

# End User Licence Agreement (EULA)

## Giglets Limited t/a Giglets Education

Version: 31 July 2018

**THIS DOCUMENT IS A LEGAL AGREEMENT. PLEASE READ IT, AS IT CREATES BINDING OBLIGATIONS UPON YOU. IF YOU DO NOT UNDERSTAND ANY OF ITS TERMS, PLEASE SEEK ADVICE FROM A COMPETENT PROFESSIONAL.**

### 1. Introduction

1. The Giglets portals (the “Licensed Portals”) are provided to you by Giglets Limited t/a Giglets Education (“we”, “our”, “us”). We are a company registered in Scotland with company number SC395574, whose registered office is at 44 Bank Street, Kilmarnock, East Ayrshire, KA1 1HA, GB-Scotland.
2. You may use the Licensed Portals only as permitted under this end user licence agreement (this “EULA”).
3. **By accessing the Licensed Portals, or by ticking the box to indicate your acceptance of this EULA, you agree to accept the terms of this EULA and are legally bound by its terms. If you do not agree to the terms of this EULA, you must not tick the box agreeing to acceptance and you are not permitted to access or use the Licensed Portals.**
4. Any updates, upgrades or new versions of the Licensed Portals we provide to you shall be deemed to be part of the Licensed Portals and subject to the terms of this EULA.
5. This EULA along with the documents referred to in it is the complete agreement relating to your use of the Licensed Portals.
6. The version of this Agreement replaces all previous versions with effect from the version date stated above.
7. You are responsible for making all arrangements necessary for you to use the Licensed Portals. You are responsible for ensuring that any computers or devices you use in connection with the Licensed Portals meet all relevant technical specifications required to use the Licensed Portals (as appropriate). We shall not be liable to you for any loss, cost, expense or damage arising as a result of any technical incompatibility between the Licensed Portals and any of your computers or devices.
8. You are also responsible for ensuring that all persons whom you permit to access the Licensed Portals are aware of the terms of this EULA and that they comply with them.
9. The terms of this EULA do not affect your rights under applicable law. For more information upon these rights, please contact your local Citizens Advice Bureau, or equivalent body in your country of residence.
10. We have used reasonable endeavours to ensure that the Licensed Portals comply with the laws of Scotland. However, we make no representations, warranties or guarantees that the Licensed Portals is appropriate for use in locations outside Scotland.
11. If using the Licensed Portals is contrary to or infringes any applicable law in your place of use, you are not authorised to use the Licensed Portals, and the Licensed Portals are not made available to you.

## **2. Rights to use**

- 2.1. The Licensed Portals and all content and materials made available in the Licensed Portals (“Material”) are protected by international copyright laws and other intellectual property rights. You acknowledge that we are the owner or the licensee of all rights (including all intellectual property rights) in or relating to the Licensed Portals and the Material.
- 2.2. We grant you no rights to use the Licensed Portals other than as stated in this EULA. We reserve all rights in and to the Licensed Portals not expressly granted to you under this EULA. Nothing contained in this EULA should be construed as granting by implication, estoppel, personal bar or otherwise any licence or right to use the Licensed Portals without our express written permission.
- 2.3. Your right to use the Licensed Portals is limited to a non-exclusive, non-transferable licence to access and use the Licensed Portals only through networks where your access is on a unique user basis personal to yourself, where your access is enabled through a password known only to you, and which are secure. This will make you an Authorised User of the Licensed Portals. You are not permitted to access or use the Licensed Portals on any other network.
- 2.4. You must not use the Licensed Portals:
  - 2.4.1. to impersonate any person, or misrepresent your identity or affiliation with any person;
  - 2.4.2. to advocate, promote, incite any third party to commit, or assist any violent, offensive, hateful, unlawful or criminal act;
  - 2.4.3. to attempt to gain unauthorised access to any server, computer or database;
  - 2.4.4. in a manner that imposes an unreasonable or disproportionately large load on our infrastructure, or that of any third party;
  - 2.4.5. to seek to infringe rights held by third parties;
  - 2.4.6. to breach any legal duty owned to any third party; or
  - 2.4.7. for any purposes prohibited by the laws of Scotland, or applicable in your place of use of the Licensed Portals.
- 2.5. If you breach this Clause 2 we have the right to report any such breach to the relevant law enforcement authorities, and we will co-operate with those authorities by disclosing your identity to them. In the event of such a breach, your right to use the Licensed Portals will cease immediately.
- 2.6. You must not attempt in any way to remove or circumvent any technical protection measures applied to the Licensed Portals or Material to prevent unauthorised use, copying or misappropriation thereof or of the intellectual property rights relating thereto, or apply, manufacture, import, distribute, sell, let for hire, offer, expose or advertise for sale for hire or have in your possession for private or commercial purposes, any means whose sole reasonable purpose is to facilitate the unauthorised removal or circumvention of such technical protection measures.

