

Terms and Conditions

1. What are these Terms and Conditions used for?

These terms and conditions of use (“Terms and Conditions”) are a legal agreement between the person or entity who is registering for access to use our LMS service (“you”, “your,” or “Customer”) and Quizworks B.V. (“EasyLMS”, “us”, or “we”).

These terms and conditions govern our respective rights and obligations with respect to your access and use as well as the support of the online learning management system (The “Service”) and the associated electronic documentation (collectively, the “Materials”).

2. What rules apply to the Participants?

Your Participants (defined below) must also comply with these Terms and Conditions, in so far as they relate to the access and use of the Service by them. It is solely your responsibility to make sure that Participants comply with those provisions. Upon our request, you will have to at your own cost enforce those provisions against Participants who violate them.

3. What does the Service consist of?

Subject to the provisions of these Terms and Conditions and your payment of the Fees in accordance with section 6, below, we grant you the non-exclusive, non-transferable, limited right to remotely access and use the Service for your own business purposes only. We thereby also grant you the right to let your Participants (“Participants”) remotely access and use the content (e.g. courses, exams, quizzes, assessments) that you have created or uploaded through your use of the Service (“Content”). We do not grant you (i) any right to allow persons or entities other than Participants right to access and use the Services, (ii) any right for you to access and use the Services outside your own business purposes. The Service supports modern versions of all regular browsers.

4. What if I have problems or questions?

If you are experiencing problems with the Service, or if you have questions about the Service, you may contact us through the help function in the Service’s dashboard or by email. You cannot contact us by phone. We will reply to your messages during weekdays, excluding national holidays in the Netherlands, between CET 09.00 and 22:00. We will try to reply to your message as soon as we can but we cannot give any response times or lead times. The Service is provided “as is”, “where is”. We do not give any guarantees with regard to the Service, for example that it is never interrupted, that is faultless or that it has full functionality.

5. What happens if the Service changes?

We may change, revise, modify or delete (either permanently or temporarily) a part or all of the functionality or scope of the Service at any time at our sole discretion (an “Update”). Following such Update, the definition of the term “Service” shall be automatically amended without any further action on the part of any of the parties to include such Update. We may

also delete or discontinue (either permanently or temporarily) the Service at our sole discretion after reasonable notification, such without being liable for any costs or damages. We shall however in that case reimburse those Fees you have paid in advance, for the remaining subscription period during which the Service is discontinued.

6. How do I pay the Fees?

You pay the fees for access and use of the Service (“Fees”) as indicated on the website. We collect the Fees each month or every calendar year, depending on the subscription you choose through your Account. If we cannot collect the payment for whatever reason, we reserve the right to downgrade your subscription to the free version of the Service or block your access and use of the Service, without being liable for any costs or damages. The Fees vary depending on the type of LMS solution you have chosen. You may upgrade the chosen solution at any time through your Account, after which we will collect the additional Fees for the upgrade. You may also downgrade the subscription. In that case, if you have a monthly subscription, we will reduce the Fees accordingly in the next month, and if you have a yearly subscription, we will reduce the Fees accordingly from the start of the next year. You are responsible for all sales, excise, VAT and all other taxes associated with your use of the Service other than taxes on our net income. We may reasonably increase the Fees (and bill your credit card for such increased Fees) upon thirty (30) days prior notice to you.

7. What is the location of the Service and how to access it.

- a) **Location of Service and Access.** The Service will be hosted on one or more servers either owned or used by us and will be accessible by you and the Participant over the Internet.
- b) **Your Account.** In order to access the Service, you will have to register an account with us (“Account”). You will have to submit a unique user name and password (“Account Access Information”). The Account Access Information is strictly personal, it is for your use only. You are responsible for keeping the Account Access Information confidential and secure.
- c) **Access by Participants.** In the Service’s dashboard, you can indicate whether Participants will have to register an account in order to access the Content (“Participant Account”). In that case, the Participant will be required to enter an email address and/or (user) name and/or password (“Participant Access Information”). It is your responsibility to make sure that Participants use the correct Participant Access Information and that they keep this confidential and strictly personal.
- d) **Monitoring.** We have the right but not the obligation to monitor access to the Service and, without limiting any remedies that we may have hereunder or at law, we may deny access to you or any Participant who violates these Terms and Conditions.

