

## Eidos Learning Consortium

### Terms & Conditions

#### 1. Interpretation

**The following definitions and rules of interpretation apply in these Conditions.**

##### 1.1 Definitions:

**Additional Content:** means all visual, audio- and audio-visual content and materials that are contained within the Learning Management System including but not limited to videos, pictures, photographs, text, sound clips, posts, comments, graphics, software, advice, recommendations, data, slides, images, files, links, chats and all other content and materials that are produced by Eidos before the Membership Term that are available to the Member at an additional cost.

**Authorised Users:** the fixed number (as specified in the Order Confirmation) of staff, employees, and workers of the Member who are authorised by the Member to use the Membership and access the Content contained in the Learning Management System in accordance with the terms of this agreement.

**Business Day:** a day other than a Saturday, Sunday, or public holiday in England, when banks in London are open for business.

**Charges:** the charges payable by the Member for the supply of the Membership in accordance with clause 8.

**Commencement Date:** the date the Contract shall come into existence as specified within Order Confirmation.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 14.5.

**Content:** means all visual, audio- and audio-visual content, e-learning modules and materials that are contained within the Learning Management System including but not limited to videos, pictures, photographs, text, sound clips, posts, comments, graphics, software, advice, recommendations, data, slides, images, files, links, chats and all other content and materials that are produced during the Membership Term.

**Contract:** the contract between Eidos and the Member for the supply of Membership to the Content in accordance with these Conditions.

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

**Domestic Law:** the law of the United Kingdom or a part of the United Kingdom

**Eidos:** EIDOS CONSULTING LTD (trading as Eidos Learning) registered in England and Wales with company number 10237695.

**Initial Membership Term:** the initial term of 24 months starting and including the Commencement Date

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, 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.

**Learning Management System Provider:** The Learning Management System Provider as appointed by Eidos from time to time.

**Learning Management System:** means the learning Management System provided by the Learning Management System Provider.

**Member:** the person or firm who purchases Membership to the Content from Eidos.

**Membership Term:** the initial term of 24 months starting and including the Commencement Date together with any subsequent renewals

**Membership:** The Membership purchased by the Member which entitle the Authorised Users to access and use the Learning Management System and the Content in accordance with this agreement.

**Order Confirmation:** the written confirmation of the Order that is to be provided by Eidos to the Member detailing the Membership, the Specification and the Contract.

**Order:** the Member's order for Membership as set out in the Member's purchase order.

**Specification:** the description or specification of the Membership provided by Eidos to the Member.

**Support Services:** means the support serviced provided by Eidos and any technical support in relation to the Learning Management system that will be provided indirectly by Learning Management System Provider.

**UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**Unique Learning Management System:** means any other learning management system that may be used for educational purposes by the Members instead of the Learning Management System provided by Eidos.

## 1.2 Interpretation:

- (a) Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision:
  - (i) is a reference to it as it is in force as at the date of this Contract; and
  - (ii) shall include all subordinate legislation made as at the date of this Contract under that legislation or legislative provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase, or term preceding those terms.
- (c) A reference to **writing** or **written** includes email

## 2. **Basis of contract**

- 2.1 The Order constitutes an offer by the Member to purchase Membership for the Authorised Users in the Learning Management System and its Content in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when Eidos issues an Order Confirmation which provides written acceptance of the Order at which point, and on which date the Contract shall come into existence.
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Member seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

## 3. **Services and access to the Learning Management System and Content**

- 3.1 Eidos shall during the Membership Term supply the Member with non-exclusive Membership to the Learning Management System which includes access to the Content created within the Membership Term and Eidos shall provide and make available resources and Content relating to the sector that is specified within the Order Confirmation and Contract in accordance with the Specification and these Conditions.
- 3.2 The Member shall have the authority to use the forums and group meetings contained within the Learning Management System.
- 3.3 Eidos reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Membership, and Eidos shall notify the Member in any such event.
- 3.4 The Member can purchase access to the Additional Content for a fee that is to be agreed with Eidos in writing, for the avoidance of doubt any Additional Content purchased by the Member is subject to these Conditions.