## **3. Authorised Learners**

- 3.1. You may create within the Licensed Portals profiles for learners at the learning establishment of which you are an Authorised User and at which you are providing teaching or other educational services (“Authorised Learners”), to allow such Authorised Learners to access and use the Licensed Portals for educational purposes only.

- 3.2. You will ensure that you effectively communicate to Authorised Learners:
- 3.2.1. the purpose for which Authorised Learners may use the Licensed Portals (being internal educational purposes only); and
  - 3.2.2. what constitutes inappropriate or unauthorised use of the Licensed Portals (including any use which is prohibited by this EULA).
- 3.3. You acknowledge that we shall not have access to profiles of Authorised Learners and that you are solely responsible for overseeing, monitoring and moderating:
- 3.3.1. use of the Licensed Portals by Authorised Learners; and
  - 3.3.2. all material submitted by Authorised Learners to the Licensed Portals,
- and you shall immediately remove from the Portals any material submitted by an Authorised Learner which is inappropriate or otherwise breaches the terms of this EULA.
- 3.4. If you become aware (or should have become aware) that any Licensed Portal has been used by an Authorised Learner inappropriately or otherwise in breach of this EULA, you shall immediately notify us, and if so instructed by us delete the profile of such Authorised Learner and ensure that they do not in the future access the Portals unless otherwise agreed by us.
- 3.5. Where use of the Licensed Portals by a minor is subject to the consent of their parent or guardian, you shall ensure that such consent has been obtained prior to allowing such a minor to access the Licensed Portals.

#### **4. Data we gather from you**

- 4.1. You acknowledge and agree that for the purposes of the General Data Protection Regulation and/or any UK and/or Scottish legislation implements or reflecting it ("GDPR"), we shall be the data processor (as defined in the GDPR) and the learning establishment at which you are an Authorised User shall be the data controller (as defined in the GDPR) of any personal data that you upload to the Licensed Portals ("Portals Personal Data"), including but not limited to documents, video, image and audio files. As data processor, we shall:
- 4.1.1. only process (as defined in the GDPR) Portals Personal Data strictly in accordance with your instructions and the GDPR; and
  - 4.1.2. put in place appropriate technical and organisational processes and procedures to safeguard against any unauthorised and unlawful processing of, and against accidental loss or destruction of, or damage to, the Portals Personal Data.
- 4.2. You acknowledge that we may review the Portals Personal Data from time to time and use some or all of the Portals Personal Data for purposes related to our business. In the event that we do so, you acknowledge that we shall become the data controller of any such Portals Personal Data and shall use the Portals Personal Data for the purposes set out within the data protection statement provided to you by the learning establishment of which you are an Authorised User pursuant to the Licensed Portals access licence agreement between us and the learning establishment of which you are an Authorised User.
- 4.3. You acknowledge that in all events we may collect from you technical data and related information, including but not limited to technical information about the computer or device from which the Licensed Portals are being accessed, the network to which this computer or device is connected, and the peripherals connected from time to time to this device. We will not be able to identify you from this technical data and related information. We may

use this technical data and related information to provide support in relation to the Licensed Portals.

