Terms and Conditions of Service

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1. Centre Agreement

When signing this agreement, the signee:

- does so as the Principal Assessor and has the approval to do so from the official financial representative of your Centre
- is fully aware of the duty of care required to gain and maintain TLM centre status
- understands and agrees to the terms and conditions laid out in this agreement
- confirms that as a TLM centre you will:

◦ Fully cooperate with TLM in all relevant matters related to the design, delivery and award of all relevant TLM products and services

◦ Not undertake any activity or advertising that can bring disrepute to the TLM name, business

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operations or brand
- Not use TLM name or logos without the consent of TLM
- Seek written confirmation from TLM of any changes/additions to the address from which qualifications are delivered.

2. Definitions

In these Terms, the following words and expressions have the following meanings:

"**Adverse Effect**"
An act, omission, event, incident, or circumstance has an Adverse Effect if it –
(a) gives rise to prejudice to Learners or potential Learners, or
(b) adversely affects –
(i) the ability of the awarding organisation to undertake the development, delivery or award of qualifications in accordance with its Conditions of Recognition,
(ii) the standards of qualifications which the awarding organisation makes available or proposes to make available, or
(iii) public confidence in qualifications.

"**Agreement**"

the agreement between you and us upon the terms set out in these Terms, the Terms of Site Use, Privacy Policies and Copyright Statement;

"**Centre**"

educational institution(s) as detailed in the Order Form;

"**Conditions**"

the standard terms and conditions of supply of the Service as set out in this document;

"**Conditions of Recognition**"
All conditions to which an awarding organisation's recognition is subject (including other conditions imposed under section 132(3)(d) of the Act).

"**Conflicts of Interest**" a conflict of interest exists in relation to an awarding organisation where –
(a) its interests in any activity undertaken by it, on its behalf, or by a member of its Group have the potential to lead it to act contrary to its interests in the development, delivery and award of qualifications in accordance with its Conditions of Recognition,
(b) a person who is connected to the development, delivery or award of qualifications by the awarding organisation has interests in any other activity which have the potential to lead that person to act contrary to his or her interests in that development, delivery or award in accordance with the awarding organisation's Conditions of Recognition, or
(c) an informed and reasonable observer would conclude that either of these situations was the case.

"**Content**"

materials (including but not limited to text, graphics, and software) at the Site;

"**Contract Period**"

the period for which you have committed to receiving the Service, as detailed in the Order Form, which period commences on the Start Date or such other date as may be agreed between us in writing;

"**Equalities Law**"

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The Equality Act 2010, any Act that was a statutory predecessor to that Act, or any legislation in a jurisdiction other than England which has an equivalent purpose and effect.

“**Fees**”

the fees payable in respect of the Service, as detailed in the Order Form or as agreed between us in writing

“**Learner**”

a Student with access to the Service;

"**Formative Sampling**"
A particular form of Centre Assessment Standards Scrutiny through which the marking of assessments by Centres is monitored to make sure it meets required standards and through which adjustments to a Centre’s marking are made, where required, to ensure that results are based on the required standard. Formative Sampling takes place before final results are issued under Condition H6.1.
(H6.1 - An awarding organisation must, in relation to any qualification which it makes available –
a. issue results for all units and qualifications,
b. publish expected dates or timescales for the issue of those results,
c. issue results which are clear and readily capable of being understood by
Users of qualifications
d. issue results which accurately and completely reflect the marking of assessments (including the outcome of any Centre Assessment Standards
Scrutiny and any other quality assurance process),
e. ensure that the issue of results is timely, and
f. take all reasonable steps to meet any date or timescale it has published for the issue of results.)

"**Signee**"
Legal Representative of the Centre (subscriber detailed on the Order Form), authorised by the Centre to make contractual commitments on the Centre's behalf.

“**Site**”

the Site operated by us at www.theingots.org [1] and awards.theingots.org [2] via which you, Centres and the Learners can access the Service;

“**Start Date**”

the date we accept the Order Form by issuing you an invoice in respect of the initial Fees payable in respect of your chosen payment option;

“**Student Data**”

all information relating to Learners which we hold for the purpose of providing the Service.

“**Student**”

a pupil at a Centre;

“**Terms of Site Use**”

the terms governing the use of the Site by you, Centres and the Learners, which are displayed on the Site at www.theingots.org [1]

the Service.