#### 4. Member's obligations, restrictions and indemnities

##### 4.1 The Member shall:

- (a) ensure that the terms of the Order and any information it provides are complete and accurate;
- (b) co-operate with Eidos in all matters relating to the Membership;
- (c) undertake that each Authorised User shall keep a confidential secure password to the Learning Management System;
- (d) undertake that the confidential secure password belonging to the Authorised User is not shared with any third party especially for the purpose of sharing access to the Learning Management System;
- (e) subject to:
  - (i) the prior written consent of Eidos;
  - (ii) clause 5.7;
  - (iii) the terms of these Conditions; and
  - (iv) the Member warranting that all Content will be removed from the Unique Learning Management System on termination of these Conditions

the Member can transfer any Content contained in the Learning Management System to its own Unique Learning Management System;

- (f) With the prior written consent and on terms agreed with Eidos be able to resale the Content contained within the Learning Management System to a third-party; and
- (g) Subject to the 'Eidos Learning' logo remaining included and for an additional fee that is to be agreed in writing with Eidos, the Member is entitled to purchase a branded version of the Learning Management System which can be customised in line with its branding;

##### 4.2 Except as expressly permitted by the terms of these Conditions the Member and any Authorised Users shall not:

- (a) Modify, adapt, translate, reverse engineer, disassemble, decompile distribute, sub license, market, lease, make available, resell, store, transmit, transfer, make derivative works of, disassemble any part of the Learning Management System, its Content, or its Intellectual Property, including any files, tables or documentation (or any portion thereof) or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the Learning Management System or any derivative works thereof;
- (b) Interfere with, attempt to interfere with, disrupt or attempt to disrupt with the proper working, integrity or performance of the Learning Management System and its Content;
- (c) Incorporate any Content or part of the Learning Management System into any other programme or product;

- (d) Use the Learning Management System to upload, transmit, store or otherwise make available in anyway any material that:
    - (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
    - (ii) that contain viruses or other material that is malicious or technologically harmful;
    - (iii) does or may infringe any copyright, trademark or other intellectual property rights; or
    - (iv) contains in the sole judgement of Eidos content that is questionable or which restricts or inhibits any other person from using the Learning Management System or may harm the reputation of Eidos.
  - (e) Use any Content of the Learning Management System in the training of any third-party;
  - (f) Use the Learning Management System, to canvass, market, advertise or promote any products or services that do not belong to Eidos to other Members.
  - (g) In anyway injure or damage the goodwill or reputation of Eidos, the Learning Management System or the Content.
- 4.3 Eidos reserves the right, without liability or prejudice to its other right or to the Member, to disable the Member's and the Authorised User's access to the Learning Management System and its Content for any material breach of this clause.
- 4.4 Eidos will monitor any content uploaded by the Member and its Authorised Users to any social messaging boards and reviews and reserves the right to remove, delete and/or destroy any content that is in breach of these Conditions.
- 4.5 Without limiting any other rights or remedies of Eidos, the Member shall indemnify Eidos against, and shall pay to Eidos a sum equal to, all liabilities, costs, expenses, damages and losses (including but not limited to any direct losses and all interest, penalties and legal cost (calculated on a full indemnity basis and all other reasonably and properly incurred professional cost and expenses) suffered or incurred by Eidos arising out of or in connection with any breach of these Conditions by the Authorised Users.
- 4.6 This Clause will survive termination of this agreement.

## **5. Membership and Authorised Users**

- 5.1 The Member warrants to Eidos:
- (a) that it will not exceed the number of Authorised Users included in its Membership and as specified in the Order Confirmation;
  - (b) that each Authorised User will only use their own account and that their details and access to the account will not be shared; and

(c) that the Membership will not be granted to any third party;

- 5.2 Eidos reserves the right to increase the number of Authorised Users for the Membership Term should the Member be in breach of the warranty contained at clause 5.1(a) and the Member agrees to pay any additional Charges as contained at clause 8.2
- 5.3 At a cost agreed by Eidos the Member can increase the amount of Authorised Users at any time during the Membership Term
- 5.4 In any event, (including after an increase of the number of Authorised Users in line with Clause 5.2) the Member can only reduce its number of Authorised Users at the end of the Initial Membership Term by:
- (a) Receiving prior written consent by Eidos; and
  - (b) by providing Eidos 30 days' written notice prior to the start of the Membership Renewal Period.

Eidos will then provide the Member with a new Order Confirmation detailing the new Membership and Charges.

- 5.5 The Member shall submit to Eidos a list of email addresses belonging to the Authorised Users that shall be registered to the Membership before the Commencement date, the email addresses provided by the Member for the Authorised Users must be used for the sole purpose of the Member's business.
- 5.6 The Member can update the list of Authorised Users provided to Eidos under clause 5.5 by providing Eidos a new list of email addresses (that are used sole purpose of the Member's business) for the Authorised Users, 5 working days before the end of each month of the Membership Term, the updated list of Authorised Users will have access to the Learning Management system from the 1st working day of the following month.
- 5.7 The Member warrants to Eidos that it shall use all reasonable endeavours to prevent unauthorised access to the Learning Management System and its Content and in any event shall immediately notify Eidos if it becomes aware that unauthorised access has occurred.
- 5.8 The rights provided under these conditions are granted to the Member only and shall not be considered to grant any subsidiary or holding company of the Member Authorised Access.

