
UP learning General Terms and Conditions

V0105

1 May 2019



1. Subject

- 1.1. These General Terms and Conditions (GTC) apply to Agreements between you and UP learning B.V. to which the UP learning General Terms and Conditions have been declared applicable.
- 1.2. The application of any of your purchasing or other terms and conditions is explicitly ruled out.
- 1.3. If one or more provisions of these GTC are partially or fully invalid at any time our could be declared null and void, the other provisions of these GTC remain applicable in full. We will then open talks with you in order to agree new provisions to replace the provisions that are invalid or have been declared null and void, taking account of the object and purport of the original provisions as far as possible.
- 1.4. Pursuant to this Agreement, we will provide you with the Service that you have ordered by signing the Offer.
- 1.5. We will provide you with the Service from the Commencement Date.

2. Definitions

- 2.1. The terms in the Agreement shown below are defined as follows:

'Additional Services'	all services that do not form part of the Service;
'General Terms and Conditions' or 'GTC'	these General Terms and Conditions;
'GDPR'	General Data Protection Regulation;
'Data Subject'	means the person to whom the Personal Data relate;
'Consultancy Services'	the services described as such in the Offer;
'Service'	the relevant Online Services and Consultancy Services that you ordered with the Offer;
'Data Breach'	means any breach of security of Personal Data, in as far as this must be reported to the Dutch Data Protection Authority (Dutch DPA) and/or Data Subjects;
'Exit Plan'	is the plan for facilitating the transfer of the Service to you or to a third party after the termination of the Agreement;
'User Conditions'	the user conditions shown in the Offer for the relevant Online Service;
'Commencement Date'	the date, as confirmed to you by us in writing, from which the relevant Service will be set up and can be used by you;

'Initial Term'	the term shown as such in the Offer, commencing on the Commencement Date;
'Customer Materials'	all materials that originate from you, including but not limited to software and data and/or content that you use in combination with the Service or that we must use in order to be able to provide the Service;
'Term'	the applicable Initial Term or the Renewed Term;
'Regular Maintenance'	the times outside office hours in which we can perform maintenance work, as shown in the SLA accompanying the relevant Service;
'New Version'	every successive version of the software that is used operationally as part of the Service, regardless of the technical or commercial name given to this, including but not limited to 'release', 'update', 'upgrade', 'patch' or 'bug fix';
'Offer'	the document that we designate as such and that you and we have signed, forming part of the Agreement, in which we make you a proposal for the design of the Service and which states which Service we provide to you pursuant to the Agreement after the signature of the Offer;
'Online Service'	The Service described as such in the Offer, such as ASP systems, test systems and/or video platforms;
'Agreement'	the Offer, the SLA, the Data Processing Agreement and these GTC together form the Agreement;
'Personal Data'	means all data relating to an identified or identifiable natural person that we process under the Agreement;
'Service Level Agreement' or 'SLA'	the part of the Agreement that we describe as such, containing the Service Levels;
'Service Levels'	the performance levels, such as availability, for the relevant Online Service;
'Sub-Data Processor'	means any data processor, as defined in the GDPR, that will process Personal Data for you on our instructions;

'you' or 'your'	means the legal entity or natural person acting in the practice of a profession or operation of a business, which has contracted the Agreement with us;
'Renewed Term'	means every renewal of the Agreement after the expiration of the Initial Term;
'Data Processing Agreement'	the provisions in Article O;
'we' or 'us'	UP learning B.V.

3. Contracting of the Agreement

- 3.1. The Agreement is contracted in the manner described in the Offer. On confirmation of receipt of the Offer you have signed, we will also state the Commencement Date from which you can use the Service.

4. Provision and set-up of the Service

- 4.1. You will be given access to the Online Service as soon as possible after the signature. This will usually take a number of working days after the signature of the Offer.
- 4.2. You accept that the Service must be set up in order to be able to be used. Where relevant, we will provide a plan for the set-up of the Service concerned in the Offer. You will provide us with the necessary assistance and information, as shown in the Offer, to enable us to set up the Service correctly and in a timely manner. You will ensure that the information you provide is accurate and complete.

5. The Service that we provide

- 5.1. Unless otherwise agreed in writing, Online Services are provided 'as is'. This means that our Online Services have the possible uses that you find. The Online Services are offered and provided to all customers in the same way, apart from the possibilities for designing and setting up the relevant Online Service.
- 5.2. The Consultancy Services are provided in accordance with and in the manner described in the Offer.
- 5.3. Without prejudice to our obligation to provide the Online Services in accordance with the Service Levels, we are not required to provide Online Services entirely free of error or without any interruption and as such, errors and/or interruptions do not constitute default. In the event of a defect or interruption, we shall notify you of this at the earliest opportunity and do our best to resume the relevant Online Service as soon as possible, in observance of the agreed Service Levels.
- 5.4. We may temporarily (arrange to) make Online Services unavailable for maintenance work during Regular Maintenance.