- 4.4. You acknowledge and agree that we have the right to contact you and the Authorised Learners through our Portals' messaging systems and by email or phone as provided by you and the Authorised Learners to inform you and the Authorised Learners about information relating to our Portals and related services. We will not pass any of your or the Authorised Learners' contact details to third parties.

## **5. Additional rights of use**

- 5.1. You may print and use copies of the Material for your internal educational (non-commercial) purposes of the learning establishment of which you are an Authorised User provided that any such printing and use does not otherwise breach the terms of this EULA. You may not under any circumstances sell, licence or otherwise distribute for use by other persons or entities any such electronic documents.
- 5.2. We may notify to you from time to time of additional restrictions applicable to your use of Material. Notifications may be set out upon the Licensed Portals. You must abide by these restrictions, which shall be deemed to form part of this EULA as if set out in the body of this EULA.
- 5.3. You may adapt, annotate and modify the Material only where and to the extent we permit you to do so in the Licensed Portals.
- 5.4. You may also upload content and materials to the Licensed Portals, where we permit you to do so.

## **6. Use of material you submit to us**

- 6.1. This clause 6 does not apply to Authorised Learners.
- 6.2. Where you adapt, annotate and modify Material and/or create new content or material in the Licensed Portals, you grant to us the perpetual and irrevocable right without limitation and without a requirement to pay to you any sums to use, copy, publish and otherwise disseminate, modify, adapt, create derivative works based upon, extract elements from and reorganise such content and material. You acknowledge that we may permit others to exercise these rights.
- 6.3. By submitting content or material to us you are guaranteeing that you have the right to grant to us the rights described in clause 6.2. If you are not able to grant to us these rights, please do not submit any such content or material.

## **7. General terms concerning material you submit to us**

- 7.1. You shall ensure that all material and content you submit to the Licensed Portals shall comply with all applicable laws in any country from which it is submitted and in which it may be read.
- 7.2. In relation to any information or material submitted by you to us you waive absolutely all moral rights arising under Chapter 4 of the Copyright, Designs and Patents Act 1988 and, so far as is legally possible, any broadly equivalent rights you may have in any territory of the world, in such information or material.
- 7.3. You agree and undertake not to use the Licensed Portals:
  - 7.3.1. to distribute or make available for viewing material which is in any way inappropriate, including without limitation inappropriate for viewing by minors and/ or children; and/or

- 7.3.2. to distribute or make available for viewing material which is malicious or technologically harmful.
- 7.4. You warrant that any content or material submitted by you to or through the Licensed Portals shall not:
- 7.4.1. be defamatory of any person, be obscene, offensive, hateful or inflammatory, promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age;
  - 7.4.2. disclose the name, address, telephone, mobile or fax number, e-mail address or any other personal information in respect of any individual other than where you have the express permission of that individual to disclose such information subject to and in accordance with these terms of this EULA;
  - 7.4.3. infringe any copyright, database right or trade mark of any other person;
  - 7.4.4. breach any legal duty owed to a third party, such as a contractual duty or a duty of confidence;
  - 7.4.5. be in contempt of court;
  - 7.4.6. be likely to harass, upset, embarrass, alarm or annoy any other person;
  - 7.4.7. advocate, promote, incite any third party to commit, or assist any unlawful or criminal act; or
  - 7.4.8. contain a statement which you know or believe, or have reasonable grounds for believing, that members of the public to whom the statement is, or is to be, published are likely to understand as a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism.
- 7.5. THE WARRANTIES PROVIDED FOR IN THIS CLAUSE 7 MUST BE COMPLIED WITH IN SPIRIT AS WELL AS TO THE LETTER. WE WILL DETERMINE, IN OUR SOLE DISCRETION, WHETHER ANY CONTENT OR MATERIAL SUBMITTED BY YOU TO THE LICENSED PORTALS BREACHES THESE WARRANTIES. YOU SHALL INDEMNIFY AND SHALL KEEP US FULLY AND EFFECTIVELY INDEMNIFIED ON DEMAND FROM AND AGAINST ALL ACTIONS, CLAIMS, LOSSES, LIABILITY, PROCEEDINGS, DAMAGES, COSTS, EXPENSES, LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION AND OTHER PECUNIARY OR CONSEQUENTIAL LOSS (INCLUDING LEGAL COSTS AND EXPENSES) SUFFERED OR INCURRED BY US AND ARISING DIRECTLY OR INDIRECTLY OUT OF YOUR BREACH OF THESE WARRANTIES.
- 7.6. Where content or material submitted to or through the Licensed Portals in our opinion breaches the terms of this EULA, we may at our sole discretion take all or any of the following actions:
- 7.6.1. carry out an investigation of the identity of the person responsible for submitting such content or material and the circumstances surrounding the submission of such information or material, in respect of which you undertake to provide us with confirmation of your identity and any other information we may require in connection therewith and to cooperate with us fully;
  - 7.6.2. immediate, temporary or permanent withdrawal or removal of the content or material or your ability to access the Licensed Portals;
  - 7.6.3. issuing a warning to you;

- 7.6.4. raising legal proceedings against you for recovery of all costs resulting from the breach;
- 7.6.5. raising further legal action against you;
- 7.6.6. disclosing such information to law enforcement authorities or relevant third parties as we reasonably feel is necessary or as required by law; or
- 7.6.7. such other action as we reasonably deem appropriate.

WE HEREBY EXCLUDE ALL LIABILITY FOR ANY DAMAGES, LOSS, COSTS OR EXPENSES RELATING TO OR ARISING OUT OF THE TAKING OF ALL AND ANY OF THE ACTION REFERRED TO IN CLAUSE 7.6.

## **8. Passwords**

- 8.1. We will provide you with a password when you register to use the Licensed Portals. When you receive this, please access the Licensed Portals and change the password to something known only to yourself. You must treat any user identification code, login, password or any other piece of information enabling access to or use of the Licensed Portals, as confidential, and you must not disclose it to any third party.
- 8.2. If you choose, or you are provided with, a user identification code, login, password or any other piece of information enabling an Authorised Learner to access or use the Licensed Portals, you must, and procure that the Authorised Learner must, treat such information as confidential and not disclose it to any third party.
- 8.3. We reserve the right to disable any user identification code, login, password, or any other piece of information enabling access to or use of the Licensed Portals at any time where we believe you or an Authorised Learner are in breach or likely to breach the terms of this EULA.
- 8.4. You must immediately notify us if you have reason to believe any user identification code, login, password, or any other piece of information enabling access to or use of the Licensed Portals provided by us to you or created by you has become known to any third party.

## **9. Breach**

- 9.1. Any breach of the terms of this EULA is a violation of our rights and (if applicable) those of our licensors, service providers and third parties. If you breach the terms of this EULA you may incur liability (both criminal and civil) and become subject to court action.
- 9.2. If we have reason to believe that you have breached the terms of this EULA or are likely to breach the terms of this EULA we may take action to protect ourselves, our licensors, service providers and third parties from liability, including but not limited to:
  - 9.2.1. contacting relevant third parties and disclosing information collected from you or concerning you;
  - 9.2.2. changing, suspending, removing, or disabling access to the Licensed Portals or any Materials without notice; or
  - 9.2.3. imposing limits on your use of or access to certain parts of the Licensed Portals or any Materials,

and in no event will we be liable to you for any action taken pursuant to this clause 9.

9.3. WHERE YOU BREACH THE TERMS OF THIS EULA, YOU SHALL ON DEMAND INDEMNIFY AND KEEP US INDEMNIFIED AGAINST ANY LOSS, COST, DAMAGE OR EXPENSE ARISING AS A RESULT OF THAT BREACH.