8. Are there any restrictions regarding use of the Service?

Yes, there are restrictions on the use of the Services:

- a) **You provide your own equipment.** You, as well as your Participants shall provide at your own expense all hardware, Internet service and other items necessary for the access and use of the Service.
- b) **No Copies.** The Service is protected by international intellectual property right laws, including copyright and trade secret laws and treaties. Except as otherwise provided in this Section, you, nor any Participant may make copies of the Service or accompanying materials.
- c) **No Reverse Engineering and the like.** You, nor any Participant may, nor cause or permit any of your employees or any third party to, modify, adapt, translate, reverse engineer, decompile, disassemble, translate or create derivative works based on the Service without our prior written consent, which we may withhold in our sole discretion.
- d) **No Rent, Lease or Transfer.** Access to the Service is granted only to you and your Participants. You, nor any Participant may transfer, lease, assign, rent, distribute, sell or otherwise dispose of the Service (including any of the Materials) on a temporary or permanent basis except with our written consent, which we may withhold in our sole discretion. You may however offer the Content to Participants for payment of a fee. Prior to transferring the Service to an authorized transferee, the transferee shall agree in writing to be bound by all of these Terms and Conditions.
- e) **Access Information.** We shall not be liable for any loss, claim, damages or other liability whatsoever that may arise from the unauthorized use of any Account Access Information or Participant Access Information; this is without limiting any other provision in these Terms and Conditions regarding liability. If any Account Access Information Participant Access Information is compromised, it is your responsibility to notify us thereof immediately, so that the Account can be deactivated and a new username and password can be provided.
- f) **Manner of Use.** You are solely responsible for all activity that occurs under your Account, including the Participants' activities through the Participants Account. You, nor any Participant may use the Service for any illegal or unauthorized purpose(s). You may not, in the use of the Service, violate any applicable laws (including but not limited to copyright laws, and other applicable laws). We may but have no obligation to remove Content and Accounts containing Content that we determine in our sole discretion is/are unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene or otherwise objectionable or violates any party's intellectual property rights, these Terms and Conditions, or applicable law (in addition to all our rights).
- g) **Export Control License.** You represent and warrant that you, nor any Participant shall use the Service in any way that would require either us, you or the Participant to obtain an export control license, whether from a US, EU or other authority. Such use includes without limitation training or use for weapons, whether biological, chemical, nuclear or otherwise and for any other military or nuclear devices.
- h) **Usage and Storage.** We may, in our own discretion, disable any Account or Participant Account or usage should such an Account's usage consumption exceed average usage (as determined by us) in any one month period; this includes without limitation bandwidth usage, total amount of plays and a maximum number of concurrent

Participants as determined by us. We also may, in our own discretion, disable any Account or Participant Account or limit storage capacity with respect to such Account should your storage exceed average usage (as determined by us). If we do so, we will provide you with reasonable notification.

9. Do I get ownership of the Service?

We do not sell the Service to you, but only grant you a right to access and use the Service according to these Terms and Conditions. We, as well as our licensors retain ownership in the Service and all intellectual property rights in the Service, including without limitation any and all patents, copyrights, trade secrets, data base rights, trademarks and any other proprietary and other rights. You agree that we may audit your and the Participants' use of the Service for compliance with these Terms and Conditions at any time, upon reasonable notice. We, as well as our licensors reserve all rights not specifically granted under these Terms and Conditions.

10. Can I create and upload any Content I want?

You decide which Content you create and upload making use of our Service. However, it is your responsibility to make sure that you are allowed to use the Content and that it is not owned by any other party who has not given you permission to use it. It is also your responsibility to make sure the Content complies with the Manner of Use indicated in article 8 sub f above.

