

## Studytube Conditions of Use

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### **Article 1 Definitions and Interpretation**

1.1 In these Conditions of Use the following terms are defined as follows:

**Additional Services:** the additional services specified in the Agreement which the Client will purchase from Studytube.

**Agreement:** the agreement, namely the Service Agreement, between Studytube and the Client for access to and use of the Platform, including the agreed Annexes, of which these Conditions of Use form an integral part.

**References** in these Conditions of Use to the Agreement are also intended to refer to these Conditions of Use themselves.

**Author Tool:** the Module by which the Client is able to develop its own Learning Interventions.

**Classroom Workshops:** classroom, offline workshops, training sessions or training courses offered via the Platform by External Trainers.

**Client:** the party indicated as the Client in the Agreement.

**Client Material:** All information, data, materials and/or works that are placed on the Platform by or on behalf of the Client or Users, including online workshops, training sessions or training courses developed by or on the instructions of the Client and which the Client makes available to Users via the Platform, including all texts, images, video and/or sound materials it contains.

**Company Academy:** the password-protected and closed environment(s) on the Platform specifically designed for the Client.

**Conditions of Use:** these Studytube Conditions of Use.

**DOI:** the Module by means of which the Client can directly book Classroom Workshops with External Trainers via the Company Academy.

**Contact Persons:** the contact persons designated by the Client in the Agreement

**Effective Date:** the date on which the Agreement becomes effective as stated in the Agreement.

**External Trainers:** third parties that offer Classroom Workshops or Online Workshops to Client and Users via the Platform.

**Force Majeure Event:** any event beyond the reasonable control of Studytube, including orders, instructions, requests, acts or omissions of any (local) government, a disaster management organisation, agencies, or other competent authorities, legal or statutory obligations, problems, delays or errors in production or delivery by third parties of equipment, infrastructure and/or services, or any other cause that is beyond Studytube's control.

**IP Rights:** all intellectual property rights and rights related to them, wherever in the world, including patent rights, copyrights, neighbouring rights, trademark rights, model rights, database rights, unified performances and know-how rights.

**Learning Interventions:** all educational content offered on the Platform including Classroom Workshops, Online Workshops and Micro Learnings.

**Learning Service(s):** the learning services provided by Studytube as described in the Agreement (including but not limited to Group Booking, Non-Catalogue Booking, and/or Invoicing Service).

**LMS:** the Module by which the Client can set up and manage the Company Academy and its use, including setting and changing the access and permissions of Users, assigning, changing and removing Learning Interventions to Users, monitoring and directing the learning progress of Users, allocating and managing budgets and viewing invoices and with which the Client can communicate with Studytube and Users.

**Micro Learnings:** short and/or simple educational content from third parties made available to Users via the Platform, such as videos or articles.

**Modules:** the various parts of the Platform that are purchased by the Client, as included in Annex 1 to the Agreement.

**Online Workshops:** online workshops, training sessions or training courses offered via the Platform by External

Trainers and which are made available for Users via the Platform.

Party/Parties: where applicable, Studytube and/or the Client.

Platform: Studytube's online, automated e-learning platform on which the Company Academy for the Client will be opened and set up, including the Modules.

Processor Agreement: the Processor Agreement between Studytube and the Client as included in Annex 4 to the Agreement.

Services: the services as agreed in the Agreement (for instance providing access to and making available the Platform and the Company Academy, LMS, Course Library, Authoring Tool, DTA, Invoicing Service and Learning Service).

SLA: the Service Level Agreement between Studytube and the Client as included in Annex 3 to the Agreement.

Studytube: the private company with limited liability Studytube B.V., with its registered office in Amsterdam and listed in the Commercial Register of the Chamber of Commerce under number 51290901.

Third Party Content: all material on the Platform whose content has been developed and/or compiled by third parties, including Classroom Workshops, Online Workshops and Micro Learnings.

Users: Client's employees, or other natural persons working directly in the Client's organisation, who are assigned a User license from or on behalf of the Client.

User License: a license that allows one specific and named User to access the Platform.

Working hours means Monday to Friday from 9:00 AM to 5:00 PM Central European Time, except for public holidays.

Workshop Library: the Module by which Online Workshops can be offered and made available to Users via the Company Academy.

1.2 Where in these Conditions of Use the terms 'inclusive', 'such as', 'inter alia', 'including', 'among which' or similar terms are used, this is not intended to be exhaustive.

1.3 In these Conditions of Use, the term 'in writing' will also include message traffic by e-mail, fax or other forms of electronic communication, providing the person sending the respective communication is authorised to state its content. Reference to a 'signed document' in these Conditions of Use will include a document that is signed by an authorised person on behalf of each of the Parties, either on paper or by means of a digital signature.