55. If we regard this as necessary for (protection of) the security and/or integrity of an Online Service, performing necessary maintenance that we cannot plan in advance within the Regular Maintenance, the correction of defects and/or solving a failure, we may also temporarily make an Online Service unavailable outside the Regular Maintenance.
56. We will notify you of a planned disconnection of the service at the earliest opportunity. If we make an Online Service unavailable for the reasons referred to in Article 0 and/or are not able to notify you of this in advance, this does not constitute default.
57. You are yourself responsible for all actions and refraining from action that is reasonably necessary and desirable in order to enable us to provide the Service correctly and in a timely manner, including the provision of the correct information which we state is necessary.

6. Changes

- 6.1. Except in the cases referred to in this Article 6 and Article 10, changes to the Agreement between you and us are valid only if the relevant change has been agreed in writing.
- 6.2. As part of the Online Services, we introduce New Versions from time to time in order to provide for continuity and maintenance of the Online Services (explicitly including following the release policy of a licensor) as well as the further upgrading of Online Services. Online Services may change as a result of a New Version. As far as possible, we will notify you in advance of the nature of the changes that a New Version entails and the planned time at which this will be introduced. Outside the context of maintenance, we may also, but are not required to with respect to you, replace or change hardware, software, systems or processes that do not have negative consequences for the availability or potential uses of Online Services. Changes, as referred to in this Article 6.2, form part of the provision of the Online Services and are not changes to the Agreement or the Online Services to which the provisions of Article 6.1 apply.
- 6.3. You also have the right to cancel the relevant Agreement during the Initial Term in writing, up to two (2) months after we announce the change and following good commercial talks with us, if:
 - a) we change an Online Service and this entails a substantive reduction in the functionality and/or Service Levels of the relevant Online Service; and
 - b) the change is not due to the fact that a licensor of the relevant New Version requires of us or makes it necessary for us to commission a New Version because the relevant licensor no longer maintains or otherwise no longer supports the version to be replaced by the New Version.

7. Customer Materials

- 7.1. You guarantee that, in as far as it is necessary that we use Customer Materials in order to provide the Service, you have obtained permission from third parties to the extent necessary for us to deliver the Service.
- 7.2. You shall indemnify us against third party claims on the grounds of breaches of intellectual property rights of that third party or of unlawful action arising through the failure to obtain the permission referred to in this Article or through the use or presence of Customer Materials in connection with the Service.

8. Goods made available

- 8.1. If we make goods available to you as part of the Service, such as equipment, you are not permitted to:
- a) attach the goods provided to any moveable property or real estate in any way such that they lose their independence through accession, integration or specification;
 - b) change the nature, purpose, location or design of the goods made available without our prior written consent;
 - c) change or remove any distinguishing marks applied in any way.
- 8.2. You bear the risk and expense of any costs and damage arising through loss or damage to the goods made available to you.
- 8.3. You shall notify us immediately if a third party wishes to exercise any right in relation to goods made available or of any seizure of goods made available by us (property falling under bankruptcy).
- 8.4. The dispatch and transportation of goods made available shall take place at our risk and expense, except in the case of an urgent delivery or a delivery outside standard office hours, or if the dispatch and transportation is provided for by you or on your behalf.
- 8.5. We are not liable for damage caused by delays in the delivery of goods made available.

9. Use of the Service

- 9.1. You shall use the Service:
- a) in accordance with the agreed User Conditions, in as far as these concern Online Services;
 - b) solely for your internal business purposes;
 - c) the Service shall not be made available to third parties in any form, including but not limited to hiring, sub-hiring or other forms of disclosure for which the Agreement does not provide;
 - d) without infringing subjective rights of third parties, including end-users; and
 - e) will use the Service in observance of all reasonable instructions that we issue.

10. Fees

- 10.1. If we provide Additional Services, you will owe us a fee. We calculate the fee for Additional Services on the basis of post-calculation, by multiplying the time we spend on providing the Additional Services by the rates that we charge at that time. The fee determined in this way on the basis of post-calculation is payable at the end of the calendar month in which the Additional Services are provided.
- 10.2. Unless agreed otherwise in writing, the fee is due and payable for the Service after we receive the signed Offer from you. This also applies to Prepaid Cards.

