

# Commercial Training Agreement Terms and Conditions



## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following expressions shall have the following meanings:

**“Agreement”** – means this Agreement

**“Charges”** – means any charges payable for the Services in accordance with clause 5 and as specified in the agreement

**“Course”** – means the specific topics and curriculum offered to the learner as a part of the training.

**“Individual Learning Plan”** – means in relation to each Learner a plan agreed between the Employer, Realise and the Learner detailing the planned start and end dates of the training

**“Intellectual Property Rights”** or **“IPR”** – means patents, rights to inventions, copyright and moral rights, trademarks and service marks, business and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**“Law”** – means any Act of Parliament, regulation, EU Directive or Regulation or judgement of any court or tribunal which, in each case, has legal effect in the United Kingdom or any part thereof.

**“Learner”** – means the individual who will receive the training

**“Planned End Date”** means the date we plan to complete the training specified in the Learning Plan

**“Services”** – means services to provide training and to support each Learner in undertaking a Course listed in the Learning Plan

**“Start Date”** – means the start date of Services being the date specified in the Training Plan

**“Training Materials”** – means all documents, information, items and materials in any form, whether owned by Realise or a third party, which are used by Realise in connection with the Services.

## 2. COMMENCEMENT AND TERMINATION

2.1 This Agreement shall commence on the Start Date and shall expire when the learner under this Agreement have either exited or completed their training, or until terminated earlier in accordance with this Agreement.

2.2 Either party may terminate this Agreement at any time upon giving the other not less than 3 months’ written notice provided that such termination shall not affect or terminate either party’s obligations pursuant to this Agreement in respect of any Learner who is currently undertaking a Course at the time of expiry of such notice and such obligations shall continue until the last of such Learners have completed their Course.

2.3 Realise reserves the right to terminate this Agreement immediately upon notice to the Employer if any regulation, rule, guidance or instructions would, in Realise’s sole opinion, make continued delivery unreasonable.

2.4 Either party may terminate this Agreement at any time by giving written notice to the other if the other commits any breach of this Agreement and (if capable of remedy) fails to remedy the breach in 30 days after being required by written notice to do so; or if the other repeatedly breaches the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the Agreement; or if the other commits an act of bankruptcy or goes into liquidation other than for the purposes of reconstruction or amalgamation or suffers the appointment of a receiver or administrator of any of its property or income or makes any deed or arrangement with its creditors or otherwise becomes insolvent.

## 3. REALISE’S OBLIGATIONS

3.1 Realise (and its subcontractors) shall:

(a) Provide and carry out the Services in accordance with good industry practice and on the terms and conditions set out in this Agreement.

(b) Prepare and distribute the Individual Learning Plan for each Learners at the outset of as Course. Realise shall make available the number and type of sessions indicated in the course synopsis. Where the learner is unable to attend sessions for any reason, Realise shall be under no obligation to offer additional ‘make-up’ sessions.

(c) Provide the Training Materials to the Learner(s).

(d) Observe all health and safety and security requirements that apply at the Employer’s premises that have been communicated to it provided that it shall not be liable under this Agreement if, as a result of this observance, it is in breach of any of its obligations under this Agreement or Laws.

3.2 Realise makes no guarantee that the Learner(s) will successfully complete the Course(s).

3.3 Realise does not give any warranty or guarantee in connection with the Training Materials as to their quality, fitness for purpose of otherwise.

## 4. THE EMPLOYER’S OBLIGATIONS

4.1 The Employer shall:

(a) Support Realise and the Learner to agree the Individual Learning Plan at the outset of a Course.

(b) Co-operate with Realise and the Learner in all matters relating to the Services, including (but not limited to) providing Realise with access to the Employer’s premises as reasonably required to carry out the Services, providing suitable opportunities for Learner to develop and learn in the workplace, facilitating the Learners’ attendance at training and on programme assessment, and providing Realise with such information as may be reasonably required to perform the Services.

(c) Provide Realise with at least 5 working days notice of any cancellations of training sessions or appointments by a Learner.

(d) Obtain the Learner’s express written consent that data relating to them (held by the Employer) may be transferred to Realise (and its subcontractors) for the purposes of the Services and such consent to include the right of Realise to transfer data and information held by Realise relating to the Learner and the Employer.

(e) Immediately notify Realise of any change of circumstances to any of the Learners, including (but not limited to) where a learner exits a course

(f) Provide feedback to Realise on the Learner’s experience for the purposes of Realise quality control.

(g) Comply with all reasonable requests of a third party that is undertaking a review, audit or inspection of the Services.

(h) Ensure that any Learners are protected at work from any risk to their health and safety.

(i) Comply with all applicable diversity, employment, anti-bribery, safeguarding, equality & health & safety Laws.

(j) Maintain employer’s liability insurance as required by Law.

## 5. CHARGES

5.1 The Employer shall pay to Realise :

(a) Payment equal to 100% of the total Price (inclusive of any VAT) within 30 days of the Start Date

5.2 If any sums owing to Realise are overdue, it may charge interest on the outstanding amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and any regulations made thereunder from the due date until the date of payment.

