



DARKTRACE EDUCATION: CERTIFICATION TERMS AND CONDITIONS

This agreement (the “**Agreement**”) is entered into between You and Darktrace (each a “**Party**” and together the “**Parties**”), and governs the booking and delivery of training courses and examinations which are provided by Darktrace to one or more of Your Attendees. By signing this Agreement, downloading or otherwise accessing the Training Materials, or registering an Enrolment for an Attendee, You are bound by the terms of this Agreement.

1. INTERPRETATION

1.1 Unless context otherwise dictates, the following capitalised terms shall have the following meanings:

Attendee means the individual attending the training course and sitting a Darktrace Exam;

Certified Analyst means an Attendee who has completed a Darktrace Learning Path, and who has passed the associated Darktrace Exam for an analyst;

Certified Engineer means an Attendee who has completed the Darktrace Learning Path, and who has passed the associated Darktrace Exam for an analyst;

Contact means the Customer or Partner (as applicable) contact at Darktrace which manages the relevant Customer or Partner’s account;

Course means a series of lessons and/or the training portion of a Darktrace Certification where an Attendee will receive Training Materials and/or participate in tutored learning, as applicable;

Course Assessment means a short test pertinent to the Course, used to evaluate, measure, and document the academic readiness, learning progress, skill acquisition of an Attendee.

Customer means a customer which is actively receiving one or more services under a valid agreement with Darktrace at the time of the Darktrace Exam;

Darktrace Certification means the certification by which the Attendee will become a Certified Analyst and/or a Certified Engineer;

Darktrace Learning Path means learning elements which must be completed in order to obtain a Darktrace Certification, including but not limited to a Course and/or Exam as applicable;

Data Privacy Laws means the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the General Data Protection Regulation (Regulation (EU) 2016/679) (“GDPR”), the California Consumer Privacy Act of 2018 (“CCPA”), and laws of similar purpose or effect in any relevant jurisdiction, in each case as amended, updated, re-enacted or replaced from time to time;

Effective Date means the earlier of: (a) Your signature on this Agreement; (b) Your download of or accessing the Training Materials; or (c) Your registration for an Enrolment of an Attendee;

Exam means the examination which an Attendee must sit and pass in order to achieve the Darktrace Certification;

Examination Site means the physical and/or online venue in which the Attendee will take the Darktrace Exam;

Fee means the price paid or payable to attend a course, Examination and/or receive a Darktrace Certification including, without limitation, costs associated with training materials, course fees and/or the Exam. **Fees** shall be construed accordingly;

Guide means any such guidebook, documentation or instruction which Darktrace reasonably provides You and/or an Attendee which outlines any requirements, conditions and/or instructions an Attendee must observe when attending an Exam or a Course;

Instructor means a representative of Darktrace who is authorised to provide the training and/or administer examination for or on behalf of Darktrace;

Intellectual Property Rights or **IPR** means all patents, rights to inventions, utility models, copyrights 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 computer software, database rights, topography rights, moral rights, 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;

Learning Path means a series of Darktrace training Courses and Course Assessments that are undertaken by the Attendee in a predefined order

Partner means a member of the Darktrace partner program which includes but is not limited to authorised resellers and distributors, as applicable;

Permitted Materials means any materials that an Attendee is permitted to have with them during an Exam;

Personal Data means, generally, information relating to an identified or identifiable natural person, or other regulated data types as defined by applicable Data Privacy Laws;

Portal means the private online portal through which You or Your Representative may view the catalogue of courses and enrol the Attendee on one or more course;

Products means: (i) products and/or solutions which are made available by Darktrace to its Customers, as applicable from time to time; (ii) products and/or solutions which Darktrace has previously made available to its Customers but which are no longer part of its offering; and (iii) products and/or solutions which Darktrace has developed (either independently or with assistance from a third party) which will form, but are not yet part of, its offering to its Customers;

Representative means an authorised individual who carries out activities on Your behalf relating to an Attendee's Enrolment including, but not limited to, registering an Attendee for an Enrolment and/or making payment on Your behalf;

Training Materials means any Course materials provided to an Attendee prior to the Attendee sitting an Examination;

Unauthorised Materials means any item which is not a Permitted Material;

Unauthorised Person means any individual which is not the Attendee or otherwise authorised to be present in the Examination Site during an Exam;

You means the individual or entity entering into this Agreement.

