



XMA Limited
Terms and Conditions of business

1. Definitions and interpretation

“Agreement”: these terms and conditions of business (“**T&Cs**”) and any other document entered into by the parties pertaining to Services;

“Client”: person, firm or company to whom Services are provided;

“Company”: XMA Limited (company number 2051703) with registered office at Wilford Industrial Estate, Ruddington Lane, Nottingham, NG11 7EP

“Booking Form” or **“BF”**: booking form at [sample](#) to be executed by the parties with respect to Services;

“Services”: services to be provided by Company to Client under the Agreement which include public scheduled courses and administration, provision of equipment or systems; conduct of examinations, venue hire, courseware;

“Working Day”: every week day apart from Saturday, Sunday, statutory holidays in place where Services are provided;

Use of words **‘includes’**, **‘including’**, or similar expression will be construed as illustrative and without limitation to the generality of related words. No provision of this Agreement shall be construed adversely to a party solely on ground that such party was responsible for preparation of this Agreement.

2. Contractual precedence

Unless otherwise agreed in writing between the parties, if there is any inconsistency between these T&Cs and any other documents executed by the parties, the order of priority in descending order shall be:

- (i) any other document executed by a XMA director and a Client authorised signatory;
- (ii) these T&Cs;
- (iii) if applicable, web portal access terms and conditions;
- (iv) Joining Instructions for Training Courses

For avoidance of doubt, no other form of contract or communication sent by Client to Company in relation to Services shall be deemed accepted by Company except where executed in writing.

3. Fees and costs

3.1 Fees for Services: Fees payable by Client for Services shall, unless otherwise stated in the Agreement, be the fees chargeable by Company for such Services current at date of provision and in case of provision of Services over a period, fees payable shall, at Company’s option, be either: (i) fees current at date of Service provision unless fees are expressly stated to be fixed or firm for a period; or (ii) fees current at date of invoice for relevant Services; or (iii) where agreed by the parties, fees calculated on a time and materials basis pursuant to rates agreed between the parties in writing. For clarification, examinations are not discountable.

3.2 Fee adjustment: Unless fees are stated to be fixed or firm for a period Company’s fees payable for Services shall be subject to amendment to take account of variations in wages, materials or other costs since commencement of Agreement. Company reserves the right to adjust fees payable by

Client for Services by the amount of any increase in such costs after fees are quoted and fees so adjusted shall be payable as if it were the fees stated as being payable in Agreement. Any adjustments or increases in fees shall not exceed an amount equal to 25% of fees for relevant Services.

3.3 *Value added tax*: Fees are exclusive of VAT which shall be charged at applicable rate.

3.4 *Resits*:

Pass Mark	Action	Cost
40-59%	Resit exam	Cost to cover examination costs and admin
Below 39%	Reist whole course	Total cost of taking course again

4. Terms of payment

Except where otherwise agreed in writing fees for Services shall be due and payable by Client as follows:

- (i) where Services relate to provision of training Services fees shall be paid in full no later than 15 Working Days prior to training commencement;
- (ii) if under the Agreement fees are due in installments, a default by Client in payment of any installment shall entitle Company to require that Client pays the whole balance of fees due within 15 Working Days of such default. Client shall not be entitled to exercise any set-off, lien or any similar claim in relation to fees due to Company. Time of payment shall be of the essence. Without prejudice to any other rights, Company shall be entitled to charge interest of 3% over base rate of Bank of England per month or part thereon on overdue payments; such interest to run from payment due date until full payment receipt.

5. Cancellations

If the Consumer Protection (Distance Selling) Regulations 2002 apply, Client shall have the right to cancel this Agreement without any liability within 14 days of date of Agreement provided that Services have not commenced and are not due to commence in this period. Company shall issue a supplementary fee invoice to Client for such cancellation and/or re-scheduling fees and Client shall make full payment to Company within 15 Working Days of date of that invoice:

5-0 Working Days Before Course Commencement
Cancellation of Course
100% of course fees

Client may substitute course participants by written notification to Company subject to new course participants complying with course requirements (including pre-requisites, and pre-course reading) as notified by Company to Client, or as detailed in course outline.

6. Intellectual property rights

6.1 *Use of Company's name, logo:* Company's name and logo may not be used by Client except with Company's prior written consent.

6.2 *Background intellectual property rights:* Company or its licensors shall retain all right, title and interest in and to all intellectual property rights or other proprietary rights (including copyright, patents, trademarks, trade or business names, know how, moral rights, domain names, database rights or any similar rights) (collectively "**Background IPR**") owned at any time by Company or its licensors. Company hereby grants to Client a limited license to use Background IPR solely to the extent necessary for Client to receive Services. For avoidance of doubt, Client shall not acquire any rights to Background IPR including any documents, training guides, instruction manuals, drawings, diagrams, videos or any other materials provided by Company in connection with Services and Client shall not copy, reproduce, sell, licence, distribute, publish or otherwise circulate such Background IPR except with Company's prior written consent.