## **6. Eidos Obligations**

- 6.1 Eidos agrees to use reasonable endeavours to ensure the Learning Management System and the Content is available to the Member 24 hours a day, seven days a week, except for any planned or unplanned maintenance that is carried out on the Learning Management system that will communicated to the Member as soon as reasonably possible.

6.2 Eidos are not responsible for the functionality of the Learning Management System and responsibility for the same is provided by the Learning Management System Provider. Eidos will be available and at no additional cost to the member to provide Support Services on Business Days between the hours of 09:00 – 17:00.

6.3 Eidos are not obligated to support the transfer of the Learning Management System or its Content to any Unique Learning Management System that is used by the Member and Eidos provides no warranties as to the performance of the Learning Management System or its Content if it is transferred or integrated into a Unique Learning Management System.

## **7. Content**

7.1 All the Content contained within the Learning Management System:

- (a) Does not remove or lessen in any way the obligations of the Member to provide a safe working environment or the obligation it has to adopt safe working practices;
- (b) May be subject to uncertainties of scientific and technical research;
- (c) May not be fully accurate, current or complete although Eidos warrants that reasonable steps have been taken to ensure that the Content is accurate, current and complete;
- (d) Is subject to change without notice; and
- (e) Is not a substitute for independent professional advice and Members are advised to obtain appropriate professional advice relevant to its circumstances.

7.2 The Content contained on the Learning Management System may include views or recommendations of third parties, which do not necessarily reflect the views of Eidos or indicate its commitment to a particular course of action.

7.3 Eidos reserves the right to amend, improve and update the Content contained within the Learning Management System.

7.4 Eidos will grant each Member a single vote which will decide on the Content that is produced next for the Learning Management System. The Member will:

- (a) Be invited to vote on the Content that is produced once a year;
- (b) The vote will entitle the Member to decide on which additional modules will be created as Content that year;
- (c) The vote will be decided democratically with the most popular additional modules being provided as new Content for the Learning Management System.

## **8. Charges and payment**

- 8.1 The Charges for the Membership shall be calculated by the number of Authorised Users that are entitled to use the Membership for the Membership Term and are payable in advance and on an annual basis.
- 8.2 As stated at clause 5.2, Eidos reserves the right to increase the number of Authorised Users should the Member be in breach of the warranty contained at clause 5.1(a) and following such increase:
- (a) The Charges for the Membership will increase for the remainder of the Membership Term to include any increase in Authorised Users (**Additional Charges**); and
  - (b) Any and all Additional Charges will be payable by the Member following receipt of an invoice:
    - (i) within 30 days of the date of the invoice; and
    - (ii) in full and in cleared funds to a bank account nominated in writing by Eidos
- 8.3 Eidos shall invoice the Member for the Charges following receipt of the Order Confirmation.
- 8.4 The Member shall pay each invoice for the Charges submitted by Eidos:
- (a) within 30 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by Eidos, and
- time for payment shall be of the essence of the Contract.
- 8.5 All amounts payable by the Member under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Eidos to the Member, the Member shall, on receipt of a valid VAT invoice from Eidos, pay to Eidos such additional amounts in respect of VAT as are chargeable on the supply of the Membership at the same time as payment is due for the supply of the Membership.
- 8.6 If the Member fails to make a payment due to Eidos under the Contract by the due date, then, without limiting Eidos' remedies under clause 12, the Member shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 8.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **9. Intellectual property rights**

- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Membership shall be owned by Eidos.



- 9.2 The Member acknowledges and agrees that the Learning Management System and the Content contained therein, is proprietary to Eidos and retains exclusive ownership of the same. Except for any express permission given to the Member, Eidos retains all right, title or interest in the Learning Management System and its Content.
- 9.3 The Member acknowledges and agrees that any ideas, enhancements, improvements, additions, or modifications to the Platform suggested by them, and any and all Intellectual Property Rights contained therein, will become property of Eidos, and the Member hereby assigns and agrees to assign any and all right, title and interest to any rights in such suggestions to Eidos.
- 9.4 The Member shall not sub-license, assign or otherwise transfer the rights granted under these Conditions.

## 10. Data protection

### Definitions:

For the purposes of this clause **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures**: are defined as they are defined in the Data Protection Legislation.

- 10.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 10.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Member is the Controller, and Eidos is the Processor.
- 10.3 Without prejudice to the generality of Clause 10.1, the Member will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Eidos for the duration and purposes of this agreement.
- 10.4 Without prejudice to the generality of Clause 10.1, Eidos shall, in relation to any Personal Data processed in connection with the performance by Eidos of its obligations under this agreement:
- (a) Process that Personal Data only on the documented written instructions of the Member unless Eidos is required by Domestic Law to otherwise process that Personal Data. Where Eidos is relying on Domestic Law as the basis for processing Personal Data, Eidos shall promptly notify the Member of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits Eidos from so notifying the Member;
  - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Member, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss,

destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Member has been obtained and the following conditions are fulfilled:
  - (i) the Member or Eidos has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) Eidos complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) Eidos complies with reasonable instructions notified to it in advance by the Member with respect to the processing of the Personal Data;
- (e) Assist the Member, at the Member's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Member without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Member, delete or return Personal Data and copies thereof to the Member on termination of the agreement unless required by Domestic Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 10.