11. Do I own the Content?

Yes, you, or your licensors own the Content you create or upload making use of the Service, as well as any intellectual property rights in relation to such Content. We do not claim any ownership rights in respect of your Content.

12. What about the Participants' personal data, and mine?

- a) **Your Personal Data.** We collect and use some of your personal data (including personally identifiable information) in order for you to make use of the Service and in order for us to gain insight into the way in which the Service is used. Please review our Privacy Policy for more information on how we use your personal data.
- b) **Participants' Personal Data.** When making use of our Service, you may, and probably will create and upload Participants' personal data (the "Personal Data"). You can chose to select different types of data that the Participants have to submit before they can access the Content. For example: their phone number, job title, gender, date of birth, street name, postal code, city or town, country, employee ID.
- c) **No Sensitive Data.** You can also create your own custom questions. In reaction to such questions, the Participants may submit Personal Data. You warrant and guarantee that you will not ask the Participants to submit Personal Data that is regarded as a special category or sensitive personal data under applicable laws. This concerns for example: data related to health, religious beliefs, political opinions, race, ethnical background,

sexual preference or behavior, trade union membership, criminal records, biometric data for identification purposes, genetic data. We have not attuned our security measures to the processing of special or sensitive categories of Personal Data.

- d) **Your responsibilities.** It is your responsibility to - and you warrant and guarantee that you - comply with the applicable personal data legislation with regard to the Personal Data created in or uploaded to the Service. This includes without limitation having a legal ground for the submission (e.g. valid consent if so required) of the Personal Data and making sure that the Participants have the legal age for submission of their Personal Data.
- e) **Data processor provisions.** In the sections below, we explain how we handle the Participants' Personal Data in order for you to make use of the Service. In section b) above we have explained the type of Personal Data being processed, the categories of data subjects and the nature of the processing.
- f) **Processing for the Service only.** We only process the Personal Data in order for you to make use of the Service. We do not process the Personal Data for our own purposes. We will not disclose or sell the Personal Data to third parties. We may however be legally obliged to disclose certain Personal Data at a third party's or government agency's request on the basis of applicable laws. Should we receive such a request, we shall notify you thereof, unless the applicable law prohibits us from notifying you on important grounds of public interest.
- g) **We keep the Personal Data confidential.** Our employees working with the Personal Data will keep the Personal Data confidential and will only handle them for the purposes set out above.
- h) **We keep the Personal Data secure.** We have taken appropriate technical and organizational security measures to protect the Personal Data. You can read all about this in our Security Information Sheet. As the security measures are continuously updated, the Information Sheet may also be updated from time to time.
- i) **Your security responsibilities.** It is your responsibility to keep the Account Access Information secure and confidential, as it gives access to your Account, which stores and shows the Personal Data. Should you use a publically accessible computer or other type of device, you should always log out of your Account before leaving the Service to prevent other users from accessing the Account. It is also your responsibility to make sure the Participants keep their Participant Access Information secure and confidential as it gives access to their own Personal Data. This is why it is essential that you notify us immediately if that Access Information is compromised.
- j) **What happens in case of a data breach?** If there is a security breach which leads to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or access to the Personal Data (a "Data Breach"), we will notify you thereof. Upon your request, we will give you the relevant information we know about the Data Breach, in order for you to notify it to the competent authorities or the Participants, if required.
- k) **We use Service Providers.** For us to be able to offer you the Service, we use our own service providers. The Service runs on servers that are located in the United States of America and are run by a service provider that is certified under the EU-US [Privacy](#)

[Shield Framework](#). You give your general approval for us to use this service provider. The service providers are obliged to respect the European Personal Data principles.