## **10. Limitations**

10.1. We shall use reasonable endeavours to ensure that the Licensed Portals is of satisfactory quality and operates in accordance with its documentation as provided to you by us.

10.2. We do not guarantee that any Materials made available through the Licensed Portals are accurate, complete or error free. You undertake not to rely upon Materials, nor to provide Materials to any third party with a view to that third party relying upon the Materials. Any reliance you or any third party places upon the Materials is entirely at your (or their) own risk and you undertake not to hold us liable for any loss, cost, damage or expense incurred as a result of such reliance.

10.3. We do not guarantee that the Licensed Portals will be free of errors or defects or operate in an uninterrupted manner.

10.4. We do not guarantee that the Licensed Portals will not interfere with the performance or operation of the computer or device through which it is installed or accessed or other software installed thereon or peripherals connected thereto (and any software installed on said peripherals).

10.5. We do not guarantee that the Licensed Portals will be free of viruses or other malicious code.

10.6. We do not guarantee that the Licensed Portals is suitable for any particular purpose or that it will meet your requirements, irrespective of whether that purpose or those requirements are known to us.

10.7. Other than as expressly stated hereunder we exclude all guarantees, warranties, conditions and representations whether express or implied.

## **11. Liability**

11.1. To the fullest extent permissible by law in no event shall we be liable to you for:

11.1.1. death or personal injury (except where arising due to our negligence);

11.1.2. any loss, cost, damage or expense not considered likely to arise at the date of your acceptance of the terms of this EULA; or

11.1.3. any incidental, special, indirect or consequential loss, cost, damage or expense,

regardless of the basis for such liability, whether under contract, delict, or otherwise, and even if we have been advised of the possibility of such liability.

## **12. Termination**

12.1. This EULA shall remain in effect until terminated in accordance with its terms and it shall terminate automatically on termination of the licence to use the Portals granted to the learning establishment of which you are an Authorised User.

12.2. We shall have the right to terminate this EULA where you breach the terms of this EULA.

12.3. In the event this EULA terminates all rights you have under this EULA shall also terminate, including your right to use the Licensed Portals.

12.4. In the event that this EULA terminates any provision which by implication is intended to survive its termination shall remain binding upon you.

12.5. Termination of this EULA is without prejudice to any obligations which are intended to apply afterwards.

### **13. General**

13.1. You may not transfer or otherwise dispose of any of your rights or obligations arising under this EULA without our prior written consent.

13.2. We may sub-license, rent, lease, transfer, assign, charge, sub-contract or otherwise dispose of any of our rights or obligations arising under this EULA at any time.

13.3. We will not be liable for any failure to perform any obligation under this EULA due to causes beyond our reasonable control.

13.4. This EULA does not confer any rights on any person other than you, us and the learning establishment of which you are an Authorised User.

13.5. If we fail at any time to insist upon strict performance of any of your obligations under this EULA, or if we fail to exercise any of the rights or remedies to which we are entitled under this EULA, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations.

13.6. If any term, condition or provision of this EULA is determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be severed from the remaining terms and conditions which will continue to be valid to the fullest extent permitted by law.

13.7. We will communicate with you in English only, or in a mutually agreed language. You agree that we may provide a notice to you by placing a prominent notice in the Licensed Portals.

13.8. Except as expressly stated under this EULA you may only notify us in connection with any matter relating to this EULA at [info@giglets.com](mailto:info@giglets.com). Any notification shall be deemed to have been received by us on the expiry of a period of seventy two (72) hours. For the purposes of determining this period all weekends and public holidays in Scotland shall be excluded.

13.9. We may vary the terms of this EULA by giving one month's notice at any time to you as an Authorised User.

### **14. Applicable laws**

14.1. The laws of Scotland govern this EULA and your use of the Licensed Portals.

14.2. This EULA and your use of the Licensed Portals and the Material may also be subject to other local, national, or international laws.

14.3. You submit to the exclusive jurisdiction of the courts in Scotland in connection with any dispute arising in relation to this EULA or the Licensed Portals.