- 1.2 Any reference to the singular includes the plural, and vice versa, and any reference to one gender includes all other genders.
- 1.3 Any reference to a clause or schedule is to the relevant clause or schedule of or to this Agreement and any reference to a paragraph is to the relevant paragraph of the clause or schedule in which it appears.
- 1.4 The index and clause headings are for convenience only and will not affect the interpretation of this Agreement.
- 1.5 Any reference to persons includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, foundations and trust (in each case whether or not having separate legal personality).
- 1.6 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression will be construed as illustrative and will not limit the sense of the words preceding those terms.
- 1.7 Any reference to any other document is a reference to that other document as amended, varied, supplemented, or novated (in each case, other than in breach of the provisions of this Agreement) at any time.

2. REGISTRATION AND BOOKING

- 2.1 To enrol an Attendee on a Darktrace course and/or register an Attendee for a Darktrace Exam, You and/or the Attendee, as applicable, must have access to the Portal. If You and/or the Attendee do not have access to the Portal, You must request this via the Contact.
- 2.2 You are responsible for maintaining, and shall ensure that the Attendee maintains, the confidentiality of any log in details required to access the Portal and the accuracy of any details which are entered into the Portal. Darktrace accepts no liability for any issues which arise out of or which are related to the provision of inaccurate information or the use or misuse of the log in details.
- 2.3 Once access to the Portal has been obtained, You will have access to Darktrace's full catalogue of courses, as they are available from time to time, via the 'Darktrace Education' tab on the Portal. You and/or the Attendee may book the Attendee on any of the available courses provided that they are not fully booked ("**Enrolment**").
- 2.4 Once an Enrolment has been accepted and Fees have been paid in accordance with clause 8 You and/or Attendee shall receive confirmation of this Enrolment from Darktrace ("**Confirmation**"). Any requests for Enrolment which are not received via the Portal will not be considered.

3. DELIVERY OF THE COURSE

- 3.1 Once You and/or the Attendee have received a Confirmation, You and/or the Attendee will be provided with details as to how to access the Training Materials, Course outline, Exam timetables and any other such information as is reasonably required to provide the Course to the Attendee.
- 3.2 Elements of the Course may be delivered online and any registration details, audio, video recordings and/or images as seen via the webcam, screenshare or other such video and/or audio recording device may be visible to a Darktrace Instructor. By submitting, transferring, displaying or posting content during the Course, You agree, and shall procure all relevant consent from the Attendee to ensure, that Darktrace may use such the aforementioned for administering the Course.
- 3.3 If the Attendee exhibits any questionable, suspicious or unacceptable behaviour during the Course, Darktrace reserves the right to, record the Attendee's behaviour and/or terminate the Exam and/or report the Attendee's actions to Darktrace and to You. You agree that Darktrace may record, and where relevant shall procure consent from the Attendee to ensure that Darktrace may record, such behaviour where required.
- 3.4 Darktrace reserves the right to remove content from, introduce content to, and/or otherwise modify or adjust the syllabus, structure and/or timelines of any Course at its sole discretion at any time and without notice.
- 3.5 The Attendee may be required to undertake one or more Course Assessments in order to be eligible to sit an Exam. Darktrace will consider the results of a Course Assessment once completed and make a decision as to whether the Attendee is suitably prepared to sit an Exam. Where an Attendee is not considered suitably prepared to sit an Exam, Darktrace will communicate this to You and/or the Attendee and advise on recommended next steps. Darktrace shall not be liable to You in any way for any decisions made regarding an Attendee's suitability to sit an Exam including, but not limited to, a suitability decision made in favour of sitting an Exam where the Attendee subsequently fails.