- l) **What if we change or add a Service Provider?** If we want to change or add a service provider, we will notify you thereof. You may object to the change or addition within 7 working days after the notification. If the processing of the Personal Data is not adversely affected by such change or addition we ask you to not object so that we can continue to offer the Service to you. If you do timely object, and we cannot amend the Service for you to accommodate your objection with 14 days of your objection, you may terminate the Service and we shall reimburse those Fees you have paid in advance, for the remaining subscription period during which the Service is discontinued.

- m) **How long will we process and store the Personal Data?** We will process the Personal Data during your use of the Service. You must ensure that you have extracted and deleted the Personal Data from your Account before you end your subscription. If we block your Account due to non-compliance with these Terms and Conditions, we will, upon your request, which is to be made within a {10 day} period after your Account was blocked, and upon payment of any Fees still due, give you the Personal Data or, at our discretion, allow you access to your Account during a 3 day period solely to extract and delete the Personal Data. If after these periods, you have not deleted the Personal Data, we reserve the right to do so unilaterally, unless we are required by applicable laws to retain certain Personal Data.

- n) **What if the Participants have questions or requests about their Personal Data?** Through your Account you have access to the Personal Data, where you can amend it, remove it or download it as you please. Should a Participant direct a question or a request about their Personal Data at us, we will forward this to you so that you can handle the question or request yourself. Taking into account the above and the nature of the processing we will provide further reasonable assistance to respond to the Participants' requests for exercising their rights under the applicable personal data legislation.

- o) **What other assistance can you provide?** Taking into account the nature of the processing and the information available to us, we will provide reasonable assistance to help you with the applicable obligations relating to security, Data Breach notifications, privacy impact assessments and prior consultation. Furthermore, we will, upon your reasonable notice, give you the information required for you to check whether we comply with the provisions of this Article 12. This information is Confidential Information as defined in Article 13 below.

- p) **Reasonable Fees for extra support.** We reserve the right to charge a reasonable Fee for assisting you beyond our usual support activities.

- q) **What law applies to your processing of the Personal Data?** You agree that the laws of the Netherlands apply to our processing of the Personal Data.

13. Do I have to keep information confidential?

You acknowledge and agree that these Terms and Conditions and the Service contain our proprietary information ("Confidential Information"), and you hereby agree to maintain the confidentiality of the Confidential Information using at least as great of degree of care as

you use to maintain the confidentiality of your own most confidential information. Notwithstanding the foregoing, in the event that you are required by a valid order by a court or other governmental body to disclose Confidential Information, you may disclose such Confidential Information provided that you first give us prompt notice thereof in order to enable us to have the opportunity to seek protection from such order of disclosure.

14. Your representations and warranties.

Without limiting any other representations and warranties in these Terms and Conditions, you represent and warrant to us that: (i) you have the full power and authority to enter into these Terms and Conditions on behalf of the entity you work for, as applicable, (ii) you are not listed on any restricted persons or parties list, under any jurisdiction, (iii) you are not established in, nor will access and use the Service from a country on a US, EU or other authority's export control list. You also agree that you possess the necessary skills and qualifications to competently use the Service in accordance with these Terms and Conditions.

15. Your indemnification.

You shall defend, indemnify and hold harmless us and our subsidiaries, licensors and affiliates (and their respective officers, directors, employees and agents) against any and all claims, losses, damages, liabilities, deficiencies, judgments, assessments, fines, costs and other expenses (including reasonable attorneys' fees and costs) arising from or relating to (i) (Participants) accessing the Service, (ii) use or misuse of the Service (including any Content and other data or information input in the Service or file or database created thereby), (iii) your breach, or any of your officers', directors', employees' and/or agents' breach of applicable laws, such as intellectual property laws and privacy laws and (iv) your breach, or any of your officers', directors', employees' and/or agents' breach of any of the provisions of these Terms and Conditions, including without limitation, any of your representations and warranties in these Terms and Conditions.