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“**we**”, “**our**” and “**us**”

refers to The Learning Machine Limited;

"**Workforce**"
Persons available for work (including employees, workers and contractors)

“**you**” and “**your**”

refers to the subscriber detailed on the Order Form;

In these Terms:

- clause headings are inserted for ease of reference only and do not affect construction;
- words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing bodies corporate, corporations, unincorporated associations and partnerships and vice-versa, words importing the singular shall be treated as importing the plural and vice-versa, and words importing whole shall be treated as including a reference to any part thereof.

3. Provision of the Service

The Service is accessible using a standard Internet browser.

You must comply with all policy and procedures for both TLM and Ofqual as amended from time to time in relation to the use or operation of the Service, whether provided in hard copy or made available on the website(s) shown: https://theingots.org/community/ofqual_policies [3] and https://www.gov.uk/guidance/ofqual-handbook [4]

You will fully support TLM in its centre monitoring process, including, but not limited to, allowing named TLM representatives to complete access to records, premises and learners. This provision can include short or zero notice inspection requests.

You will ensure you comply with all relevant government legislation, including but not limited to, Data Protection, Equality, and Copyright with more information available on the TLM website https://theingots.org/community/OfqualTPs#government-legislation [5]

You will follow the required internal/external assessment requirements for TLM as shown in all applicable qualification specifications.

You will monitor, review, and appraise your operations to ensure compliance with TLM policy and procedures

You will ensure that enough resources, including personnel, are assigned to allow efficient and safe delivery of TLM qualifications.

You are responsible for compliance by your Centres and Students with these Terms, the Terms of Site Use.

You must not re-sell or offer in any manner to a third party the Service or use of or access to any facilities on the Learning site or Mark book site

4. Changes to the Service

We may:

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- for operational reasons, modify the technical specification of the Service, provided that any change to the technical specification does not materially adversely affect the performance of the Service; or
- discontinue, temporarily or permanently, any part of the Service after giving reasonable notice to you of our intention to do so.

You agree that we shall not be liable to you or any third party for any such modification or discontinuance save as provided by 12 below.

5. Centre Obligations

As a centre with an agreement with TLM an Ofqual regulated Awarding Organisation, you must make certain provisions.
You are required to:
• take all reasonable steps to ensure TLM is able to comply with its "Conditions of Recognition" which include but not limited to informing TLM immediately of any issues that puts at risk its ability to meet the full TLM centre approval requirements. This includes any issues that have the potential to cause an "Adverse Effect" on any learner or organisation.
• potential or actual "Conflicts of Interest"
• suspected or actual malpractice or maladministration
• take all reasonable steps to comply with requests for information or documents made by the TLM or Ofqual as soon as practicable,
• assist TLM in carrying out any reasonable monitoring activities and to assist Ofqual in any investigations made for the purposes of performing its functions,
• retain a Workforce of appropriate size and competence to undertake the delivery of the qualification awarded by TLM,
• have available sufficient managerial and other resources to enable you to effectively and efficiently undertake the delivery of the qualification awarded by TLM,
• undertake the delivery of the qualification in accordance with Equalities Law,
• operate a complaints handling procedure or appeals process for the benefit of Learners,
• take all reasonable steps to protect the interests of Learners in the case of any withdrawal of the Centre (whether voluntary or not) from its role in delivering a qualification,
• attend centre monitoring sessions as per CASS strategy.

You confirm that:
• your organisation, and its key personnel/assessment team, have not previously been involved with a centre which has had centre approval withdrawn by TLM or any other Awarding Organisation, nor had any sanctions imposed by TLM or any other Awarding Organisation.
• the roles, responsibilities and accountabilities of your assessment and management team are clearly defined and understood
• that all data entered for registration and approval of learners will be accurate and fully comply with all relevant legislation and that learners will be informed of their status with TLM.
• you will inform TLM immediately of any changes to your organisation that materially impact on its ability to design, deliver and/or award TLM qualifications in accordance with TLM policy and procedures.
• will contact TLM directly if you need further clarification or assistance in how to fully comply with the terms and conditions shown.
• you will notify TLM of any complaints received in relation to any of its qualifications and will fully cooperate with TLM in any actions required to resolve such matters. • you will monitor and ensure that only authorised personnel within your organisation are allowed access to TLM services.
• will fully comply with TLM Conflict of Interest policy as shown https://theingots.org/community/ofqualCofI [6].
• You understand that failure to follow and comply with all centre obligations, including but not limited to, Conflict of Interest **[6],** Malpractice and Maladministration **[7]** can lead to the application of **sanctions** in accordance with the published TLM policy and procedures. https://theingots.org/community/Sanctions2019 [8].
• You will not allow learners located in countries outside of the agreed territories to access TLM qualifications.

