

TERMS AND CONDITIONS

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Accompanying Letter: means the accompanying letter setting out the Discount or Commission as the case may be

ACT: means ACT (Administration) Limited, a wholly owned subsidiary of the Association of Corporate Treasurers incorporated and registered in England and Wales with company number 01713927, whose registered office is at 51 Moorgate, London, EC2R 6BH

ACT's Contact: the ACT's point of contact for marketing activity, as notified by the ACT to the Marketing Partner from time to time.

ACT Qualification: means the ACT qualification(s) listed in the Accompanying Letter.

Commission: has the meaning set out in the Accompanying Letter

Discount: has the meaning set out in the Accompanying Letter.

Effective Date: as set out in the Accompanying Letter

Force Majeure Event: means any event affecting the performance of any provision of this agreement including, without limitation, flood, fire, explosion, earthquake or other extreme weather conditions, subsidence, structural damage, epidemic or other natural physical disaster, failure or shortage of power supplies, war, military operations, riot, crowd disorder, strike, lock-outs or other industrial action, terrorist action or civil commotion.

Marketing Partner's Contact: means the Marketing Partner's point of contact for marketing activity as notified by the Marketing Partner to the ACT from time to time.

Marketing Partner Members: means current, fully paid up members of the Marketing Partner in the Territory.

Intellectual Property Rights: all copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Marketing: means the marketing and promotional activity to be conducted by the Marketing Partner under this Agreement.

Marketing Plan: has the meaning set out in clause 3.3.

Referral Indicator: means a unique code or reference name which is agreed between the parties, the use of which by a student during the ACT Qualification registration process on the ACT's website, indicates to the parties that the Student has been referred by the Marketing Partner.

Marketing Partner: means the organisation that is contracted with the ACT under these Terms and Conditions and is named in the Accompanying Letter

Student(s):

(a) in the event the ACT is paying a Discount, means individuals who: (i) have indicated during their registration for the ACT Qualification that they are Marketing Partner Members and who have supplied their Marketing Partner membership number to the ACT; and (ii) in respect of whom the Marketing Partner has subsequently verified to the ACT that the membership number supplied relates to the named student, and is current and valid, or

(b) in the event that the ACT is paying Commission, means students who (i) have registered via an ACT approved web page for an ACT Qualification utilising a Referral Indicator or via a coded enrolment form, and (ii) have paid all associated tuition and examination fees to the ACT for the ACT Qualification.

Territory: means the territory listed in the Accompanying Letter

Trade Mark(s): means the registered or unregistered trade marks of each party as notified to the other in writing from time to time.

2. COMMENCEMENT AND DURATION

Subject to clause 8, this agreement shall be effective from the Effective Date and shall continue thereafter unless and until terminated by either party giving the other not less than three months written notice.

3. MARKETING ACTIVITY

3.1 The Marketing Partner shall conduct the Marketing with the aim of raising the profile of the ACT amongst Marketing Partner Members, and encouraging them to undertake the ACT Qualification.

3.2 For the avoidance of doubt, the ACT appoints Marketing Partner on a non-exclusive basis and the ACT shall be free to conduct marketing of the ACT Qualification in the Territory either itself or by appointing a third party.

3.3 In the event that the Accompanying Letter refers to the need to have a Marketing Plan, the Marketing Partner shall propose a marketing plan designed to raise the profile of the ACT Qualification during the term of this agreement (the "**Marketing Plan**"). The ACT shall review the Marketing Plan and the parties, acting reasonably and in good faith, shall discuss the same until details of the proposed plan are agreed.

3.4 The parties shall:

- (a) each provide reasonable co-operation to the other in all matters relating to the performance of this agreement; and
- (b) hold meetings as appropriate (by telephone or in person) between the Marketing Partner Contact and the ACT Contact to discuss and report on progress under this Agreement.

3.5 The Marketing Partner shall conduct the Marketing with reasonable skill and care, and in compliance with all applicable legislation.

3.6 The ACT shall:

- (a) If paying a Commission, keep proper records and books of account relating to the number of Students who have enrolled for an ACT Qualification utilising a Referral Indicator; and
- (b) If paying a Discount, keep proper records and books of account relating to the number of Students who have enrolled for an ACT Qualification and qualified for the Discount; respond to the Marketing Partner's request for approval of marketing material within a reasonable time (subject always to the Marketing Partner submitting approval requests sufficiently in advance of the date by which approval is required), and shall support the Marketing Partner's Marketing of the ACT Qualification where the ACT considers it is reasonable to do so.

3.7 If the ACT pays a Discount, the Marketing Partner shall respond to the ACT's request for verification of any prospective Student's Marketing Partner membership status within a reasonable time, and provide such documentary evidence of the same as the ACT shall reasonably require.