- 10.3. Fees for Consultancy Services become due and payable at the following times:
- a) Fees of less than €5.000 are due in full (100%) and become payable after the Offer has been signed;
 - b) For fees of up to €25.000, 50% is due and becomes payable after the Offer has been signed; The remaining 50% become due and payable after delivery (but no later than 6 months after signing the Offer);
 - c) For fees in excess of €25.000, 50% is due and becomes payable after the signature of the Offer, 25% is due and becomes payable after the agreed milestone has been reached or (if no specific milestone has been defined) after we have reached 75% of all services rendered. The remaining 25% is due and becomes payable after delivery (but no later than 6 months after signing the Offer).
- 10.4. If we have agreed in the Offer that the full fee is due and payable before we provide the agreed Consultancy Services, we will provide the relevant Consultancy Service after you have paid the amount due.
- 10.5. When we perform the Consultancy Services on-site, we will charge for travel costs. Travel distance and appointment duration together drive the costs for this:
- a) If the travel distance from the Ede office to the location is less than 50 km, we will not charge travel costs, provided that at least one half day of 4 consecutive hours is taken. With a consumption of fewer hours, we charge one extra Consultancy Service hour at the agreed rate.
 - b) If the travel distance from the Ede office to the location is more than 50 km, we will charge one extra Consultancy Service hour at the agreed rate for an appointment duration between 4 and 8 hours. With a consumption of less than 4 hours and a travel distance greater than 50 km, we will charge two additional Consultancy Service hours at the agreed rate.
- 10.6. Appointments with a consultant can lastly be cancelled or rescheduled two working days before the appointment takes place. In the event of later cancellations, the planned hours and costs will be invoiced.
- 10.7. Unless stated otherwise, the fee is denominated in euros and is increased by VAT.
- 10.8. For consultancy work performed in weekends we will charge 150% of the regular fees, unless otherwise agreed.
- 10.9. We may change the fee in order to charge on cost increases resulting from necessary adjustments to the Service as a result of legal amendments, general pay increases and increased fees charged to us by third parties for matters including licence fees and/or New Versions. We will notify you of each change in advance, observing a notice period on one (1) month before the altered fee is charged. If, in any calendar year, we increase the fee by more than 5% of the Statistics Netherlands (CBS) Commercial Services Price Index for the immediately preceding calendar year, you have the right to cancel the relevant Agreement in writing within two months of that moment.
- 10.10. Unless otherwise agreed, you must pay fees due within 14 days.

11. Processing of Personal Data

11.1. If the Service requires us to process Personal Data, we and you must act in accordance with the General Data Processing Regulation (GDPR) in relation to Personal Data that are processed as part of the Service. Under the Agreement, you are the data controller within the meaning of the GDPR, and we are the data processor within the meaning of the GDPR. This Article 0 is a data processing agreement within the meaning of Article 28 of the GDPR ('Data Processing Agreement'). It is your responsibility to ensure that the Personal Data are processed in compliance with the GDPR.

11.2. Subject to statutory obligations to the contrary, we shall:

- a) process Personal Data only in the manner described in the Agreement and in accordance with your instructions;
- b) Store Personal Data during the term of the Agreement. If the Data Controller wishes to apply a different term, it must submit a written request to that effect, in which case the Data Processor may impose conditions for the execution of this;
- c) provide you with support for compliance with the obligations pursuant to Articles 32 to 36 of the GDPR, in as far as our support is necessary for that purpose;
- d) taking account of the nature of the processing, you shall provide assistance, in as far as possible, for compliance with your obligation to respond to requests to exercise the rights of the relevant data subject pursuant to the GDPR, by means of appropriate technical and organisational measures; and
- e) ensure that only (i) our employees and (ii) Sub Data Processors gain access to Personal Data and only for as long as this is necessary in relation to the performance of our obligations pursuant to the Agreement; and
- f) taking account of the nature of the processing and the information available to us, shall take and maintain the appropriate technical and organisational measures; We are ISO/IEC 27001 certified.

11.3. We are permitted to make use of Sub Data Processors in relation to this Data Processing Agreement. We shall notify you of any envisaged changes concerning the addition or replacement of Sub Data Processors. You have the right to object to this change and to cancel the Agreement with us. We shall make efforts to impose the same obligations on the Sub Data Processors as those arising for us pursuant to this Data Processing Agreement.