16. Disclaimer of Warranties.

EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS, THE SERVICE (INCLUDING ANY WRITTEN MATERIALS), AND ANY SUPPORT ARE ALL PROVIDED "AS IS" AND BEST EFFORT ("INSPANNINGSVERBINTENIS") WITHOUT WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE AND ANY WARRANTY OF ERROR FREE APPLICATION OR NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WE DO NOT WARRANT THE USE, RESULTS OR PERFORMANCE OF THE SERVICE, THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE OR SECURE, OR THAT THE SERVER(S) THAT MAKE(S) THE SERVICE AVAILABLE, IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

17. Limitation of Liability.

NEITHER US NOR ANY PERSON OR ENTITY WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION, OPERATION OR SUPPORT OF THE SERVICE SHALL BE LIABLE (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, PRODUCT LIABILITY OR OTHER CAUSE OF ACTION) TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING BUT NOT LIMITED

TO DAMAGES FOR LOSS OF BUSINESS REVENUE OR PROFITS, BUSINESS INTERRUPTION FOR ANY REASON, LOSS OF BUSINESS INFORMATION OR DATA, INJURY TO REPUTATION, PERSONAL INJURY (WHETHER PHYSICAL OR MENTAL OR BOTH), GOODWILL, USE, YOUR CONTENT, DATA OR OTHER INTANGIBLE LOSSES OR VIOLATION OF ANY APPLICABLE PRIVACY LAWS ARISING OUT OF (I) THE USE, MISUSE, OR INABILITY TO USE THE SERVICE; (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (IV) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; (V) TERMINATION OF ANY OF YOUR OR THE PARTICIPANTS' ACCOUNTS; OR (VI) ANY OTHER MATTER RELATING TO THE SERVICE OR USE THEREOF, EVEN IF YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL OUR ENTIRE LIABILITY EXCEED THE TOTAL AMOUNT PAID BY YOU TO US UNDER THESE TERMS AND CONDITIONS. THE LIMITATION OF LIABILITY STATED IN THIS SECTION SHALL NOT APPLY FOR ANY LOSSES OR LIABILITY ARISING ON OUR PART DUE TO GROSS NEGLIGENCE, FRAUD OR WILFUL MISCONDUCT OF OUR MANAGEMENT. IN NO EVENT SHALL WE BE LIABLE FOR ANY DAMAGE UNLESS WE HAVE BEEN SERVED A WRITTEN NOTICE OF DEFAULT, SETTING OUT THE DEFAULT IN DETAIL AND ALLOWING US A REASONABLE REMEDY TERM OF AT LEAST TWO WEEKS TO REMEDY THE DEFAULT, AND WE HAVE NOT REMEDIED THE DEFAULT WITHIN SUCH TERM.

18. How can I terminate the Service?

You may decide to terminate the Service and remove your Account at any time in the Service dashboard. However, should you terminate the Service during the subscription period, we will not reimburse the Fees already paid for that period, which may be a monthly or an annual period. As long as you do not terminate the Service before the end of your subscription period, your subscription will automatically renew for the same subscription period (i.e. monthly or yearly).

19. Can you terminate the Service and block my Account?

Yes. We may at our discretion immediately terminate the Service and block your Account without notice and without being obliged to pay damages or repay any Fees, if:

- a) Yes. We may at our discretion you or a Participant fails to comply with any provision of these Terms and Conditions, including without limitation, the Fee payment obligations and the obligation to enforce these Terms and Conditions against Participant in violation hereof;
- b) we become aware that you, or a Participant unlawfully transmits through the Service copyrighted material without a license, valid defense or fair use privilege to do so;
- c) you cause or permit violation of Sections 3, 7 sub b) and c) , 8 or 14 of these Terms and Conditions;
- d) we have well founded grounds to believe that your (mis)use, or a Participant's (mis)use of the Service will otherwise harm our business interests or the Service's reputation.