6.3 *Foreground intellectual property rights:* During this Agreement, the parties may agree that Company will create or develop at Client's request new intellectual property products or materials and provide certain new Services in which intellectual property rights subsist (collectively "**Foreground IPR**"). The parties hereby agree that Company shall own all right, title and interest in and to all Foreground IPR and Company shall grant to Client a worldwide, royalty-free, perpetual license to use the Foreground IPR for Client's internal business purposes only and provided always that Client shall not commercialise Foreground IPR and shall not sell, licence, distribute, publish or otherwise circulate Foreground IPR to any third party except with Company's prior written consent.

6.4 *Notification of infringement:* Client shall promptly inform Company in writing of any infringement or alleged infringement of Background IPR or Foreground IPR or any claim coming to Client's attention that Services or Background IPR or Foreground IPR infringe any person's intellectual property rights.

6.5 *Indemnities:* Subject to limitations on liability under Clause 9, Company shall indemnify Client from and against all losses suffered or incurred by Client as a result of a claim that Background IPR or Foreground IPR or Services infringes any person's intellectual property rights. Where Client requires Services to be provided by Company to Client's specifications or requires Company to incorporate Client's materials within Services, Client shall fully indemnify Company from and against all losses suffered or incurred by Company as a result of a claim that provision of Services to Client's specifications and/or using Client's materials infringes any person's intellectual property rights.

7. Provision of Services

Notwithstanding that Company may have given a detailed quotation for Services, no request for Services shall be binding unless the parties have executed a BF. Client must provide a valid purchase order number to Company. Company's catalogues, brochures, leaflets or other correspondence including information published on Company's website are not binding and reasonable variations may be made to Services without notice, and Services so varied shall be accepted as complying with Agreement. Company reserves the right to cancel, curtail or re-schedule training courses or events without notice to Client and in such instance, Company's total aggregate liability to Client shall be limited to refund of 100% of course fees already paid by Client in advance. Company reserves right to refuse Services or provide reduced Services if course participants attending on Client's behalf fail to satisfy course requirements/prerequisites.

8. Term and termination

The term of this Agreement shall be set out in the, the BF. Company may at its discretion terminate or suspend this Agreement upon 10 days notice to Client if (i) Client ceases to do business, or otherwise terminates business operations; (ii) becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding

or any proceeding is instituted against Client; (iii) undergoes a change or similar arrangement; and/or (iv) fails to make timely payments as required under Agreement. Company may at its discretion immediately terminate or suspend this Agreement if Client commits a material breach, or a series of breaches the combination of which constitutes a material breach and Client fails to remedy the breach(es) within 10 days after receipt of notice giving particulars of breach(es) and requiring them to be remedied.

9. Limitation of liability

9.1 Limitation of liability: Nothing in this Agreement limits either party's liability for death or personal injury due to negligence or fraudulent misrepresentation. Except as set out in this clause, Company shall not be liable for lost profits, loss of business, lost or corrupted data or software, loss caused by supply of inaccurate information or any omitted information by Client, any consequential, punitive, incidental or indirect loss or damages, whether any claims for such damages are based on tort, contract, or other theories, and whether Company knew or should have known the possibility of such damages. Except as set out in this clause and clause 7, Company's total aggregate liability under this Agreement for any losses or damages shall not exceed total price payable for Services.

9.2 Viruses: Company will use reasonable endeavours to ensure that all software introduced to Client's machines will be free of computer viruses and has undergone virus checking procedures in line with current practice. Notwithstanding reasonable endeavours Company shall not be liable for any damage to any Client or third party equipment that has been caused by a virus introduced as a result of software loaded by or via Company.

10. Warranties and representations

Each party warrants and represents that, as at date of this Agreement, it has full capacity and authority to enter into this Agreement. If requested, Company may help Client to choose training or other Services but Company does not provide any warranties that such Services will be fit for Client's purpose and assessment and selection of Services remains Client's ultimate responsibility. No statement, description, information, condition or recommendation contained in any Company catalogue, price list, advertisement or communication or made verbally by representatives of Company shall be construed to vary in any way any of the terms of this Agreement. All other warranties (express or implied) are hereby excluded to maximum extent permitted by applicable law.

11. Modifications and additional terms

11.1 Modifications to these T&Cs: Company reserves right to modify these T&Cs without prior notice. When changes are made, Company will post changes on Company's website. If Client does not accept any changes, Client shall promptly notify Company of such non-acceptance and in such case, the old T&Cs shall govern for the remaining term of Agreement and the new T&Cs shall apply to any new Agreement.