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• you understand that TLM follows a risk assessment process that includes ongoing monitoring as well as centre review each term to confirm your centre maintains compliance with the TLM terms and conditions.
• Understand that failure to follow and comply with all centre requirements and obligations, including. https://theingots.org/community/Sanctions2019 [8] can lead to the application of sanctions in accordance with the published TLM policy and procedures.
https://theingots.org/community/Sanctions2019 [8]

6. Payment

On receipt of the agreement of the fees offered, we will issue you an invoice for the initial Fees payable in respect of your chosen payment option. Invoices are payable within 21 days of the date thereof.

Fees are inclusive of Value Added Tax which you shall pay at the prevailing rate in addition and at the same time as payment of the Fees.

If you do not pay any invoice by its due date, we will terminate access to the Service by you. In addition, we will initiate interest charges in accordance with "Late Payment of Commercial Debts Regulations 2013"
(http://www.legislation.gov.uk/uksi/2013/395/memorandum/contents [9]).

Failure to make payment after 60 days, will trigger a standard debt recovery action. Whereby a letter will be sent to you, informing you of TLM's intent to pursue the debt through the courts. TLM reserve the right to refuse credit for any reason. In such cases where TLM refuses you credit, TLM may offer services by way of payment in advance.

7. Data Protection

In so far as applicable to the Service, you and we shall comply with the Data Protection Act 2018 (GDPR) and any other applicable data protection legislation that may be in force or come into force during the continuance of the Agreement. In this clause, the terms “personal data”, “process” and “data subject” have the meanings given to them in the Data Protection Act 2018 (GDPR)

Our Privacy Policies explains how Student Data and other personal data will be treated. You warrant that you have all necessary authority and consent to provide the Student Data to us for use in connection with the Service.

Where, in connection with the Service, we process personal data on your behalf or on behalf of a Centre, we shall:

- unless otherwise agreed in writing, only process the personal data to the extent and in such manner as is necessary for the provision of the Service or as is required by law or any regulatory body;
- implement appropriate technical and organisational measures to protect personal data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. Such measures shall be appropriate to the harm that might result from unauthorized or unlawful processing or accidental loss, destruction or damage to personal data and to the nature of personal data to be protected; and
- promptly notify you if we receive a request from a data subject to have access to personal data or any other complaint or request relating to your obligations under the Data Protection Act 2018 (GDPR).

8. Intellectual Property

All intellectual property (including, without limitation, all copyright, database rights, rights in designs and inventions, trademarks (whether registered or unregistered)) in the Site, the Content, and the Service.

You, Centres, Learners and their parents may only use the facilities provided on the websites during the Contract Period.

- the use of the facilities provided on the websites is restricted to the Contract Period;
- Content or material from the Site may not be incorporated into any other work or publication, including for the avoidance of doubt any Learning Platform, Virtual Learning Environment or Managed Learning Environment whether in hard copy or electronic or any other form;
- Content or material from the Site may not be distributed or copied for any commercial purpose;
- no part of the Site may be reproduced on or transmitted to or stored in any other web site or included in any public or private electronic retrieval system or service without our prior written permission;
- you will preserve any copyright notice or other proprietary markings of us or our licensor on any copy of the Content, MIS Compatible Software, the User Pack or other materials provided by us to you.

Any rights not expressly granted in the Agreement are reserved.

9. Warranty

We warrant that:

- the service will be provided by us with reasonable skill and care;
- we shall use reasonable endeavours to make the Service available 24 hours a day 7 days a week, subject to routine maintenance and Site updates and to 16 below.

We shall use reasonable endeavours to provide continuing availability of the Service, but we shall not, in any event, be liable for interruptions or downtime of the Service. We do not guarantee fault-free performance of the Service and you are entitled to the quality of performance generally provided by us from time to time to all users of the Service.

In the event of any defect in the Service that is notified to us in writing, our sole responsibility shall be to use reasonable endeavours to remedy the defect.

We accept no responsibility for the content of any web site to which there is a hypertext link from the Site. Such links are provided for your convenience on an “as is” basis with no warranty, express or implied, for the information provided within them

10. The extent of our liability to you

Save as expressly provided in the Agreement, we shall not be liable for any loss or damage (including, without limitation, loss of profit, opportunity, savings or any type of indirect, economic or consequential loss) arising in contract, tort or otherwise from the use of or inability to use the Service, or any Content, or from any action or decision taken as a result of using the Service or any Content. We do not exclude or restrict our liability for fraudulent misrepresentation or for death or personal injury resulting from our negligence.