10.5 The Member does not consent to Eidos appointing any third-party processor of Personal Data under this agreement.

**11. Limitation of liability: THE MEMBER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

11.1 Eidos has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £1,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover Eidos has been able to arrange, and the Member is responsible for making its own arrangements for the insurance of any excess loss.

- 11.2 References to liability in this clause 11 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.3 Nothing in this clause 11 shall limit the Member's payment obligations under the Contract.
- 11.4 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; and
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Membership Act 1982 (title and quiet possession).
- 11.5 Subject to clause 11.4 (Liabilities which cannot legally be limited), Eidos' total liability to the Member for all loss or damage shall not exceed the Charges for the Membership.
- 11.6 The caps on Eidos' liabilities shall be reduced by:
- (a) payment of an uncapped liability;
  - (b) amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 11.7 Subject to clause 11.3 (No limitation of Member's payment obligations) and clause 11.4 (Liabilities which cannot legally be limited), this clause 11.7 sets out the types of loss that are wholly excluded:
- (a) loss of profits.
  - (b) loss of sales or business.
  - (c) loss of agreements or contracts.
  - (d) loss of anticipated savings.
  - (e) loss of use or corruption of software, data, or information.
  - (f) loss of or damage to goodwill; and
  - (g) indirect or consequential loss.
- 11.8 Unless the Member notifies Eidos that it intends to make a claim in respect of an event within the notice period, Eidos shall have no liability for that event. The notice period for an event shall start on the day on which the Member became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 11.9 This clause 11 shall survive termination of the Contract.

## 12. Termination

- 12.1 Without affecting any other right or remedy available to it, the Conditions shall continue for the Membership Term and will renew automatically for successive periods of 12 months' (**Membership Renewal Period**).
- 12.2 Either party may terminate these Conditions by giving the other party not less than 1 months' written notice to terminate these conditions at the end of the Initial Membership Term or the end of any Membership Renewal Period.
- 12.3 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 days of that party being notified in writing to do so;
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on;
  - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.4 Without affecting any other right or remedy available to it, Eidos may terminate the Contract with immediate effect by giving written notice to the Member if:
- (a) the Member fails to pay any amount due under the Contract on the due date for payment; or
  - (b) there is a change of control of the Member.
- 12.5 Without affecting any other right or remedy available to it, Eidos may suspend the supply of Membership under the Contract or any other contract between the Member and Eidos if:
- (a) the Member fails to pay any amount due under the Contract on the due date for payment;
  - (b) the Member becomes subject to any of the events listed in clause 12.3(c) or clause 12.3(d), or Eidos reasonably believes that the Member is about to become subject to any of them; and
  - (c) Eidos reasonably believes that the Member is about to become subject to any of the events listed in clause 12.3(b).

12.6 For the avoidance of doubt, the Member shall be liable to pay any outstanding and unpaid Charges that are due for the remaining Initial Membership Term to Eidos should these Conditions be terminated by Eidos in accordance with clauses 12.3, 12.4 and 12.5 and the Member will not be entitled to any form of refund for any Charges that have been paid to Eidos up until the date of termination.

### **13. Consequences of termination**

13.1 On termination or expiry of the Contract the Member shall immediately pay to Eidos all of Eidos' outstanding unpaid Charges in respect of the remaining Membership Term, invoices and interest and, in respect of Membership supplied but for which no invoice has been submitted, Eidos shall submit an invoice, which shall be payable by the Member immediately on receipt.

13.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations, or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

13.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

### **14. General**

**14.1 Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

#### **14.2 Assignment and other dealings.**

- (a) Eidos may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Member shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Eidos.

#### **14.3 Confidentiality.**

- (a) Each party undertakes that it shall not at any time and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, Members, clients of Eidos, except as permitted by clause 14.3(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, contractors, subcontractors, or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives,

contractors, subcontractors, or advisers to whom it discloses the other party's confidential information comply with this clause 14.3; and

- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

#### **14.4 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

**14.5 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**14.6 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**14.7 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal, or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this Contract deleted under this clause 14.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

#### **14.8 Notices.**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;

- (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) This clause 14.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**14.9 No partnership or agency**

- (a) Nothing in these conditions is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party
- (b) Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**14.10 Third party rights.**

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

**14.11 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**14.12 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.