20. What happens after termination of the Service?

After termination of the Service, (i) you shall, as soon as possible, cease from using and return all Confidential Information to us; (ii) except as otherwise specifically provided in these Terms and Conditions, all rights and licenses granted to your and the Participants

hereunder shall automatically cease without any further action, (iii) we are entitled to block the access and use of the Service and the Accounts, and (v) all amounts due become immediately payable. You must ensure that you have extracted all of the Content through your Account before you end your subscription. In case we block your Account, we may, but are not obliged to return the Content to you.

After termination, the sections 6, 9, 13, 14, 15, 16, 17, 20, 21, 22 and 23 and all other provisions of these Terms and Conditions intended to survive termination of the Service will survive the termination, as applicable to the extent the circumstances described in those sections arise post agreement.

21. How do notices have to be given?

All notices required by these Terms and Conditions or given in connection with the Service shall be deemed given as of the day they are emailed to you or posted in the Service. The email address of record for notices and requests in connection with the Service shall be deemed to be the email address you use to access your Account. It is your responsibility to update any changes to that email address in your Account.

22. Injunctive Relief

You acknowledge that breach of sections 3, 7 sub b) and c), 8, and/or 14 of these Terms and Conditions will give rise to irreparable injury to us and leave us inadequately compensated in damages. Accordingly, we may seek and obtain injunctive relief against you, or a Participant's breach or threatened breach, in addition to any other legal remedies, such as (but not limited to) suit for copyright infringement. You further acknowledge and agree that this provision is necessary for the protection of our legitimate business interests and is reasonable in scope and nature.

23. Miscellaneous

- a) These Terms and Conditions shall exclusively be governed and construed in accordance with the laws of the Netherlands, excluding its conflict laws.

You hereby consent to the exclusive jurisdiction and venue of the courts of The Hague in connection with all disputes arising out of or relating to these Terms and Conditions and/or the use of the Service.

- b) In performing any and/or all of our respective obligations under these Terms and Conditions, we shall each operate as and have the status of being an independent contractor of the other party, and neither party shall act as or be an agent or employee of the other party.
- c) In the event that any provision of these Terms and Conditions is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of any remaining promises shall not in any way be affected or impaired and a valid, legal and enforceable provision of similar intent and economic impact shall be substituted therefor.
- d) We may change these Terms and Conditions during your subscription period. We will notify you of such changes in advance of the start date of the new version of the Terms and Conditions. Until that start date, you have the option to object to the changes. If you

make this objection, we may at our discretion decide to continue the Service pursuant to the old Terms and Conditions or allow you to terminate the Service.

- e) The provisions of these Terms and Conditions shall be interpreted and construed in accordance with their fair meanings, and not strictly for or against any party, regardless of which party may have drafted these Terms and Conditions or any specific provision of these Terms and Conditions. The headings used are used to facilitate reading and do not define or affect the meaning or interpretation of the wording.
- f) The waiver of any provision of these Terms and Conditions shall not be effective unless in writing and signed by the party against which it is sought to be enforced. The failure of any party to insist, in any one or more instances, upon performance of any of these Terms or Conditions shall not be construed as a waiver of future performance of any terms, covenants or conditions of this License, and the obligations of each party with respect thereto shall continue in full force and effect.
- g) These Terms and Conditions shall be binding upon the parties and their successors and permitted assigns. You may not assign the rights and obligations arising from the use of the Service or these Terms and Conditions, or any portion thereof, to any third party without our express prior written consent. We may assign our rights and obligations hereunder to any affiliate or to any successor to our business.
- h) If you are not established in the Netherlands, you agree that articles 6:232, 234 and 235, sub 1 and 3 of the Dutch Civil Code (*"Burgerlijk Wetboek"*) apply. These articles to the manner in which these Terms and Conditions are made available and agreed to in an online environment.
- i) You agree that articles 6:227b and 6:227c of the Dutch Civil Code do not apply, in so far as it is possible to deviate from those provisions. These articles relate to the manner in which electronic agreements are concluded and to the information that must be provided in relation thereto.