You agree that our liability to you for any other loss or damage arising in relation to the Agreement shall be limited to an amount equal to the same proportion of the total Fees paid by you under the Agreement at the date of written notification by you to us of your claim (“the claim date?) as the period from the Start Date to the claim date bears to the Contract Period.

Nothing in the Agreement shall affect Learner’s legal rights as a consumer.

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11. Centre Approval

You understand that TLM has the right to refuse approval without the need to give reasons for their decisions.

You understand that on an annual basis TLM will ask that no material changes have occurred, and you are still fully compliant with all TLM policy and procedures.

You understand that your organisation must follow and comply with all policy and procedures, and failure to do so can lead to the application of sanctions in accordance with the published TLM policy and procedures.

The Agreement will commence on the Start Date and will continue for the Contract Period unless ended under 14 or 15 below.

We will notify you at least 1 month prior to the expiry of the Contract Period. You will have the option to renew provision of the Service for a further period or terminate the Service at the end of the current Contract Period.

12 Early termination

Cancellation: If at any time during the Contract Period, you wish to stop receiving the Service, you may end the Agreement by not less than one month’s notice to us in writing. If you end the Agreement in this way, no refund of Fees which you have paid will be payable by us and you shall pay to us forthwith:

- any Fees which are due or in arrears at the time the Agreement is ended, plus
- a sum equal to the balance of the Fees that would have become due during the remainder of the Contract Period less a discount of 10 per cent.

On termination of the Agreement for any reason, we will disable your administration account, teacher account and all Learner accounts.

13. Indemnity

You shall indemnify us in respect of all losses suffered by us as a result of any breach by you or any Centre or Learner of these Terms or the Terms of Site Use.

14. Force Majeure

Notwithstanding anything contained in the Agreement we shall not be liable for failure or delay in performing any of our obligations under the Agreement because of any cause beyond our reasonable control, including but not limited to:
a. decision of any court or other judicial body of competent jurisdiction,
b. unavailability of equipment, power or another commodity,
c. failure or non-availability of Internet or telecommunications facilities, computer hardware or software,
d. act of God, war, riot, terrorist attack, civil commotion, malicious damage, fires, flood, storm, or pandemic,
e. strikes or other industrial disputes (whether involving our workforce or that of any other party) or
f. acts of government or other prevailing authorities or default of suppliers, subcontractors or other third parties.

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15. Assignment

You shall not assign any of your rights or obligations under the Agreement without our prior written consent. We may assign any or all our rights and obligations under the Agreement to a person who acquires the whole or a substantial part of our business in which event it shall be sufficient for us to give notice to you of the assignment.

16. Miscellaneous

Any notice under the Agreement shall be made via regular mail or fax or email to the address for the party being given the notice last known to the party giving the notice. Notice served by post shall be deemed served on the second business day after the date of posting. Notice served by fax or email shall be deemed served on the next business day after the date of transmission and shall be confirmed by regular mail.

Any failure by us to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision.

You and we agree that we do not intend any third party (including specifically any Student or parent) to have any right to enforce any of the provisions of these Terms pursuant to the Contracts (Rights of Third Parties) Act 1999.

You agree that in entering into the Agreement, you do not do so based on, and do not rely on, any representation, warranty or other provision except as expressly set out in these Terms.

The Agreement operates to the exclusion of any other agreement or understanding of any kind between you and us preceding the date of the Agreement and in any way relating to the subject matter of the Agreement. The Agreement constitutes the whole agreement and understanding between you and us as to the subject matter hereof and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to herein.

If any provision of the Agreement is found by a court of competent jurisdiction to be unenforceable or invalid in any way such unenforceability or invalidity shall in no way impair or affect any other condition, all of which shall remain in full force and effect.

The Agreement shall be governed by the laws of England and Wales. You and we agree to submit to the exclusive jurisdiction of the English Courts.

Source URL: https://theingots.org/community/terms

Links
[1] http://www.theingots.org/
[2] http://www.awards.theingots.org/
[3] https://theingots.org/community/ofqual_policies
[4] https://www.gov.uk/guidance/ofqual-handbook
[5] https://theingots.org/community/OfqualTPs#government-legislation
[6] https://theingots.org/community/ofqualCofI

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[7] https://theingots.org/community/QCF5.29-5.32
[8] https://theingots.org/community/Sanctions2019
[9] http://www.legislation.gov.uk/uksi/2013/395/memorandum/contents

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