence to access the Website during the period of the Customer Licence Agreement using the Software for the purpose of the provision of the Services and subject to these Conditions. Subject to earlier termination in accordance with the terms of the Customer Licence Agreement, the first Access Period shall commence on the Effective Date and each subsequent Access Period (if any) shall commence on the expiry of the Access Period preceding it. This licence is subject to the following conditions:
- 2.1.1 the licence is available only to you and Candidates and the Software may only be used on Equipment;
 - 2.1.2 you must not reverse-engineer, decompile or make back-up copies of the Software or use the Software in combination and/or in conjunction in any way with any other software, save to the extent expressly permitted by applicable law and to the extent that we are not permitted by that applicable law to exclude or limit your right to do so nor use, copy, adapt or alter the Software or permit or allow anyone else (save a Candidate) to use the Software in any way other than as expressly permitted under the terms of the Customer Licence Agreement;
 - 2.1.3 you must comply promptly with any reasonable instructions given by us from time to time in connection with the use and operation of the Website including without limitation using the Software in accordance with any user manuals or related documentation in respect of the Software;
 - 2.1.4 you must promptly notify us if you become aware of any unauthorised use of the Software (or any part thereof);
 - 2.1.5 you are responsible for obtaining all equipment and for paying all telephone charges necessary to enable you to access the Website;
 - 2.1.6 you will ensure that all Candidates use the Website in the manner envisaged by these Conditions and comply with the Candidate Terms;
 - 2.1.7 you will be fully responsible and primarily liable for all of the acts and/or omissions of Candidates. You will, at our request, promptly do all acts and things which we believe are reasonably necessary or desirable to control and/or prevent the use of the Website by any Candidates (including without limitation taking all necessary action against any Candidates who we believe are using the Website in any unauthorised way).

3. PROPERTY RIGHTS

- 3.1 All intellectual property rights of whatever nature and howsoever arising which relate to or are connected with the Website and/or the Software or developed in the course of their use (including without limitation the design concept, source code, documentation, tools, data files, algorithms, images, graphs, textual information and other materials and any data generated by use of the Website) shall remain vested in us and the Website (and the intellectual property rights therein) may only be used to the extent expressly permitted in the Customer Licence Agreement.
- 3.2 You agree that the Late Payment of Commercial Debts (Interest) Act 1998 applies to the arrangements between us and that we are entitled to interest thereunder on all sums due from you. If you fail to make full payment of an invoice on its due date, you acknowledge that we will be entitled to treat the failure to make payment as evidence of your insolvency for the purpose of the insolvency legislation, and/or to withdraw forthwith and without liability access to the Website.
- 3.3 You shall be responsible for paying to us all applicable VAT and any other similar taxes imposed on amounts payable by you to us for under the Customer Licence Agreement.
- 3.4 We reserve the right to vary the Access Fee upon expiry of each Access Period and the Maintenance Fee upon expiry of each Maintenance Period.

4. LIABILITY

- 4.1 Nothing in the Customer Licence Agreement shall limit or exclude our liability for death or personal injury resulting from our negligence or in relation to any other liability which may not by applicable law be excluded or limited.

- 4.2 Subject to clause 4.1, our liability to you or any third parties in relation to the Customer Licence Agreement shall be limited to a total maximum aggregate amount which is equal to the Access Fee and Maintenance Fee received in cleared funds by us from you for the Access Period in which the claim is made.
- 4.3 We will endeavour to maintain that the Website is accessible at all times, however, we cannot accept responsibility for any interruptions, failures or defect or loss of service and do not accept responsibility for any costs, loss of profits, loss of data, or indirect or consequential losses (including without limitation any loss of profits, loss of sales, loss of turnover, loss of bargain, loss of opportunity, loss of use of computer equipment, loss of software or data or loss of time on the part of management or other staff) arising. You should satisfy yourself that you have appropriate protection against computer viruses whilst using the internet, and that your connection to the Website is secure.
- 4.4 Save as expressly specified in the Customer Licence Agreement, all terms, conditions, warranties, representations or guarantees (whether express or implied) relating to the performance, quality, merchantability, fitness for purpose or ability to achieve a particular result of the Services, the Software and/or access to the Website are hereby excluded to the maximum extent permitted by law. In particular, but without limitation, you acknowledge that it is your responsibility to obtain all necessary rights and authorisations in relation to data entered by you or Candidates whilst using the Software (as is the accuracy of such data), that all tests provided by us (and their results) are guides only to the suitability or lack of suitability of Candidates and that you are responsible for all decisions taken by you in relation to Candidates. Without limitation if you create a test using the functions to do so on our Website you are solely responsible for such test, its results and your assessment thereof.
- 4.5 You agree that the exclusions and limitations in the Customer Licence Agreement are reasonable and that you have had the opportunity to obtain professional advice on them. In view of the amounts charged for the Services and the terms and conditions of the Customer Licence Agreement (including the limitations and exclusions in this clause 4), you have entered into the Customer Licence Agreement in your own commercial interests.
- 4.6 We reserve the right to suspend, restrict, or terminate your access to the Website for any reason, including in particular, if your use of the Website causes or is likely to cause the whole or part of the Website to be interrupted, damaged, rendered less efficient or in any way impaired. Likewise we are not and will not be held responsible for any damages you or a Candidate may suffer as a result of the loss of confidentiality/data due to any breaches in security.
- 4.7 You confirm that you and all Candidates will at all times have all necessary rights and authorisations to use the Software and all materials and/or information used by you and Candidates in connection with the use of the Website and shall indemnify us on demand against all losses, costs (including legal fees on a full indemnity basis) and expenses incurred by us in connection with any use of such Software, materials and/or information.