11.4. We may transfer to and process Personal Data in a country outside the European Economic Area (EEA) if we:

- a) receive instructions from you to that effect or if we are required to do so pursuant to statutory provisions; and
- b) the country in question assures an appropriate level of protection, which is formally recognised as such through placement on the European Commission's 'white list'; or
- c) we make use of a model contract as referred to in Article 46(2)(c) and 46(2)(d) of the GDPR; or

- d) the transfer is permitted on the basis of other grounds pursuant to applicable legislation.
- 11.5. If we are required to transfer Personal Data pursuant to statutory provisions, we shall notify you accordingly, unless the statutory provision prohibits such notification for serious reasons in the general interest.
- 11.6. If Personal Data are transferred to a Sub Data Processor in a country outside the EEA and we cannot contract a model contract with the Sub Data Processor in our own name, you shall instruct and authorise us to issue instructions to the Sub Data Processor on your behalf and to conclude the model contract.
- 11.7. All information that we receive from you is subject to a confidentiality obligation in relation to third parties. We shall protect the confidentiality of the Personal Data and shall contractually oblige our employees and Sub Data Processors, before they are granted access to the Personal Data, to protect the confidentiality of the Personal Data that they may be able to access in relation to the execution of the Agreement.
- 11.8. This confidentiality obligation does not apply in as far as you have issued your explicit prior consent for the provision of information to third parties or if the provision of information to third parties is logically necessary in view of the nature of the instructions that you have issued to us. The confidentiality obligation does not apply if we are required to provide the information to a third party pursuant to a statutory obligation.
- 11.9. We shall inform you fully and without unreasonable delay of every Data Breach as soon as we become aware of the existence of the Data Breach, including with regard to:
 - a) the commencement time of the Data Breach;
 - b) the nature and scale of the Data Breach;
 - c) the expected recovery time; and
 - d) which measures have been taken or proposed in order to end the Data Breach,
- 11.10. We shall take such measures as can reasonably be expected of us in order to correct or limit the detrimental consequences of the Data Breach as far as possible.
- 11.11. We shall make all such information available to you as is necessary to demonstrate compliance with the obligations set forth in the Data Processing Agreement and will permit you to provide for an audit, including inspections into our compliance with the Data Processing Agreement. The parties shall plan a date for the audit by agreement.
- 11.12. You guarantee us that the work that you instruct us to perform is lawful and indemnifies us against (i) all damage (ii) penalties imposed on us or you by supervisory authorities in connection with failure to comply with this obligation.
- 11.13. Pursuant to the GDPR, the Data Controller has obligations to the Data Subject, such as obligations regarding the provision of information, the provision of access to Personal Data and the rectification and erasure of Personal Data. If possible, the Data Processor shall assist in compliance with the obligations to be met by the Data Controller. The Data Processor reserves the right to charge the Data Controller its regular hourly rate for its assistance.

11.14. If a Data Subject contacts the Data Processor directly in relation to the exercise of its rights pursuant to the GDPR, the Data Processor shall not respond to this (substantively), but shall notify the Data Controller without delay.

12. Intellectual Property Rights

12.1. The Agreement does not serve for the transfer of any intellectual property rights to you, by ourselves or by a third party that we deploy.

12.2. For as long as necessary, you grant us rights of use for all intellectual property rights to Customer Materials, in as far as we need to use these in order to provide the Service.

12.3. If a third party makes a claim on the grounds that the Service breaches intellectual property rights of that third party, we shall indemnify you, provided that you:

- a) notify us immediately, in writing, of the existence and content of the legal claim;
- b) grant us control over the settlement and the defence;
- c) make no promises to the relevant third party;
- d) provide us with the necessary powers of attorney, information and assistance to enable us to conduct a defence against this legal claim, on your behalf if necessary; and
- e) the third party claims are not related to your use of the Service in a manner in contravention of the Agreement.

12.4. If we take the view that the Service or a part thereof breaches intellectual property rights of a third party, we shall:

- a) adjust the Service at our own expense, in such a way that no further breach takes place; or
- b) obtain a licence for the part that breaches the intellectual property rights; or
- c) if, in our view, the foregoing is not possible on reasonable terms or for reasonable costs, will cancel the Agreement, in which case we shall refund amounts that you have prepaid in proportion to the date of termination.

12.5. You will indemnify us against all third party claims relating to the use of your brands, logos, distinguishing marks or intellectual property rights in connection with the Service.

12.6. In relation to breaches of intellectual property rights, we have no obligations other than those referred to in this Article.

13. Liability

13.1. In the event that we are liable, our liability to pay compensation for damage is limited to the lower of a sum not exceeding 50% of the fees that you owed us in the calendar year in which the incident on which the liability is based occurred, or €50,000, regardless of the grounds for the liability, including on the grounds of attributable shortcomings, unlawful action, failure to comply with guarantee obligations, an indemnification obligation or otherwise. We are not liable for indirect damage such as loss of earnings, loss of revenue or reputational damage.

14. Term and termination

- 14.1. Unless otherwise agreed, the Agreement is contracted for the Initial Term. The Initial Term commences on the Commencement Date.
- 14.2. Unless otherwise agreed, the Agreement will automatically be tacitly renewed before the end of the Initial Term and on each subsequent occasion for twelve (12) months (the 'Renewed Term').
- 14.3. Each Party may cancel the Agreement in full, in writing and in observance of a notice period of two (2) months prior to the end of the Initial Term or the Renewed Term. In the event of cancellation, the Agreement is terminated on the expiration of the Initial Term or the Renewed Term in which timely notice of cancellation is issued.
- 14.4. You may also cancel the relevant Agreement in writing during the Initial Term, if and for as long as the provisions of Article 6.3 or 10.8 apply.
- 14.5. Each Party may cancel the Agreement, partially or in full, with immediate effect, in writing and without notice of default, including during the Term, if:
- a) the other party is granted a moratorium on payments, provisional or otherwise;
 - b) an application for bankruptcy or compulsory winding up is filed in relation to the other party; and/or
 - c) the other party's business is liquidated or discontinued, other than for the purpose of reconstruction or the merger of businesses.
- 14.6. We have the right to cancel the Agreement, partially or in full, with immediate effect, in writing and without notice of default if the control over your business changes.
- 14.7. Without prejudice to your or our rights to dissolve the Agreement in compliance with the law, we may dissolve or suspend the Agreement, partially or in full, with immediate effect and without the intervention of a court or any liability to pay compensation for damage if:
- a) we have asked you to provide surety for compliance with your obligations pursuant to this Agreement and this surety has not been provided or is insufficient; or
 - b) due to delays arising on your part, we can no longer reasonably be required to comply with the Agreement on the originally agreed terms and conditions.
- 14.8. Termination of the Agreement, regardless of the grounds for the termination, shall not lead to any right to repayment of fees for the Services that we have provided.

15. Exit Assistance

- 15.1. If the agreement between you and us ends, we shall draw up an Exit Plan at your earliest request.
- 15.2. On termination of the Agreement, we shall make the data that you have stored with an Online Service in storage possibilities forming part of the Online Service for that purpose available to you on request. To that end, you must submit a request to that effect to us within two weeks of the termination of the Agreement. We will make the data available in a customary format. We have the right to destroy the data referred to in this paragraph if you have not submitted the

request referred to in this Article within two weeks or have not collected data made available within two weeks of our notice to you that the data are available.

- 15.3. We are willing to reach agreement on the provision of reasonable assistance on termination. This further assistance is an Additional Service.

16. Confidentiality

- 16.1. We will not share confidential information that you provide with third parties unless we are required by law to provide these data, or you instruct us to do so. We will make confidential information available to our staff and/or third parties that we deploy only if it is necessary for them to view this information. We will indemnify you against any action we take in contravention of the provisions of this Article.
- 16.2. Our Service contains business secrets relating to ourselves and to third parties. You are not entitled to view (or arrange to view) these data in any way. You shall refrain from any action intended to provide third parties with access to these business secrets. In particular, you will not derive information, and will not permit third parties to derive information on or from the Service regarding e.g. software, encryption, algorithms, security and/or codes in any way whatsoever, including but not limited to decompilation or reverse engineering. You will indemnify us against any action you take in contravention of the provisions of this Article.

17. General

- 17.1. Without prejudice to the provisions of Article 6, we may amend the GTC and declare the altered GTC applicable to the Agreement. On each occasion, we shall also state the date from which the altered GTC will apply.
- 17.2. You hereby grant us permission to name your organisation as one of our customers and a buyer of the Service, to name your organisation on our website and to use the existence of the Agreement with your organisation for our marketing purposes.
- 17.3. We aim to comply with the terms and dates we set for the performance of services, such as the Commencement Date, as far as possible. We will not be in default by law solely due to the fact we exceed a date or term.
- 17.4. Unless provided otherwise in the Agreement:
- a) 'written' also refers to electronic data communications and
 - b) definitions in the singular also refer to the plural and vice versa.

18. Applicable law, disputes

- 18.1. This Agreement is governed by Dutch law.
- 18.2. All disputes between the parties shall be submitted solely to the competent court in Gelderland, Arnhem location.