4. CHARGES AND PAYMENT

4.1 In consideration of the Marketing, the ACT shall as applicable either:

- (a) apply the Discount to each ACT Qualification for which a Student enrolls, or
- (b) pay the Marketing Partner the Commission in respect of each ACT Qualification for which a Student enrolls.

4.2 For the avoidance of doubt:

- (a) as at the Signature Date, the Discount for the ACT Qualification relates wholly to study material and the UK examination fee;
- (b) examination re-take fees, deferral fees, tuition fees, revision fees and other sundry fees will not be subject to Discount;
- (c) If the Marketing Partner has been appointed to market Cert ICM, the ACT's Student fees for CertICM include the delivery of face-to-face tuition on which Commission or Discount is not payable; and the portion of the Student fees attributable to study material and the UK examination and to which the Discount or Commission is applicable amounts to GBP 1,000 (one thousand pounds)

4.3 The ACT reserves the right to alter its prices or its pricing structure for the ACT Qualification, and shall determine and inform the Marketing Partner of any change in the way the Discount is applied or the portion of its prices relating to study material and the UK examination fee, as such is applicable.

- 4.4 This clause shall apply if the ACT is paying Commission.
- (a) The parties agree that should any Student cancel part-way through an ACT Qualification, the Commission paid by the ACT in respect of that Student shall be subject to refund. The parties shall agree a detailed refund policy within a reasonable period of the Effective Date which addresses how the following issues will be dealt with:
- (i) The circumstances in which a refund will be payable;
 - (ii) The amounts payable in each of the circumstances; and
 - (iii) How exchange rate fluctuations occurring between the point at which Commission is paid and the point at which the obligation to refund arises will be handled.

In accordance with the refund policy to be agreed between the parties, the ACT shall, at its option, invoice the Marketing Partner for the relevant refund amount, or deduct the same from the next quarterly Commission payments payable to the ACT.

- (b) The ACT shall pay the Commission on a quarterly basis, to a bank account nominated by the Marketing Partner.
- (c) Commission is payable only if the Student enrolls for an ACT Qualification using a Referral Indicator (or via an ACT approved, jointly branded booking form). Examination re-take fees, deferral fees and other sundry fees will not be subject to Commission.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 Each party grants the other a limited, non-exclusive, non-transferable right to use their Trade Mark(s) for the term of this agreement, for the sole purpose of conducting agreed Marketing.
- 5.2 The license granted in clause 5.1 is subject always to the prior written consent of the other party to each proposed use of their Trade Mark(s), including without limitation, prior approval of the use of the Trade Mark(s) in proposed marketing or other literature.
- 5.3 Neither party shall use the name, logo or Trade Mark(s) of the other, in any context other than approved Marketing, including without limitation, to indicate or imply that a partnership exists between the parties, or that the other party endorses, approves, sanctions or is otherwise associated with any of the other's events, products or services. Notwithstanding the foregoing, the Marketing Partner may refer in the Marketing materials to being an approved entity to market the ACT Qualification in the Territory.
- 5.4 Intellectual Property Rights in all the Marketing Partner developed Marketing material (with the exclusion of any ACT Trade Mark(s)), shall vest or remain with the Marketing Partner. Intellectual Property Rights in all ACT developed Marketing material, including without limitation, course descriptions and study material, shall vest or remain with the ACT.
- 5.5 Each party shall indemnify the other from and against all claims, demands, actions, costs, expenses, liability and damages or losses (including all interest, penalties and legal and other professional costs and expenses) incurred them as a result of any claim that in receiving or using any Intellectual Property Rights of the other, in accordance with this agreement, it has infringed or will infringe the Intellectual Property Rights of any third party.

6. LIMITATION OF LIABILITY

- 6.1 Nothing in this Agreement shall limit or exclude either party's liability in respect of:
- (a) fraud;
 - (b) death or personal injury caused by negligence; or
 - (c) anything which cannot by law be limited or excluded.
- 6.2 Neither party shall be liable to the other for any indirect or consequential loss, or loss of goodwill, loss of profits, loss of publicity, loss of business opportunity or any other economic loss.
- 6.3 Subject to Clauses 6.1 and 6.2 the aggregate liability of either party for any liability arising under or in connection with this Agreement howsoever arising (including by way of negligence) shall be limited to GBP 5,000 (five thousand pounds), except that the liability of either party to the other for any claim or liability arising under or in connection with
- (a) Clauses 5.1 to 5.4 shall be limited to GBP 50,000 (fifty thousand pounds) or

(b) Clause 9.1 shall be limited to GBP 50,000 (fifty thousand pounds).

- 6.4 The indemnities in this agreement are each conditional on the party seeking indemnification: (a) promptly informing the other of the event giving rise to the claim or potential claim, (b) taking all reasonable steps to mitigate their losses; (c) giving control of the claim or potential claim, including all rights of settlement and negotiation to the other party; and (d) providing all reasonable co-operation and information to the other in connection with the claim or potential claim.