5. TRAINING AND MAINTENANCE

- 5.1 In consideration of the Maintenance Fee which you will pay to us in respect of each Maintenance Period we will provide maintenance for the Website in the manner set out in Schedule 2 of this Agreement or as otherwise agreed between you and us from time to time. Subject to earlier termination in accordance with the terms of the Customer Licence Agreement, the first Maintenance Period shall commence on the Effective Date and each subsequent Maintenance Period (if any) shall commence on the expiry of the Maintenance Period preceding it.
- 5.2 The maintenance to be provided by us shall not include services in respect of, amongst other things:-
- 5.2.1 any defects or errors resulting from modifications to the Software (or associated documentation) by anyone other than us or any version other than the then most recent version of the Software and the version immediately preceding it;
- 5.2.2 any incorrect, improper or unauthorised use of the Software or Website or operational error, or any use which is not in accordance with the Customer Licence Agreement; and/or
- 5.2.3 any error, defect and/or malfunction relating to your equipment or software or improper or incorrect use of your software or equipment
- We may at our discretion provide any services required by you in relation to the matters covered in clause 5.2 at our then current rates for such services.
- 5.3 You agree that you will promptly:-
- 5.3.1 provide all reasonable assistance, co-operation and information as we may require from time to time in relation to the Customer Licence Agreement;
- 5.3.2 report any defects or errors in the Software or Website as soon as you become aware of them; and
- 5.3.3 provide us with all necessary computer time, resources, accommodation, skilled staff and telecommunications that we may require from time to time in relation to performing any of our obligations under the Customer Licence Agreement.
- 5.4 We shall provide one training session to your personnel in the use of the Software and on a date and at a time to be agreed between us. Additional training can be provided by us as agreed between us from time to time.

6. TERMINATION

- 6.1 Without prejudice to any of our other rights we may terminate the Customer Licence Agreement immediately by notice to you if:-
 - 6.1.1 you materially breach any term of the Customer Licence Agreement and (if it is possible to remedy the breach) fail to remedy that material breach within 30 days of notice of that breach being given to you;
 - 6.1.2 any distress or execution is levied on any of your property or assets;
 - 6.1.3 you make or offer to make any arrangement or composition with creditors;
 - 6.1.4 any resolution or petition to wind you up or bankrupt you shall be passed or presented or if a receiver or shall be appointed or a petition is presented, or any step taken for, the appointment of an administrator or administrative receiver of your undertaking, property or assets.
- 6.2 We may terminate the Customer Licence Agreement upon giving 90 days prior written notice to you at any time.
- 6.3 The Customer Licence Agreement shall begin on the Effective Date and continue for at least the Minimum Period. You may terminate the Customer Licence Agreement by providing notice in writing of at least the Minimum Notice Period such notice to take effect on the expiry of the Minimum Period or any Renewal Period.. Subject to no notice having been given by you pursuant to this clause 6.3 (but without prejudice to any other provision of the Customer Licence Agreement) the Customer Licence Agreement shall be renewed for the Renewal Period commencing on expiry of the Minimum Period and shall continue to be renewed thereafter for a further Renewal Period at the end of each Renewal Period.

7. CONSEQUENCES OF TERMINATION

- 7.1 Upon termination or expiry of the Customer Licence Agreement (for whatever reason):
 - 7.1.1 we may disable or terminate the provision of the Services and you will delete all copies of the Software (if any which you have);
 - 7.1.2 you will immediately pay us any sums which are due to us under the Customer Licence Agreement and which are outstanding as at the date of termination or expiry of the Customer Licence Agreement.
- 7.2 Termination or expiry of the Customer Licence Agreement shall not affect any rights and/or liabilities of either you or us which were accrued prior to the date of termination or expiry (as the case may be).

8. ASSIGNMENT

You may not assign, transfer, sub-licence, sub-contract or otherwise deal with any of your rights and/or obligations under the Customer Licence Agreement without our prior written consent. We may assign, transfer or otherwise deal with all of (or any part of) our rights and/or obligations under the Customer Licence Agreement without your consent.

9. CONFIDENTIALITY

- 9.1 We and you shall keep confidential any information disclosed to us by the other. Neither of us shall disclose any such information to any third party save to the extent that:
 - 9.1.1 any officer, employee or contract staff for the time being working for whichever of us such information has been disclosed to and who may reasonably need to know it; or
 - 9.1.2 as otherwise required by law;provided that we and you shall be responsible for ensuring that any person to whom information is disclosed by either of us complies with any conditions of confidentiality applying to such information under the Customer Licence Agreement.
- 9.2 Nothing in clause 9.1 shall apply to any information:
 - 9.2.1 which is (or becomes) available to the public other than by breach of the Customer Licence Agreement; or
 - 9.2.2 in relation to which whichever of us receives such information already possesses it or obtains it from a third party in circumstances in which the disclosing and receiving parties are free to disclose it.

10. GENERAL

- 10.1 These Conditions may be amended from time to time. Any such amendments shall be effected by posting the amended Conditions on the Website.
- 10.2 We shall not be liable for any delay or failure in performing any of our obligations under the Customer Licence Agreement if such delay or failure is caused by circumstances beyond our reasonable control (including without limitation any delay caused by your act or default, strikes, war, riot, acts of God, power failures or failures in any telecommunications or computer networks, internet services providers, sub-contractors or other third parties).
- 10.3 No forbearance, delay or indulgence by us in enforcing the provisions of the Customer Licence Agreement shall prejudice or restrict our rights nor shall any waiver of our rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for us is exclusive of any other right, power or remedy available to us and each such right, power or remedy shall be cumulative.
- 10.4 Without prejudice to clause 10.1, variations to the Customer Licence Agreement shall not be effective unless they are in writing and signed by respective authorised representatives on behalf of you and us.
- 10.5 If any provision of the Customer Licence Agreement is held for any reason to be void, voidable or unenforceable this shall not affect the validity or enforceability of any other provision of the Customer Licence Agreement or of the remainder of the Customer Licence Agreement as a whole.

- 10.6 All notices, agreements and consents under the Customer Licence Agreement shall be in writing. Notices shall be sent to the address of the recipient set out in the Customer Licence Agreement or such other address as either you or us shall notify to the other in accordance with this clause. Any letter may be delivered by hand or first class pre-paid letter and shall be deemed to be delivered if sent by hand when delivered and if by first class post 48 hours after posting. If notices are sent by fax they shall be deemed to have been duly given when the fax is successfully transmitted and provided a receipt for the successful electronic transmission is obtained.
- 10.7 The Customer Licence Agreement, together with the Candidate Terms, forms the entire understanding between you and us in relation to its subject matter and supersedes and replaces all previous agreements, understandings, arrangements and/or representations (whether in writing or otherwise) in relation to its subject matter except in respect of any fraudulent misrepresentations. We each acknowledge that in entering into the Customer Licence Agreement we are not relying on any representation, warranty, promise or assurance made or given by the other (whether in writing or otherwise) at any time prior to the execution of the Customer Licence Agreement which is not expressly set out in the Customer Licence Agreement, provided that this shall not exclude any liability which either of us may have to the other in respect of statements made fraudulently prior to the execution of the Customer Licence Agreement.
- 10.8 In the Customer Licence Agreement:
- 10.8.1 references to the singular shall include the plural and vice versa (where the context so admits) and references to clause numbers and schedules shall be to those of the Customer Licence Agreement unless the contrary is stated;
- 10.8.2 reference to the Customer Licence Agreement shall include reference to any schedule to the Customer Licence Agreement as the same may be amended, novated or supplemented from time to time;
- 10.8.3 paragraph headings in the Customer Licence Agreement are for convenience only and shall not affect its interpretation. In the event of any conflict between any terms of the Customer Licence Agreement and the Conditions, the terms in the Conditions shall prevail to the extent that there is such a conflict.
- 10.9 Any party who is not a party to the Customer Licence Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Customer Licence Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 10.10 The relationship between you and us is that of seller and buyer and you are not our distributor, agent or partner. You must not assume any obligations and/ or liabilities of any nature on our behalf, must not make any representations on our behalf and must not bind (or attempt to bind) us in any way.
- 10.11 We and you agree that neither you or we will make any public announcement or statement and/or give any press briefing of any nature in relation to and/or in connection with the Customer Licence Agreement and/or the Website without the others prior written consent.
- 10.12 The Customer Licence Agreement may be executed in any number of counterparts and in different counterparts each of which when executed and delivered is an original but all such counterparts shall be deemed to constitute one and the same instrument.
- 10.13 You agree that you are fully authorised to enter into the Customer Licence Agreement and that it has been executed by a properly and fully authorised representative for and on your behalf.
- 10.14 We each agree that you and we will each comply with the Data Protection Act 1998 (as amended and updated from time to time).
- 10.15 This Agreement shall be governed by and interpreted in accordance with English Law and you and we hereby submit to the exclusive jurisdiction of the English Courts for all matters relating to or arising out of this Agreement.

SCHEDULE I

THE EQUIPMENT

Skillsarena Recommended System Requirements

The following specifications relate to the user workstation and connectivity. Our recommended specification will give the user good levels of performance and speed. Higher specifications will increase the usability; lower specifications should be tested to assess usability and performance needs.

Implementations may have unique requirements according to your system configuration and company policies. As such each situation should be assessed on a case by case basis with the Skillsarena Technical Team.

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| Computer Processor | Intel Pentium 4 or AMD Athlon Equivalent <i>We do not recommend running Skillsarena on Celeron Processors or Apple hardware.</i> |
| Memory | 256MB RAM |
| Screen Resolution | 1024 x 768 |
| Operating System | Windows 2000 or Windows XP |
| Software | Macromedia Authorware Web Player 6.5 Macromedia Flash Web Player 7 or above Correct manufacturer's Mouse Drivers must be installed |
| Hardware | Soundcard and Speakers/headset - required for call centre/audio typing tests |
| Free Disk Space | 900MB (recommended temporary internet files) Flash Player 7 web player (476k) Authorware 6.5 web player (3553k) |
| Browsers | Internet Explorer 5 or above AOL users should minimize their AOL browser and access Skillsarena via Internet Explorer. Additionally the following ActiveX settings should be set to Enable: Download signed ActiveX controls Script ActiveX controls marked safe for scripting Run ActiveX controls and plug-ins |
| Internet Connection | Ethernet/LAN Connection 100Mbps + Cable/DSL 512k + |

SCHEDULE 2

MAINTENANCE

ROUTINE MAINTENANCE

Whilst this Agreement remains in effect we will from time to time provide maintenance and service upgrades to the Software. We will provide you with reasonable notice of such upgrades unless immediate action is required, for example, in the event of a security breach.

SERVICE

Whilst this Agreement remains in effect we will provide the following maintenance service for you. We will provide suitably qualified and experienced personnel to perform the maintenance service and will utilise recognised conventional hardware and software tools, utilities and media in the performance of the maintenance service.

HOSTING

Our Internet Service Provider is obliged to monitor our network, hosting and technical infrastructure for 24 hours each day.

SERVICE CATEGORIES

The categories of maintenance service covered by this Agreement are:

Category 1

Our Helpdesk

Category 2

Bug-fixing

Category 3

Callout

ASSISTANCE LEVELS

The assistance to be provided by us in relation to each maintenance service category is as follows:-

Category 1

We will provide a full help desk support service during our normal working hours, being 8.30 to 5.30 Monday to Friday excluding public holidays. The Helpdesk will provide telephone assistance with technical and functional questions about the test site provided by the Software from both you and Candidates who have received remote tests. The Helpdesk is contactable by email and by telephone and has a detailed call logging and follow up procedure.

Category 2

We will provide you with support which will correct the Software as necessary to procure and maintain its compliance with this Agreement. Upon receipt of your request for this category of service, we will attempt to:

- Establish whether or not there is a bug in the Software (as opposed, by way of example, to the problem being one of user error, hardware failure, operation malfunction or the requirement of an enhancement of the function).
- If a bug in the Software is identified:

- Estimate the size of the task to resolve the problem.
- Agree with you the severity category and the relative priority of the bug fix.
- Schedule the fixing of the problem according to severity and priority.

Category 3

A member of our support personnel will attend the Location to deal with a situation that prevents the operation of the Software and which cannot be restored remotely via email, telephone or fax. Upon receipt of your request for a callout, we will analyse whether a callout is appropriate in the particular case and our decision regarding this will be final.

If we agree that a callout is required the callout will be scheduled between you and us for the earliest convenient time for each of us such that there is a clear strategy and potential for problem resolution and an agreed maximum length of time for the specific callout.

Callouts will be charged at our then current standard daily rate for such support. We reserve the right to require you to cover the cost of the travel arrangements for a callout.

SIGNED BY []
for and on behalf of SKILLSARENA
LIMITED

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Director / Company Secretary

SIGNED BY []
for and on behalf of [insert name of Customer]

Director / Company Secretary