11.2 Third party terms: Upon Client's request and in order to meet Client's requirements, Company may from time to time book on Client's behalf courses provided by third parties. In such instances, the third party contractual terms shall govern the booking of those third party courses and in particular, the third party payment and cancellation terms shall prevail over terms of this Agreement with respect to those third party courses. Company will provide to Client a copy of relevant third party contractual terms upon Client's reasonable request.

12. Confidentiality

“Company’s Confidential Information” means any commercial information of Company, any information contained within instruction manuals or other documents provided to Client and any other information related to Services. Client will keep all Company’s Confidential Information confidential for a period of 3 years after termination of this Agreement or any related agreement with Company. Client may not disclose Company’s Confidential Information to any third party without Company’s prior written consent. Client may share Company’s Confidential Information with only its employees who have a need to know and who are subject to legally binding obligations to keep such information confidential. Confidentiality obligations in this clause do not apply to Company’s Confidential Information that (a) Client can demonstrate was in its possession before receipt from Company; (b) is or becomes publicly available through no fault by Client; (c) is rightfully received by Client from third party without duty of confidentiality. If Client is required by government body or court of law to disclose any Company Confidential Information, Client shall give Company reasonable advance notice so that Company has an opportunity to contest disclosure.

13. Notices

Notices must be given in writing and must be addressed as below. A notice shall be deemed effectively served as follows: (a) if sent by email, on the date when confirmation receipt has been personally acknowledged by return email (electronically generated receipts shall not be valid), or (b) if delivered personally, on the date when left at Company’s registered office or Client’s address and signed for, or (c) if given by post, on the date when the notice has been received and signed for at Company’s registered office or Client’s address (deliveries by post other than recorded delivery shall not be valid). – For Company, notices shall be sent to: The Company Secretary, Wilford Industrial Estate, Ruddington Lane, Nottingham, NG11 7EP. – For Client, notices shall be sent to the attention of the person and address/email identified in a BF.

14. Governing law and dispute resolution

The Agreement shall be governed by English Law. Any dispute under this Agreement shall be submitted to the exclusive jurisdiction of English courts.

15. Other terms

15.1 Force majeure: Company shall be entitled to delay or cancel delivery of Services or to reduce the amount of Services delivered if it is prevented from or hindered in or delayed in the provision of Services through any circumstances beyond its reasonable control including strike, lock-out, accident, war, government action, national emergency, act of terrorism, protest, riot, civil commotion, explosion, flood, epidemic, fire.

15.2 Relationship of parties: The parties are each independent contractors. Nothing in this Agreement shall give rise to a partnership, joint venture, agency or any such other relationship between the parties. Neither party shall claim to be a legal representative, partner, agent, franchisee or employee of the other party.

15.3 Data protection: Company’s privacy statement shall apply.

15.4 Assignment: Company may assign or sub-contract its obligations or rights under this Agreement to a competent third party in whole or in part. Client may not assign this Agreement in whole or in part except with Company’s express written consent.

15.5 Export and compliance with laws: Client acknowledges that Services provided under this Agreement may be subject to export control laws and regulations in European Union, United States or other countries. Client shall comply with all applicable laws, orders and regulations of any governmental authority in connection with receipt of Services and shall bind its employees or other users of Services accordingly.

15.6 No waiver: Failure or neglect by either party to enforce at any time any of provisions of this Agreement shall not be construed as a waiver of either party's rights under this Agreement nor in any way affect the validity of the whole or any part of this Agreement.

15.7 Severability: If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

15.8 Third party rights: This Agreement is not intended to be for benefit of, and shall not be enforceable by, any person other than a party, under the Contracts (Rights of Third Parties) Act 1999.

15.9 Survival: Clauses 1 (Definitions and interpretation), 2 (Contractual precedence), 4 (Terms of payment), 6 (Intellectual property rights), 8 (Term and termination), 9 (Limitation of liability), 12 (Confidentiality), 14 (Governing law and dispute resolution), 15.3 (Data protection), 15.5 (Export and compliance with laws), 15.9 (Survival) and 15.10 (Non-solicitation) shall survive any termination or expiration of this Agreement.

15.10 Non-solicitation: During term of the Agreement, and for a period of 12 months following its termination, Client shall not directly or indirectly employ or solicit for employment any members of Company's then current personnel. If Client breaches this Clause 15.10, in addition to any other remedies available in this Agreement or at law, Company shall be entitled to recover from Client liquidated damages of 35% of gross annual salary of the member of Company's personnel employed or solicited for employment. Parties agree that such amount is a genuine pre-estimate of Company's loss and not a penalty. Clause 15.10 shall not restrict Client from employing any members of Company's personnel who apply unsolicited in response to a general advertising or other general recruitment campaign.