7. CONFIDENTIALITY

- 7.1 The parties shall keep in strict confidence all information of a confidential nature (including, without limitation, the terms of this agreement) which has been disclosed to them by the other, in connection with the performance of this agreement. The parties shall disclose such information: (a) to those of its employees, agents, consultants or subcontractors as need to know it for the purpose of the performance of this agreement; (b) to its professional advisors who shall hold the same in confidence; or (c) as may be required by law or any governmental or regulatory authority. The provisions of this clause 7 shall survive expiry or termination of this agreement.

- 7.2 No announcements or press releases shall be made by either party in relation to this agreement without the prior written consent of the other, such consent not to be unreasonably withheld or delayed.

8. TERMINATION

- 8.1 Either party may terminate this agreement immediately by notice in writing to the other if:
- (a) the other party commits a material breach of this agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so;
 - (b) the other party passes a resolution for winding up (other than for the purpose of a solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect;
 - (c) the other party ceases to carry on its business or substantially the whole of it business;
 - (d) the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets;
 - (e) as a result of any act or omission by the other party, the terminating party reasonably considers that the image or reputation of the terminating party has been, or is likely to be, adversely affected by the parties' continued association;
 - (f) there is a change in control or the not for profit status of the other party; or
 - (g) the terminating party reasonably considers that the image or reputation of the terminating party has been, or is likely to be, adversely affected by the parties' continued association.
- 8.2 On termination of this agreement for any reason, each party shall promptly return to the other, or otherwise dispose of, as the other party may instruct, all documents, materials and papers whatsoever under its control relating to the agreement.
- 8.3 For the avoidance of doubt, no compensation shall be payable on termination of this agreement.

9. DATA PROTECTION

- 9.1 The parties shall:
- (a) each comply with the provisions of the Data Protection Act 1998 and any associated legislation;
 - (b) provide reasonable co-operation to the other in connection with the other's compliance with applicable data protection legislation, including promptly acting on the other's reasonable requests with respect to the protection of any of the Marketing Partner Members or Student personal data, or the exercise of any data subject rights; and
 - (c) each indemnify the other against any claims, actions or expenses arising directly from their breach of this clause.

10. FORCE MAJEURE

10.1 Neither Party shall be liable for any breach of this agreement directly or indirectly caused by a Force Majeure Event or other circumstances beyond the reasonable control of that Party and which prevent that Party from performing its obligations to the other, provided that a lack of funds shall not be regarded as a circumstance beyond that Party's reasonable control. A Party affected by a Force Majeure Event under this clause shall make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under this agreement. As soon as reasonably possible after the end of the Force Majeure Event under this clause, the affected Party shall resume performance of its obligations under this agreement.

11. VARIATION

11.1 No variation of this agreement shall be valid unless it is in writing and signed by, or on behalf of, each of the parties.

12. WAIVER

12.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this agreement or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.

13. SEVERANCE

13.1 If any provision of this agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the agreement, and the validity and enforceability of the other provisions of the agreement shall not be affected.

14. ENTIRE AGREEMENT

14.1 This agreement constitutes the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to its subject matter.

15. ASSIGNMENT

15.1 Neither Party shall assign any of its rights or obligations under this agreement or subject any of its rights or obligations under this agreement without the other Party's consent in writing not be unreasonably withheld or delayed.

16. NO PARTNERSHIP OR AGENCY

16.1 Nothing in this agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

17. RIGHTS OF THIRD PARTIES

17.1 A person who is not a party to this agreement shall not have any rights under or in connection with it.

18. NOTICES

18.1 A notice given to a party under or in connection with this agreement shall be in writing and sent to the addresses of each party as set out in the Accompanying Letter, for the attention of the Director of Membership and Administration for the ACT, and for the Marketing Partner, the person named in the Accompanying Letter.

19. COMPLIANCE

19.1 Each Party warrants to the other that:

- (a) It will not and will procure that its employees, agents or sub-contractors will not engage in any activity, practice or conduct which could constitute an offence of bribery or facilitation payment in the United Kingdom or Territory, and
- (b) It has and will maintain in place adequate procedures and training of its employees, agents or sub-contractors to ensure compliance with clause 19.1. (a).

20. DISPUTE RESOLUTION & GOVERNING LAW

20.1 If any dispute arises in connection with this agreement, the parties shall, within five days of a written request from the other,

meet (in person or by telephone) in a good faith effort to resolve the dispute.

20.2 If the dispute is not resolved at that meeting, the parties may agree (but are not obliged to do so) to attempt to settle their dispute by mediation in accordance with an agreed professional mediation procedure at a location of the parties' choosing.

20.3 This agreement shall be governed by, and construed in accordance with, the laws of England & Wales.

20.4 The parties irrevocably agree that the courts of England & Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement.