

# Gems Training

## Terms and Conditions

### 1. Interpretation

1.1 In this Agreement the following expressions shall have the following meanings:

“Client” means the person or entity making the booking as named on the booking form and to whom Gems Training has agreed to provide a training course or courses.

“Client Data” means all the data, information, text, drawings, diagrams, images or sound embodied in any electronic or tangible medium, and which are supplied or in respect of which access is granted to Gems Training by the Client pursuant to this Agreement, or which Gems Training is required to generate under this Agreement, with the exception of Personal Data.

“Confidential Information” means all information (whether written, oral or in electronic form) concerning the business and affairs of that party that the other party obtains or receives as a result of the discussions leading up to or the entering into or the performance of this Agreement, being understood that Personal Data does not fall within the scope of this definition.

“Consequential Loss” means (i) consequential loss under applicable law; and (ii) loss and/or deferral of production, loss of product, loss of use, loss of revenue, loss of profit or anticipated profit, increased cost of working, loss of contract or business interruption, whether direct or indirect, to the extent that these are not included in (i) and whether or not foreseeable at the date of commencement of the Services.

“Data Controller” shall have the meaning ascribed to it pursuant to the DPA.

“Data Processor” shall have the meaning ascribed to it pursuant to the DPA.

“DPA” means the Data Protection Act 1998.

“Fees” means the fees for the Services set out in the price list current at the Effective Date.

“Personal Data” means any personal data or sensitive personal data (as defined in the DPA) which relate to a living individual, including data relating to the physical or mental health or condition of an individual and which are supplied or in respect of which access is granted to either party pursuant to this Agreement.

“Services” means the work to be carried out by Gems Training for the Client.

1.2 Except where the context requires otherwise the singular includes the plural and vice versa; a reference to one gender includes all genders; words denoting persons include firms and corporations and vice versa.

1.3 References to Clauses are, unless otherwise provided, references to clauses of this Agreement.

1.4 Any negative obligation imposed on any party shall be construed as if it were also an obligation not to permit or suffer the act or thing in question and any positive obligation imposed on any party shall be construed as if it were also an obligation to procure that the act or thing in question be done.

1.5 The words “include” or “including” shall be construed without limitation to the words following.

### 2. The Services

2.1 Gems Training shall provide the Services with all reasonable skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this clause) in accordance with its own established internal procedures. All other warranties and representations, whether express or implied by law, are excluded to the extent permitted by law.

2.2 The Services shall be performed in compliance with all applicable laws and regulations. Any changes to the Services necessitated solely by changes to any applicable law, regulation or relevant code of practice which come into effect after the date of this Agreement will be carried out by Gems Training subject to such revised Fees as shall be agreed with the Client.

### 3. Course Reservations/Confirmations

3.1 Reservations will only be accepted on receipt of payment and a fully completed booking form.

3. Course bookings should be made at least five (5) working days before the date of course commencement.

### 4. Course Fees

Reservations are made on the basis that training courses will be charged at the rate in effect on the date of course commencement.

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## 5. Payment Terms

5.1 For self-sponsored Clients a deposit of 100% of the course Fee is required before course bookings will be accepted.

5.2 All fees require to be paid in full five (5) working days in advance of the date of course commencement.

5.3 Gems Training reserves the right to refuse admission or cancel the booking if payment in full is not received on time. Payment may be made by major credit and debit cards, cash, bank transfer or cheques made payable to Gloucester Event Medics. If payment is made by cheque, this must be received by Gems Training ten (10) working days prior to the date of course commencement.

5.5 Gems Training reserves the right to adjust the Fees upon the provision of fourteen (14) days' written notice to the Client.

## 6. Cancellations/Transfers

6.1 All cancellations and transfers must be made in writing by the Client. Cancellation charges will be calculated and invoiced to the Client on a sliding scale from the date Gems Training receives the written notice of cancellation as follows:

(a) For cancellation more than 14 working days before the date of course commencement the Client will be charged 50% of the course Fee.

(b) For cancellation between 14-7 working days before the date of course commencement the Client will be charged 75% of the course Fee.

(c) For cancellation between 7 working days and 24 hours before the date of course commencement, the Client will be charged 100% of the course Fee.

6.2 Transfers made less than TEN (10) working days before the date of course commencement will be subject to a 25% administration charge. Substitutions can be made at any time at no additional charge. Non attendances shall not be refunded.

## 7. Service Levels

Gems Training warrants to the Client that its training courses will be provided using reasonable care and skill and shall use its reasonable endeavours to ensure that the Services are performed substantially in accordance with the terms of any quote or estimate provided in conjunction with this Agreement.

## 8. Client Obligations

8.1 The Client hereby warrants and represents to Gems Training that it will co-operate with Gems Training and provide Gems Training with such information and assistance as Gems Training may reasonably require in order to enable or facilitate Gems Training to comply with its obligations under this Agreement.

8.2 In the event that Gems Training considers that the Client is in breach of any of its obligations hereunder or if Gems Training is otherwise unable to perform any of its obligations as a result of any act or omission of the Client, Gems Training shall only be entitled to rely on such breach act or relevant omission as relieving it from the performance of any of its obligations hereunder:

8.2.1 if Gems Training shall reasonably promptly after the alleged breach, act or omission came to its attention have notified the Client in writing setting out in reasonable detail such breach, act or omission; and

8.2.2 to the extent that such breach, act or omission by the Client prevents or restricts performance by Gems Training of its obligations hereunder in the manner contemplated hereby.

## 9. Data Protection

9.1 Both parties, whether Data Processor or Data Controller shall comply with the requirements of the DPA.

9.2 Gems Training agrees that in the event that it is permitted access to Personal Data held by the Client or is supplied with or is otherwise provided with Personal Data by the Client, Gems Training shall:

9.2.1 use and/or hold such Personal Data for the purposes and in the manner directed by the Client and shall not otherwise modify, amend or alter the contents of such Personal Data or disclose or permit the disclosure of such Personal Data to any third party, unless specifically authorised in writing by the Client and shall take all such steps as may be necessary to safeguard such Personal Data;

9.2.2 hold and process Personal Data after having taken appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data. Having regard to the state of

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technological development and the cost of implementing any measures, the measures must ensure a level of security appropriate to the harm that might result from unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the personal data to be protected.

9.3 Subject always to Gems Training's obligations to comply with the DPA, Gems Training shall assist the Client in any subject access requests, which may be received from data subjects.

## 10. Intellectual Property Rights

All copyright, design right and other intellectual property rights used, created or embodied in or arising out of or in connection with the delivery of the Services remains the sole property of Gems Training. The Client and/or the delegate shall not during or at any time after the completion of the Services dispute the ownership of such rights. All materials and information (in whatever form) provided by Gems Training in connection with the Services shall not be copied, distributed or be made available to third parties and shall be used only for the purpose for which they were provided. The delegate is, subject to the previous paragraph, entitled to keep for their own use any course materials that are issued to them. However, any other materials, in whatever format, issued to the delegate must be returned to Gems Training on completion of the training course. The Client and/or the delegate shall not, without Gems Training's prior written consent, be entitled to copy any materials and information (including course materials) provided by Gems Training.

## 11. Delegate Fitness

It is the Client's sole responsibility to ensure that delegates are physically fit and free from respiratory disorders or heart disease. Gems Training reserves the right to ask any delegate to complete a medical disclaimer form and to complete a series of reasonable physical tests in order to assess their fitness to attend any training course provided by Gems Training. If the Client and/or any of the Client's delegates have a disability, the Client must notify Gems Training at the time of making the booking, and Gems Training will endeavour to overcome this to the best of its ability. Acceptance of disabled delegates is at Gems Training's sole discretion. It is recommended that delegates have an up-to-date medical certificate. Gems Training reserves the right to turn delegates away if it believes that they pose a safety risk. Gems Training shall not be liable for any injury or illness to the delegate other than resulting solely from Gems Training's negligence.

## 12. Completion of Course

All elements of the course must be completed successfully before certification can be awarded. Where a delegate is unable to complete a course due to circumstances beyond their control, they may re-book onto the course within three (3) calendar months to complete it, in which case, a re-booking Fee of 10% of the course Fee will be payable. If the delegate does not re-book onto the course within three (3) calendar months, the full Fee will be payable again for course completion.

## 13. Confidentiality

13.1 Each party undertakes to keep confidential all Confidential Information belonging to the other and to disclose such Confidential Information only to those of its employees, agents and sub-contractors involved in the provision or receipt of the Services and who need to know the Confidential Information in question.

13.2 Each Party undertakes to the other to make all relevant employees and sub-contractors aware of the confidentiality of the Confidential Information belonging to the other and the provisions of this clause 13, to take all such steps as shall from time to time be necessary to ensure compliance by its employees, agents and sub-contractors with the provisions of this clause 13.

13.3 For the purpose of Gems Training's undertaking under clauses 13.1 and 13.2 above, the Confidential Information shall be deemed to include all Client Data.

13.4 Nothing contained in this clause 13 shall prevent Gems Training or the Client from using data processing techniques, ideas and know-how gained during the performance of this Agreement in the furtherance of its normal business. Nothing contained in this clause 13 shall prevent Gems Training using data gained during the performance of this Agreement in an anonymous way and for statistical purposes, subject to compliance with applicable legislation including the DPA.

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## 14. Health and Safety

14.1 Details of any safety equipment and/or protective clothing, which the Client is required to provide will be set out in the Course Joining Instructions. It is the Client's sole responsibility to ensure that any such equipment and/or clothing is in good order and repair and is fit for the purpose for which it is required.

14.2 Gems Training reserves the right at any time to postpone or suspend the provision of any training course if in Gems Training's sole opinion there is or is likely to be any risk to the safety of any personnel or any risk of loss or damage to any plant, machinery, equipment or material at the premises. Gems Training shall have no liability to the Client in respect of such actions.

14.3 Gems Training shall, in the interests of safety (whether of personnel, property or otherwise), be entitled at any time to require a delegate to leave the premises, to refuse a delegate entry to the premises and/or to continue to provide training to the delegate. Gems Training shall have no liability to the Client in respect of such actions and the Client shall still be bound to pay the Fee due to Gems Training or receive no reimbursement of the Fee already paid by the Client to Gems Training.

14.4 The delegate shall throughout the duration of the training comply in all respects with Gems Training's health and safety policies, drug and alcohol policies and statutory regulations applicable to the premises.

## 15. Force Majeure

No failure or omission by either party to carry out or observe any of the obligations to be performed here under shall, except as herein expressly agreed to the contrary, give rise to any claim against such party, or be deemed to be in breach of contract, if such failure or omission arises from a force majeure event. A force majeure event is an event beyond the reasonable control of the affected party, which renders the performance of its obligations hereunder inadvisable, commercially impracticable, illegal or impossible, including but not limited to sickness of Gems Training staff who cannot be replaced. In the event that the Services cannot be rendered as a result of a force majeure event, the time for performance shall be extended for a reasonable period.

## 16. Termination

16.1 Gems Training may terminate this Agreement immediately if the Client materially breaches the terms of the Agreement and does not remedy that breach (where such breach is capable of remedy) within such reasonable period as Gems Training specifies.

16.2 Gems Training may at any time by notice in writing terminate this Agreement from the date of service of such notice if there is a change of law, regulation, legal decision or change of policy direction by government or decision of the other relevant regulatory authority which necessarily renders the existence or performance of this Agreement void, invalid or fundamentally frustrated, or which leads to a substantial increase in the ongoing costs of Gems Training.

16.3 Upon termination of this Agreement for any reason whatsoever:

16.3.1 Gems Training shall cease to perform any of the Services; and

16.3.2 any outstanding Fees shall remain due and payable by the Client to Gems Training in accordance with the terms of this Agreement.

## 17. Liability

17.1 Notwithstanding any other provision to the contrary, neither party shall in any circumstances be liable to the other for any Consequential Loss, regardless of cause and even if caused or contributed to by the negligence, fault, strict liability, or breach of duty (statutory or otherwise) of the other party and each party shall save, indemnify, defend and hold harmless the other party in this regard.

17.2 Liability of Gems Training to the Client in respect of any claim for breach of contract, negligence, breach of statutory duty or other claim in relation to this Agreement shall in the aggregate be limited as follows:

17.2.1 in respect of any claim for personal injury or death caused by the negligence of Gems Training, no limit shall apply; and

17.2.2 in respect of any other claim, the total aggregate liability of Gems Training arising out of or in connection with this Agreement (whether caused by negligence, by way of indemnity, or otherwise) shall in no event exceed the lesser of:

(i) £1,000,000 (one million pounds sterling); and

(ii) a sum equal to ten (10) times the value of the Fees paid or payable by the Client for the Services.

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17.3 Subject to the provisions of clauses 17.2.1 and 17.2.2, Gems Training shall have no liability in respect of any claim for breach of contract, negligence, breach of statutory duty or other claim in respect of any delay or failure by Gems Training to perform any of its obligations under this Agreement where such failure results directly or indirectly from any negligent or wilful act or omission of the Client, its agents, subcontractors or contractors.

17.4 The parties agree that the foregoing limitations and exclusions represent the parties' agreement based on the level of risk assumed by Gems Training in connection with its obligations under this Agreement and the payments provided under this Agreement to Gems Training for the performance of these obligations.

17.5 The parties expressly agree that should any limitation or provision contained in this clause 17 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

## 18. Duplicate Certificates

Requests for duplicate certificates must be made in writing, stating the relevant course title, date, delegate name and date of birth. An administration charge of £15.00 per copy certificate will be made in addition to the certifying body's own fee in this regard. These sums must be paid in advance of the duplicate certificate being issued.

## 19. General

19.1 Delegates must meet and be able to produce prior to commencement of the course proof of any prerequisites set out for each course.

19.2 Gems Training's training courses are generally conveyed in the English language. Delegates must be able to read, understand oral instructions in and be capable of making themselves understood (whether in writing or otherwise) in English.

If the Client or any of the Client's delegates attending a training course are not competent in understanding English language or literature, it is the Client's responsibility to advise Gems Training at the time of booking. A translator can be hired by the Client at the Client's cost and such translator may accompany the Client and/or any of the Client's delegates on the training course, but the translator will not receive a certificate or competency for attendance on any training course. Any translator acting for any delegate must comply with the terms and conditions of this Agreement and the Client shall be responsible and liable for all the action or omissions of the translator as if the translator was one of the Client's delegates.

19.3 The Client must specify any special requests such as dietary requirements, any disability or religious commitments to Gems Training at the time of booking. If Gems Training is not advised of these requests at the time of booking, then Gems Training will not be liable for taking any of these requirements into account.

19.4 All courses are offered on the basis of Gems Training being satisfied that there are sufficient delegates to justify running the course. If at any time Gems Training, in its sole discretion, determines that the number of delegates does not justify running any course and decides to cancel or postpone a training course, Gems Training's liability for such cancellation shall be limited to a refund of any Fees paid for such course. No refunds shall be given if the delegate attends any rescheduled course or any other course instead of the cancelled course.

19.5 All business with Gems Training relating to the provision of Services is transacted on the terms set out in this Agreement. These terms prevail over any inconsistent terms and conditions contained in, or referred to, in the Client's purchase order, confirmation of order, acceptance, correspondence or otherwise.

19.6 This Agreement constitutes the whole agreement and entire understanding between the parties hereto in respect of the subject matter of this Agreement and supersedes all previous agreements, correspondence, discussions, representations, quotes or estimates relating to its subject matter.

19.7 This Agreement is severable in that if any provision is determined to be illegal or unenforceable by any court of competent jurisdiction such provision shall be deemed to have been deleted without affecting the remaining provisions of this Agreement.

19.8 Nothing in this Agreement shall constitute or be deemed to constitute a partnership, agency or joint venture between the parties hereto or constitute or be deemed to constitute either party the agent of the other for any purpose whatsoever and neither party shall have any authority or power to bind the other or to contract in the name of or create a liability against the other.

19.9 Unless otherwise agreed in writing, no failure by either party to exercise any right or remedy available to it hereunder nor any delay so to exercise any such right to remedy shall operate as a waiver of it nor

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shall any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.

19.10 Any notice to be given under this Agreement shall be either delivered by hand or sent by first class recorded delivery post to the address of the party. If delivered by hand, the notice shall be considered effective at the time of delivery. If delivered by first class recorded delivery post, the notice shall be considered effective two (2) working days after it has been properly posted.

19.11 The provisions of this Agreement which by their nature and/or implication survive expiry or termination of the Agreement shall remain in full force and effect after such expiry or termination.

19.12 Neither party may assign, novate or transfer this Agreement, or part thereof, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

19.13 The Client acknowledges the investment made by Gems Training in the training and development of staff to deliver the Services under this Agreement. For a period of twelve (12) month from delivery of the Services, the Client shall not (and shall procure that its affiliates or associated companies shall not), whether directly or indirectly or alone or jointly or as a principal or agent, solicit or entice any employee, agent, contractor or consultant working for Gems Training to leave his or her employment with Gems Training without the prior written consent of Gems Training. Where a member of Gems Training's staff accepts an offer of employment with the Client, then the Client will pay to Gems Training such sum representing 100% of the annualised earnings of that employee including bonus payments while employed by Gems Training. The provisions of this clause shall not apply to recruitment fairs, job advertisements on the Client's website or in the local press or trade publications, radio or television advertisements or other indirect recruitment procedures which are operated in the public domain.

## 20. Governing Law & Jurisdiction

20.1 This Agreement shall be governed and construed in accordance with the laws of England. The parties hereby irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales.

20.2 This Agreement shall not give rise to any rights enforceable by a third party pursuant to the Contract (Rights of Third Parties) Act 1999 but without prejudice to any rights or remedies that exist or are available apart from that Act.