## **Article 2 Applicability and Amendments**

2.1 These Conditions of Use apply to all Agreements between Studytube and the Client, to the provision of Services by Studytube and to the Client's use of the Platform. If these Conditions of Use are or have been applicable to any legal relationship between the Parties, they will apply by operation of law to all legal relationships of a subsequent date.

2.2 Any general terms and conditions of the Client or of third parties are explicitly not applicable, regardless of any reference to those conditions in communications from the Client with a date subsequent to that of the Agreement. Deviations from these Conditions of Use are only possible in writing or, if required by these Conditions of Use, by means of a signed document.

2.3 Studytube is entitled at any time to amend these Conditions of Use. The amended Conditions of Use will become effective and are applicable to all Agreements thirty days after the date on which the amendments have been made known to the Client. If the Client does not want to agree to the amended Conditions of Use, it will be entitled as its sole remedy to terminate the Agreement as from the date on which the amendments become effective.

2.4 Insofar as any provision(s) in the Agreement, in (one of) the Annexes or in any other agreed (purchase) conditions conflict with each other, the following order of priority will apply: (i) the Agreement, (ii) the Modules, Licences and Pricing (Annex 1), (iii) the Processor Agreement (Annex 4), (iv) these Conditions of Use (Annex 2), (v) the SLA (Annex 3), and (vi) any other validly agreed (purchase) conditions.

## **Article 3 Service provision**

3.1 The Studytube Services include, among other things, providing the Client with access to the Platform,

offering the Client support in setting up the Company Academy, providing the Client with the agreed Modules and providing the Client with the agreed Additional Services, all this under the conditions of the Agreement. The Studytube Service also includes offering as an intermediary, if applicable, a technological platform on which the Client can purchase Classroom Workshops and Online Workshops from External Trainers.

3.2 All Services are performed on the basis of a best-efforts obligation, unless and to the extent that Studytube has explicitly promised a result to the Client and the result in question has been defined in a sufficiently precise manner.

3.3 In order to prevent or limit any liability towards third parties, Studytube is entitled to take measures with regard to the use of the Platform and/or the Services by the Client. In the event of a violation or (threat of) violation of these Conditions of Use Studytube will be entitled to deny, suspend or limit the Client's access to the Platform.

3.4 The Client will provide Studytube with all information and materials and provide all the assistance reasonably necessary to Studytube for the adequate performance of the Agreement and it guarantees that all the information and materials provided are always correct, complete, accurate and current.

#### **Article 4 Implementation**

4.1 Insofar as the Platform offers the possibilities to do so, the Company Academy can be designed by the Client in the Client's house style and branding.

4.2 If the Parties agreed in the Agreement that Studytube will carry out implementation activities, Studytube will provide support during the agreed period for designing and using the LMS and the Company Academy. In doing so Studytube will be able to give advice including on the use of the Workshop Library, on the deployment of Learning Interventions in connection with the objectives intended by the Client and on the learning paths to be offered, and be helpful in assigning User Licenses, grouping Users into teams, assigning Learning Interventions to Users and importing User Data into the LMS from Client systems. The Client itself is responsible for offering Learning Interventions to Users. Studytube excludes any liability for this entirely, regardless as to whether it played an advisory role in this respect.

4.3 Insofar as Studytube provides any other support with the design or configuration of the Platform, it does so without any obligation.

#### **Article 5 Technical Link**

5.1 If the Parties agreed in the Agreement that Studytube will establish technical link(s), Studytube in consultation with the Client will make an effort to link the LMS to the Client's systems which are to be agreed between the Parties. It may, among other things, be possible to establish a technical link with the Client's HR systems in order to import User Data directly into the LMS and possibly establish single sign-on functionality that allows Users to log into the Company Academy from Client's systems.

5.2 The parties will conduct a feasibility study with regard to the desired technical link. In this connection it will be determined which technical links will be established, which systems of the Client will be involved, which activities and efforts will be required for this from both Studytube and the Client, what information the Client must provide for this and the period within which the technical link is deemed to be made. Any communicated delivery periods and/or dates are never deadlines.

5.3 At the time of signing the Agreement, the feasibility study has not yet taken place. The fee for the technical link included in the Agreement is therefore only an indication. The fee that Client pays after signing, will be paid as a non-refundable advance. Based on the feasibility study the Parties might have to agree an additional fee. At Studytube's request the Parties will conclude a separate agreement for the technical link.

5.4 If, during the performance of the technical link, it appears that Studytube needs to carry out activities that, in Studytube's opinion, exceed the activities determined in the feasibility study, those additional activities will be considered as additional work. Studytube will never be obliged to accept additional work and may require an additional fee to be paid for this and a separate written agreement be concluded. Carrying out additional work may have consequences for the planning of the technical link.

## **Article 6 License, Access and Use of the Platform**

6.1 Subject to the Client paying all the fees payable to Studytube, Studytube grants the Client a platform license in order to use the Platform as well as User Licenses to allow Users to access the Platform from the Effective Date and during the term of the Agreement and under the conditions of the Agreement. These licenses are non-exclusive, non-transferable, non-pledgeable and non-sublicensable.

6.2 The provision by Studytube and the right of use granted therein do not cover to the source code of the software underlying the Platform. The Agreement is not considered by the Parties as a purchase agreement.

6.3 Studytube will be entitled to take technical measures in order to protect the Platform against unlawful use and/or against use in a different way or for purposes other than those agreed between the Parties. The Client shall not remove, or have removed, or bypass, or have bypassed, technical provisions meant to protect the Platform.

6.4 Access to the Platform is granted remotely via the internet or another data network.

6.5 If the Parties have so agreed in the Agreement, Studytube can open and set up more than one Company Academy for the Client in order to serve different groups of Users.

6.6 After the Agreement has been concluded Studytube will provide the Client with login details by sending them to the contact person mentioned in the Agreement. The Client can then assign User Licenses through the LMS and invite Users to register. The Client is obliged only to communicate the login details provided to it for the Platform to authorised Users and to oblige Users to keep the login details secret and not to disclose them to third parties. The Client is responsible and liable for all authorised and unauthorised use of the Platform that takes place through Users' login details. The Client fully indemnifies Studytube against all claims by third parties that are in any way related to any unauthorised use of the login details and against all related damage and costs, including full lawyer's costs.

6.7 In the LMS certain Users may be assigned various powers, including powers to manage the Company Academy on behalf of Client. The Client warrants that Users are legally authorised to represent the Client with respect to the powers assigned to their specific user role in the LMS.

6.8 The Client itself is responsible for the use it makes of the Platform and the Services. When using these, the Client must comply with all the (user) regulations and procedures of Studytube, including these Conditions of Use.

6.9 The Client must make sure that it has the facilities that are necessary for the use of the Platform and the Services.

6.10 The Client will use the Platform and Services solely for internal use and within the conditions of the Agreement and the purchased licenses and only grant access to authorised Users. Use for the benefit of third parties is not allowed in any way. The Client will not (re)sell, let out, dispose of or grant restricted rights to the Platform and the Services or make them available to a third party in any way, for any purpose or under any title whatsoever. Nor will the Client give a third party access to the Platform, whether or not remotely, not even if the respective third party uses the Platform for the Client's benefit.

6.11 The Client will at all times respect the privacy of third parties, not distribute data contrary to the law, not gain unauthorised access to the Platform, not spread viruses or other harmful programs or software code and refrain from criminal acts, violations of other legal obligations and any other wrongful act or omission.

6.12 The Client guarantees that Users will not act contrary to these Conditions of Use and fully indemnifies Studytube against all third-party claims which are in any way associated with a violation of these Conditions of Use by Users and against all related damages and costs, including the full lawyer's costs.

6.13 The Client agrees that employees of Studytube, or natural persons who work directly in the organisation of Studytube, can access (all parts of) the LMS in order to enable the correct performance of the Services by Studytube.

## **Article 7 Classroom Workshops and External Trainers**

7.1 If the Client purchases the DOI Module, Users can view the Classroom Workshop range in the Company Academy and register for it. Agreements for participation of Users in Classroom Workshops are entered into directly between the Client and the External Trainer. Studytube is not a party to this and accepts no

responsibility or liability for this. External Trainers themselves determine the costs for Classroom Workshops. These costs are stated on the Platform including VAT, unless otherwise stated. Costs for Classroom Workshops are paid by the Client to the External Trainer.

7.2 All information in the Classroom Workshops range are published on the Platform by External Trainers, under their own responsibility. Studytube carries out normal checks for accuracy, but does not guarantee that the information provided by External Trainers is correct, complete or up-to-date.

7.3 External Trainers are entitled to cancel Classroom Workshops if the required number of participants has not been reached. Any fees paid in advance by the Client must in that case be refunded by the External Trainer. Studytube is not liable for this. The Client and/or individual Users are entitled to cancel Classroom Workshops if and on the conditions under which this has been communicated via the Platform by the External Trainer.

## **Article 8 Studytube Invoicing Service**

8.1 The parties can agree in the Agreement that the invoicing process of the Learning Interventions booked by the Client via the Platform between External Trainers and the Client will run via the Additional Service 'Studytube Invoicing Service'.

8.2 The Studytube Invoicing Service consists of Studytube supporting the Client in processing invoices for Learning Interventions booked by the Client via the Platform with external Trainers. The Studytube Invoicing Service ensures that invoices to the Client (i) are collected centrally, (ii) are checked by Studytube for correctness, (iii) are periodically merged into one single invoice statement, (iv) are forwarded to the Client as one invoice statement and (v) will be paid periodically on behalf of the Client to the External Trainers upon receipt by Studytube of the payment of the costs for the Learning Interventions booked by the Client.

8.3 If and insofar as has been agreed between the Parties in the Agreement, it is possible to use the Studytube Invoicing Service for both the Client and the companies affiliated with it in a group (as determined in Section 2:24b of the Dutch Civil Code) which companies form part of the Agreement. In this respect, the Client itself is responsible for indicating to Studytube that the invoices from the External Trainers contain the correct names and address details so that Studytube can process the invoices correctly with the Studytube Invoicing Service. Any shortcomings and/or errors in the required names and address details are at the expense and risk of the Client. Studytube does not accept any responsibility and liability for non-compliance with this Article.

8.4 Studytube will periodically send the Client an invoice overview with the Studytube Invoicing Service for the Learning Interventions booked by the Client via the Platform with External Trainers. On the invoice overview, Studytube states the total amount of costs for the booked Learning Interventions, as well as the Invoicing Service Fee payable by the Client to Studytube. The Client must pay this amount into the bank account number stated on the invoice overview, all this under the payment conditions as set out in Article 7 and on the understanding that the Client is obliged to make the payments to Studytube within a maximum period of thirty days and that the total amount will become immediately due and payable in the event of late payment. In order to enable timely payment to the External Trainers, the Client is obliged to apply a payment term of sixty days to the External Trainers.

8.5 The separate invoices provided by External Trainers for the Learning Interventions booked by the Client are sent by Studytube together with the invoice overview of the Client, all this for the benefit of the Client's own accounts. The invoices are in the name of the Client (or in the name of a company affiliated with it in a group if and insofar as Studytube has been provided by the Client with the correct name and address details). The Client itself is at all times responsible for the payment of VAT on the basis of these invoices.

8.6 The costs paid by the Client for Learning Interventions booked via the Platform will be transferred to the External Trainer by Studytube for and on behalf of the Client after Studytube has received the payment from the Client. All amounts in Studytube's possession are held solely for the benefit of the party to whom the amounts accrue and are managed as such.

8.7 The Client owes Studytube an ongoing Invoicing Service fee for having purchased the Studytube Invoicing Service. This ongoing Invoicing Service Fee amounts to 2.0% of the total amount that the Client owes to the External Trainers for booked Learning Interventions, as indicated on the invoice statement periodically provided by Studytube to the Client.

8.8 If any amount is paid by the Client directly to an External Trainer or is deposited into a bank account of an External Trainer, the Client itself will be responsible and liable for recovering the relevant amount from the External Trainer. Studytube has no responsibility or liability for such recoveries. Direct payment by the Client to an External Trainer does not affect the Client's payment obligations under the invoice overview, including the Invoicing Service fee.

8.9 The External Trainer himself is responsible for any shortcomings and/or errors in the delivery of Learning Interventions and the invoices sent, as well as for handling complaints and/or questions about this. If a dispute arises the Client must address the External Trainer. Studytube cannot under any circumstances be obliged to receive and/or handle on behalf of the External Trainer any complaints and/or questions from the Client regarding the booked Learning Interventions or invoices. After all Studytube is not a party to the performance of the booked Learning Interventions. Any disputes between the Client and an External Trainer, including contesting an invoice from an External Trainer or raising disputes regarding the implementation of the booked Learning Interventions, do not affect the Client's payment obligation under the invoice statement, including the Invoicing Service fee, or Studytube's obligation to proceed with the transfer payment to an External Trainer.

8.10 Studytube is entitled to demand appropriate securities from the Client further to be determined (such as payment of an advance and/or a deposit) to cover the payment of the costs that External Trainers charge the Client for Learning Interventions booked by the Client via the Platform. At Studytube's first request, the Client will reasonably contribute ideas with regard to providing appropriate security if there is reason to believe that the Client will not pay the amounts payable to the External Trainers. After the Agreement with the Client has terminated Studytube will be entitled to retain temporarily and within reasonable limits the security it has received from the Client until all amounts payable by the Client to Studytube have been paid. After termination of the Agreement Studytube will be entitled to offset all its claims against securities received by Studytube from the Client.

8.11 The Client acknowledges and agrees that Studytube is not the party responsible and liable for the payment of the costs for the booked Learning Interventions to the External Trainers. Insofar as Studytube facilitates payment through the Studytube Invoicing Service, it does so exclusively for and on behalf of the Client. The Client itself is at all times responsible and liable for payment of the costs for the Learning Interventions booked with the External Trainers and bears the risk of non-payment of these costs.

8.12 The Client undertakes to adopt an active and productive attitude if in the unlikely case of non-payment an External Trainer still turns to Studytube, for example by the Client immediately making the payment or taking over the dispute, and indemnifies Studytube against all claims by third parties, including claims from an External Trainer, related to and/or arising from the Client's failure to comply with the agreements in this Addendum and for all related damages and costs.

8.13 Studytube facilitates the payments from the Client to the External Trainers through Online Payment Platform B.V. (OPP). To use OPP's services, the Client will need to create a user account with OPP and agree to the OPP User Terms (<https://onlinepaymentplatform.com/terms-policies/terms-of-use>).

## **Article 9 Learning Services**

9.1 If agreed, Studytube will provide the Client with Learning Service(s).

9.2 Requests for a Learning Service will only be processed if they are submitted via the designated online request form.

9.3 Studytube's customer service desk is available during Working Hours. The response time for the Learning Service is 16 Working Hours.

## **Article 10 Fees, Invoicing, Payment and Tax**

10.1 The Client will pay the agreed fees for the provision of the Services. The amount of the fees may partly depend on the Modules purchased by the Client, the number of User Licenses purchased by the Client and the Additional Services purchased by the Client.

10.2 All fees are in Euros and exclusive of VAT and any other government levies, unless stated otherwise.

10.3 Studytube reserves the right to annually increase its fees as of January 1st by the latest services price index (DPI) published by the Central Bureau of Statistics (CBS), with a minimum increase of 5%. Additionally,

Studytube is entitled to raise the fees it charges upon renewal of the Agreement.

10.4 Studytube invoices all fees in advance, with the User License fees being invoiced twelve months in advance. The Client will pay invoices in Euros. Payments must be received by Studytube within a period of 15 days after the invoice date, unless otherwise agreed. Fees paid are non-refundable unless expressly agreed otherwise.

10.5 In the event of late payment, the amount payable will become immediately due and payable and the Client will be in default without a further notice of default being required. In that case, Studytube will send the Client a reminder to point out that the payment term has been exceeded. If the Client does not comply with this reminder, Studytube will be entitled to outsource the collection and to increase the amount payable with administration and collection costs, in accordance with the Dutch Collection Costs Act (Wet Incassokosten). Studytube will also be entitled to charge per month the statutory commercial interest on the amount payable from the date of the default onwards.

10.6 If the Client requests additional User Licenses during the term of the Agreement, these User Licenses will become effective on the same day of the request month as the Effective Date and will be invoiced up to the next invoicing moment of the Agreement.

10.7 The Client is responsible for withholding and declaring any taxes or other government levies applicable to fees invoiced by Studytube, in accordance with applicable tax regulations and the practices and requests of the tax authorities. The Client is responsible for payment and remittance of any taxes or other government levies applicable to fees invoiced by Studytube and any penalties and interest for late payments or failure to withhold and/or declare taxes applicable to the costs invoiced by Studytube.

10.8 All payments to be made by the Client in connection with the Agreement must be made without any deduction or set-off and without deducting or withholding amounts for taxes, fees, surcharges or levies of any nature whatsoever. If Studytube is obliged to deduct or withhold such an amount, the Client will pay Studytube the additional amounts necessary to ensure receipt by Studytube of the full amount that it would have received without deducting or withholding the amount.

## **Article 11 Content**

11.1 Third Party Content is made available to the Client via the Platform. This Third Party Content is and will remain the property of Studytube and/or its suppliers or licensors. The Client only acquires a non-exclusive, non-transferable, non-pledgeable and non-sublicensable right to make the Third Party Content in the Company Academy available to Users during the term of the Agreement, in accordance with the conditions set out in the Agreement and exclusively in the manner intended with the functionalities of the Platform.

11.2 Use of Third Party Content may be subject to the terms of the respective third party.

11.3 Studytube strives to achieve and maintain a high level of Content on its Platform, but does not guarantee and is not liable for any damage caused by incorrect, incomplete, outdated, infringing or otherwise wrongful Third Party Content. Use of Third Party Content is entirely at Client's risk and responsibility. Studytube does not guarantee that certain Third Party Content will be or remain available on the Platform.

11.4 The Client can itself upload and/or make available Third Party Content and Client Material via the Platform and (as a Learning Intervention) make it available to Users via the Company Academy. The Client is fully responsible and liable for all Third Party Content and all Client Material uploaded on the Platform and/or made available through the Platform by or on behalf of the Client.

11.5 If Studytube edits, categorises or qualifies Third Party Content or Client Materials and/or provides it with any description or metadata, this is done solely for the convenience of the Client and Users. Studytube does not accept any liability and does not guarantee that this editing, categorisation, qualification, descriptions, and/or metadata are accurate, complete, or up-to-date.

11.6 The Client is obliged at Studytube's first request to remove immediately any Third Party Content or Client Material indicated by Studytube from the Platform.

11.7 Notwithstanding any other rights of Studytube, it can at any time remove from the Platform all Third Party Content or Client Material uploaded on the Platform or made available via the Platform by the Client, for any reason whatsoever, for example if it considers itself legally obliged to do so or this has been ordered by the

authorities, if the content (allegedly) infringes any rights of third parties, including IP rights, or if the Client violates the Agreement, provides incorrect, outdated or misleading information or engages in fraudulent activities. Studytube will not therefore become liable for paying the Client any form of damages or compensation. If Studytube does not consider itself legally obliged to remove this content immediately, Studytube will inform the Client of this at least thirty days in advance.

11.8 If Studytube receives a request from any third party to remove from the Platform (part of) the Third Party Content uploaded on the Platform or made available via the Platform by the Client, Studytube may forward such notice to the Client in order to process the request. In that case, the Client will do everything necessary to ensure that the content is rendered in compliance with applicable legislation and regulations and that it can otherwise also be published lawfully. However, Studytube has the right to remove the content immediately on the basis of notices from third parties that are sufficiently substantiated at Studytube's sole discretion. Studytube will not therefore become liable for paying any form of damages or compensation. If Studytube receives a request for removal from a third party, Studytube will be entitled to provide this third party with identifying and contact details of the Client.

11.9 If the Client believes that any Third Party Content on the Platform is incorrect, incomplete or outdated, infringes rights of the Client, Users or of any third parties, or is otherwise wrongful, the Client can notify Studytube of this in writing. Studytube will process the notification as soon as possible and, if it is obliged to do so, will remove the respective Third Party Content from the Platform as soon as possible.

#### **Article 12 Didactic Support and Video Production Work**

12.1 If agreed, Studytube will provide didactic support and/or carry out video production work in the development of Client Material, under the conditions and fees as agreed in the Agreement. The Client acknowledges that the didactic support only relates to didactic aspects and not to the content of Client Material. Studytube does not accept any liability for this, not even in case any communications from it or its employees during the support activities could nevertheless be considered as advice with regard to the content of Client Material.

12.2 If Studytube carries out video production work, this can only consist of providing a recording studio and recording equipment, technical support, cameramen, video editing and the creation of images and animations. The Client itself is responsible for the content of the Client Material to be recorded, for attracting, contracting with and paying any external trainers, teachers, experts, (voice) actors, presenters and/or suppliers or licensors of the content of the Client Material, and for obtaining the necessary rights and consent to make the Client Material available through the Platform.

#### **Article 13 Availability, Maintenance and Updates**

13.1 Studytube keeps the Platform available, maintains the Platform, offers updates to the Platform and provides user and technical support in accordance with the SLA agreed between the Parties.

#### **Article 14 Term, Suspension and Termination**

14.1 Unless explicitly otherwise agreed, an Agreement is entered into for a term of twelve months as of the Effective Date. The Agreement will each time be tacitly renewed for a term of twelve months, unless one of the Parties terminates the Agreement in writing with due observance of a notice period of two months before the end of the current term.

14.2 On termination of an Agreement for any reason whatsoever, the SLA will terminate by operation of law on the same date.

14.3 Either Party is entitled to suspend its obligations under the Agreement and/or the SLA without any obligation to pay compensation, without prejudice to any right to termination of the Agreement and/or the SLA, if:

14.3.1 the other Party is by law in default;

14.3.2 the bankruptcy of the other Party has been applied for or pronounced;

14.3.3 a moratorium has been applied for by the other Party or awarded;



14.3.4 the suspending Party has reasonable grounds to believe that the other Party is using or attempting to use the Services for fraudulent purposes or is otherwise committing a wrongful act in connection with the performance of the Agreement, including but not limited to committing criminal offenses;

14.3.5 the suspending Party is hindered by the other Party in fulfilling the Agreement and/or the SLA.

14.4 Except in force majeure situations as referred to in the SLA, either Party is entitled to dissolve the Agreement in whole or in part if the other Party defaults in fulfilling one or more of its obligations under the Agreement, unless the default, in view of its minor significance or special nature, does not justify the dissolution. The default only becomes effective after the respective Party has been given a proper notice of default in writing, whereby a further reasonable period has been given to fulfil its obligations. In the event of a failure by Studytube this reasonable period will be at least thirty days. A notice of default will not be required if the failure can no longer be remedied.

14.5 Either Party is at all times entitled to terminate this Agreement without judicial intervention and without obligation to pay compensation, if:

14.5.1 the other Party is bankrupt or the bankruptcy of the Client has been applied for;

14.5.2 the other Party has been granted a moratorium or this has been applied for;

14.5.3 the other Party offers its creditors a voluntary arrangement;

14.5.4 the other Party has discontinued its activities or if its assets have been seized before judgement.

14.6 If one of the Parties terminates the Agreement pursuant to Article 14.3.5 or 14.4 it will not be obliged to pay either directly or indirectly any compensation or damages.

#### **Article 15 Consequences of Termination**

15.1 Studytube is not liable to the Client for the termination of the Agreement in accordance with the provisions herein or for the suspension of the Client's right to access to and/or use of the Platform.

15.2 In the event of the termination of the Agreement for any reason whatsoever, the Client remains obliged to pay the fees that have become due prior to the termination. Services already provided and the fees paid for them will not be subject to being undone.

15.3 As of the date of termination of the Agreement, for any reason whatsoever, the Client will cease all use of the Platform, all Third Party Content and all other information and materials that Studytube has made available.

15.4 The definitions and rights and obligations of the Parties, which by their nature continue, will also continue to exist after the termination of the Agreement. At the request of the Client, Studytube will provide a copy of the Client's data within one month, in accordance with the SLA. In the absence of such a request within that period, Studytube will have the right to destroy the data or otherwise dispose of it.

#### **Article 16 IP Rights**

16.1 All IP Rights in the Platform and the Services belong to Studytube or its licensors. The Client will only acquire those rights of use that are explicitly stated in the Agreement or these Conditions of Use. Unless otherwise agreed, the rights of use obtained from or through Studytube are non-exclusive, non-transferable and non-sublicensable. All IP Rights to the aggregated, statistical data created and/or collected through the use of the Platform are fully vested in Studytube.

16.2 If and insofar as Studytube develops any custom software on the instructions of the Client, Studytube will only make this available to the Client for use. The source code of the software and the technical documentation will only be made available to the Client if and insofar as agreed in writing.

16.3 If and insofar as the IP Rights to any parts of the Platform, including Third Party Content, do not belong to Studytube, but to a licensor of Studytube, the Client accepts and agrees that it may have to enter itself into a (license) agreement with this licensor and will provide Studytube with a power of attorney to do so for or on its behalf, if and to the extent possible.

16.4 Any infringement by or on behalf of the Client of the IP Rights of Studytube or its licensors, or any infringement of the licenses granted herein, entitles Studytube to terminate the Agreement in writing immediately and without judicial intervention, without prejudice to Studytube's right to claim compensation.

16.5 Client Material is and remains the property of the Client and/or its suppliers or licensors. Studytube obtains from the Client the non-exclusive, sub-licensable, worldwide and royalty-free right to use the Client Material in any way necessary to provide the functionalities of the Platform.

16.6 When uploading and/or making Third Party Content or Client Material available on the Platform, the Client guarantees that (i) it is fully authorised to do so, (ii) it has obtained all the necessary rights to do so, (iii) this does not infringe on any rights of third parties nor is it otherwise wrongful and (iv) Studytube will not owe any fees or compensation to any third party as a result. The Client fully indemnifies Studytube against all claims by third parties in this respect and against all related damage and costs, including the full lawyer's fees.

#### **Article 17 Personal Data**

17.1 Studytube processes Users' personal data in the context of the implementation of the Agreement. In this connection Studytube can be considered as a processor and the Client as the data controller within the meaning of the relevant legislation. The Parties have concluded a separate Processor Agreement with regard to the processing of personal data. Studytube can provide Users with further information via the Platform about the way in which Studytube processes personal data. However, as a data controller, the Client remains responsible for meeting its obligations under applicable regulations, including its obligation to provide information.

17.2 The Client instructs Studytube to maintain, update and renew the Platform. The Platform is therefore continuously developing and it is possible that new functionalities will be added in the future. It is possible that for this purpose different processing of personal data will take place, different personal data will be processed or processing will take place for purposes other than when the Agreement was signed. Studytube will always inform the Client of such developments as soon as reasonably possible. Different processing will only take place on the instructions of the Client. In doing so, Studytube will observe its role as a processor at all times and enable the Client to observe its role as a data controller.

17.3 Studytube reserves the right to make unilateral changes to the Processor Agreement leaflets insofar as it is of the opinion that these are of minor importance. Studytube will immediately inform the Client about such changes of minor importance.

#### **Article 18 Confidentiality**

18.1 If and insofar as information from one Party comes to the attention of the other Party during the implementation of the Agreement and this information has been referred to orally or in writing as confidential, or should have been reasonably understood by the receiving Party to be classified as confidential, the receiving Party will keep this information strictly secret, use it only for the purpose of implementing the Agreement and limit access to that information to persons who are required to know it for that purpose. The receiving Party will ensure that such persons are required to keep this confidential information secret by means of an employment contract and/or a confidentiality agreement.

18.2 Financial and commercial information, including market information and information about the marketing and sales policies of the Parties, information on current and future products and services of the Parties, or related companies or undertakings, and personal data of Users will in any case be considered as confidential information within the meaning of the foregoing paragraph of this Article.

18.3 What constitutes confidential information will exclude information which was already publicly available at the time it came to the knowledge of the receiving Party or subsequently became public through no fault of the receiving Party, or which the receiving Party obtained from a third party without a duty of confidentiality being imposed or this third party being obliged to this.

18.4 The Client will not make any statements to third parties about Studytube in a way that could cause damage.

#### **Article 19 Guarantees and Indemnities**

19.1 The Platform and the Services are provided "as is" and "as available" and, to the extent permitted by law, to the exclusion of all implicit and explicit claims to conformity, correctness or usefulness. The Platform and Services are continuously developing and Studytube does not guarantee that all components will be fully

available at all times. Studytube is entitled to change the content and scope of the agreed Services at any time if it deems this desirable for technical or commercial reasons.

19.2 The Client guarantees that it is fully authorised to enter into the Agreement and that it will not violate any rights of third parties or contractual obligations towards third parties. The Client furthermore guarantees when using the Platform that it will act in accordance with applicable legislation and regulations, not infringe on any rights of third parties or act wrongfully in any other way. The Client indemnifies Studytube against claims by third parties, including Users, on the basis of an (alleged) violation of these guarantees and against all related damage and costs, including the full lawyer's fees. Furthermore, the Client indemnifies Studytube against claims by third parties, including Users, who suffer damage in connection with the implementation of the Agreement which is the result of any act or omission by the Client or due to a cause that must be at the risk of the Client.

## **Article 20 Liability and Force Majeure**

20.1 The Client has no sanctions available, nor is Studytube obligated to comply with any provisions of the Agreement and/or the SLA if the execution of such a provision is prevented by a Force Majeure situation.

20.2 Any liability of Studytube due to an attributable failure in the fulfilment of the Agreement only arises if Studytube has been given a notice of default by the Client, by registered letter and in sufficient detail without delay (and at the latest within one month of discovery of the failure), whereby a further reasonable term of at least thirty days has been given to properly fulfil its obligations.

20.3 Studytube's total liability due to an attributable failure in the fulfilment of the Agreement is limited to a maximum of the amount that Studytube's non-life insurer actually pays out in connection with the event that caused the damage.

20.4 If, for justified reasons attributable to Studytube, the non-life insurer does not pay any compensation at all for the benefit of the Client, Studytube's total liability will at all times be limited to the compensation of an amount equal to the amount Studytube has invoiced to the Client for Services provided in the quarter prior to the event causing the damage, with an absolute maximum of €20,000 (in words: twenty thousand euros).

20.5 Notwithstanding the foregoing, Studytube is not liable for indirect damage, consequential damage, lost profit, lost savings, reduced goodwill, damage due to business interruption, damage as a result of claims from purchasers of the Client, damage related to the use of items, materials or software by third parties prescribed to Studytube by the Client or for damage due to mutilation, destruction or loss of data or documents.

20.6 Insofar as, despite the provisions herein, the Client has any right of recourse against Studytube for administrative fines arising from the processing performed by Studytube in the context of the Processor Agreement, this potential recourse will be limited to the compensation of an amount equal to that part of the fine that is proportional to the total worldwide annual turnover of Studytube (recourse = fine x (Studytube's annual turnover / Client's annual turnover)).

20.7 Apart from the aforementioned liability provisions, Studytube has no liability whatsoever for compensation, regardless of the ground on which an action for compensation is based.

20.8 The liability exclusions and limitations in this Article apply in full to directors, management, employees, representatives and legal successors of Studytube, who can invoke this Article directly.

20.9 The liability exclusions and limitations of liability in this Article do not apply if the damage is caused by intent or gross negligence on the part of Studytube.

## **Article 21 Other**

21.1 The Agreement and these Conditions of Use are governed by the laws of the Netherlands.

21.2 All disputes arising out of or in connection with the Agreement will be submitted exclusively to the competent court of the District Court of Amsterdam, unless the Parties agree to arbitration or a binding opinion.

21.3 In the event of invalidity or annulment by the Client of one or more provisions of the Conditions of Use, the other provisions of the Conditions of Use will remain fully applicable to the Agreement. The Parties will enter into consultations in order to replace the invalid or annulled provision of the Conditions of Use by a provision which is valid or not annulable and which, in so far as possible, is consistent with the purpose and purport of

the invalid or annulled provision.

21.4 A waiver of a right is only possible by means of an explicit and written statement.

21.5 Studytube is entitled, without further permission from the Client, to engage third parties to assist in the implementation of the Agreement, or to implement parts of the Agreement as a subcontractor.

21.6 The Client is not entitled to transfer the rights and obligations of the Agreement to a third party without the prior written consent of Studytube. Studytube is entitled to attach conditions to this permission.

21.7 Studytube is authorised to transfer all or part of the rights and obligations under the Agreement (i) to companies affiliated with Studytube in a group, (ii) to third parties jointly with Studytube's company or (iii) in the event of a merger.

21.8 Electronic communications sent by Studytube are deemed to have been received on the day of dispatch, unless proven otherwise by the Client.

21.9 Studytube and the Client are independent parties that are not authorised to represent each other, to carry out legal acts for each other, to mediate with or on behalf of each other to enter into agreements, to issue guarantees or to make commitments, unless otherwise agreed. The Agreement in no way entails any exclusivity agreement between the Parties.

21.10 The applicability of the Vienna Sales Convention (CISG) is expressly excluded.