5.3 The Employer shall not be entitled to exercise any set-off, lien or similar claim in relation to the Charges.

5.4 If a Learner exits their Course early then the balance of the amounts paid to date and the full Price will be due.

## 6. LIMITATION OF LIABILITY

6.1 Nothing in this Agreement shall limit or exclude the other party’s liability for:

- (a) Death or personal injury caused by its own negligence;
- (b) Fraud or fraudulent misrepresentation; or
- (c) Any other liability which cannot be limited or excluded by Law.

6.2 Subject to clause 6.1, Realise shall not be liable to the Employer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for loss of profits, loss of sales, loss of agreements or contracts, loss of anticipated savings, loss of (or damage to) goodwill, loss of or corruption to software, data or information or any indirect or consequential loss.

6.3 Subject to clause 6.1, Realise's total liability to the Employer, whether in contract, tort (including negligence), for breach of statutory duty, misrepresentation or otherwise, arising under or in connection with the performance of this Agreement shall be limited to the total Charges paid during the 12 months immediately preceding the date on which the claim arose.

## 7. EMPLOYER INDEMNITY

7.1 The Employer warrants that it shall indemnify Realise against all loss, damages, costs, claims and expenses suffered by Realise as a result of the Employer providing incorrect information to Realise or failing to disclose any information to Realise that was reasonably required.

## 8. CONFIDENTIALITY AND DATA PROTECTION

8.1 The parties shall each comply with their obligations under the Data Protection Act 1998 ("DPA") and as may be amended by the General Data Protection Regulation (EU/2016/679) as enacted in the laws of England and Wales at all times. The terms "Personal Data" and "Data Processor" shall have the same meaning as in the DPA.

8.2 The parties acknowledge that Realise is a Data Processor.

8.3 Each of the parties shall ensure that Personal Data shall be processed fairly and lawfully and only to the extent and in a manner necessary for the purposes of this Agreement.

8.4 Each party shall take all reasonable precautions not to disclose to any third party any confidential information concerning the parties' business, affairs, customers, clients or suppliers of the other party including without limitation any assignment instructions and the contents of this Agreement.

8.5 This obligation shall not apply to information that is or becomes public knowledge through no fault of the parties or which the receiving party can prove was lawfully in its possession before the date of disclosure; or is received from any third party having the right to disclose such information; or the disclosing party has by written approval agreed may be disclosed to third parties.

## 9. INTELLECTUAL PROPERTY RIGHTS

9.1 Realise (or its licensors or subcontractors, as applicable) shall retain ownership of all IPR in its Training Materials.

9.2 Realise grants to the Employer a non-exclusive, non-transferable, royalty free licence to use the Training Materials for the duration of the Services.

9.3 Any Training Materials or other information provided to the Employer for the purposes of the Services shall be kept confidential by the Employer, subject to the Learner's rights to use such materials for the purposes of the Course.

## 10. FORCE MAJEURE

10.1 Neither party shall be liable to the other for any failure or delay in carrying out its obligations hereunder where such failure or delay is caused by circumstances beyond its control which it could not reasonably be expected to have foreseen at the time the Agreement was made and whose effect it could not reasonably have avoided or overcome (a "Force Majeure Event"), provided that this clause shall not apply to an obligation to pay the Charges.

10.2 As soon as reasonably practicable after the start of the Force Majeure Event if a party is prevented, hindered or delayed from performing any of its obligations under this Agreement (the "Affected Party") it shall notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement.

10.3 The Affected Party shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

10.4 If a Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 3 months, the other party may terminate this Agreement by giving 1 (one) month's written notice to the Affected Party.

## 11. ASSIGNMENT AND SUBCONTRACTING

11.1 Subject to clause 11.2, and save to a company whose ultimate parent is the same as the ultimate parent of that party, neither party may assign or transfer any of its rights and obligations under this Agreement without the written consent of the other party.

11.2 Realise may subcontract performance of the Services provided that Realise shall remain responsible for performance of the Services by that subcontractor.

## 12. GENERAL

12.1 This Agreement forms the entire agreement between the parties relating to the provision of the Services. It replaces and supersedes any previous proposals, correspondence, understandings or other communications whether written or oral.

12.2 Any and all variations to this Agreement shall be recorded in writing and signed by both parties before implementation.

12.3 If any term or provision in this Agreement shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of Law, such term or provision or part shall to that extent be deemed not to form part of this Agreement but the validity and enforceability of the remainder of this Agreement shall not be affected.

12.4 No waiver, delay or failure by either party in enforcing any provision of this Agreement shall prejudice or restrict the rights of that party under this Agreement, nor shall waiver by either party of any breach operate as a waiver of any subsequent breach.

12.5 No one other than a party to this Agreement, their successors and permitted assignees shall have a right to enforce any of its terms in accordance with the Contracts (Rights of Third Parties) Act 1999.

12.6 Any notice required to be given under this Agreement shall be addressed to the relevant party at the address specified in this Agreement or as notified by the parties to each other from time to time.

12.7 This Agreement shall be construed in accordance with the laws of England and the Courts of England and Wales shall have exclusive jurisdiction in relation to any matters arising out of this Agreement (except enforcement of an order made by the Courts of England and Wales).