4. DELIVERY OF AN EXAM

- 4.1 A Darktrace Certification may require the Attendee to sit and pass one or more Exams before the Darktrace Certification can be awarded. An Exam may contain, without limitation, one or more practical elements, multiple choice questions and/or long or short form written questions.
- 4.2 Immediately prior to taking a Darktrace Exam, and during the Darktrace Exam, You must ensure that the Darktrace Instructor is able to monitor the Attendee's device screen and virtually inspect the Examination Site in order to ensure that it is clear and free from any Unauthorised Materials and Unauthorised Persons. If required, the Darktrace Instructor will provide the Attendee with instructions as to how the Attendee is to demonstrate to the Darktrace Instructor that the Examination Site meets the required criteria and is free from Unauthorised Materials and Unauthorised Persons. If the Examination Site fails to meet the required criteria, the Attendee will fail the Exam.
- 4.3 The Attendee may be required to show photographic ID such as a passport, driving license or national identity card at any time and in such instance must make it clearly visible to the Darktrace Instructor via the Attendee's webcam or other such video link device in order for the Darktrace Instructor to verify the Attendee's identity. Darktrace reserves the right to refuse to administer an Exam to an individual who is unable to verify their identity.
- 4.4 You must ensure that the Attendee establishes and maintains video and audio contact with the Darktrace Instructor for the duration of the Exam. You agree that Darktrace may, and shall procure consent from the Attendee to ensure that Darktrace may, record the Exam as and where required, for use by Darktrace in determining the outcome of the Exam. This may include video and/or audio recordings of the Attendee.
- 4.5 If the Attendee exhibits any questionable, suspicious or unacceptable behaviour during the Exam, Darktrace reserves the right to record the Attendee's behaviour and/or terminate the Exam and/or report the Attendee's actions to Darktrace and to You. You agree that Darktrace may record, and where relevant shall procure consent from the Attendee to ensure that Darktrace may record, such behaviour where required.
- 4.6 If an Exam is terminated under clauses 4.2 or 4.4, the Attendee will automatically fail the Exam and You forfeit the right to a refund of any Fees which You have paid to Darktrace. Any Fees which are outstanding will become payable by You to Darktrace in full immediately and without any set-off or deduction. Depending on the nature of the Attendee's behaviour under this clause 4.3, Darktrace reserves the right to refuse to bar the relevant Attendee from any future Course and/or Exam.
- 4.7 Once the Darktrace Exam has been completed, all audio and video connections between Darktrace and the Attendee will be disconnected.
- 4.8 Following completion of all required Exams, You and/or the Attendee will be notified as to whether the Attendee has passed or failed the Exam. If the Attendee has passed an Exam, the Attendee will be issued with the corresponding Darktrace Certification. The Darktrace Certification will remain valid until the earlier of:
 - 4.8.1 Darktrace releasing a new major version of the Product for which the Attendee has been awarded a Darktrace Certification; or
 - 4.8.2 two (2) calendar years from the date of the Darktrace Certification being awarded,

after which point it will expire. Following expiry of a Darktrace Certification, the Attendee may elect to renew the Darktrace Certification which may require the Attendee to retake the entire Course and/or applicable Exam(s) at the then-current list price as required.

5. FAILURE OF AN EXAM

- 5.1 Except as otherwise set out in this Agreement, or as otherwise communicated to You in writing, there is no limit on the number of times that an Attendee may attempt an Exam in order to obtain a Darktrace Certification provided that payment of any Fees for each further attempt are paid in advance.
- 5.2 In the event that an Attendee does not pass an Exam on their first attempt, Darktrace shall permit that Attendee to participate in one further sitting of the Exam free of charge (the "**Second Attempt**").
- 5.3 If the Attendee has still not passed an Exam on their Second Attempt, they may take such further sittings of the Exam as are required, subject to the terms of this Agreement, at the listed price as applicable from time to time.

6. CANCELLATION

- 6.1 Darktrace reserves the right to reschedule the commencement date of, or cancel, any Course or Exam at its sole discretion and without notice up to seven (7) working days prior to the published commencement date. If the rescheduled dates are not suitable, You shall be entitled to a refund of the Fees paid with respect to the relevant Attendee for that Course or Exam. This shall be Your sole remedy in such scenario.
- 6.2 You and/or the Attendee may cancel an Attendee's attendance on a Course or an Exam by notifying training@darktrace.com no later than ten (10) working days prior to the commencement of the Course or the Exam that the Attendee is expected to attend (the "**Cancellation**"). In such circumstance, Darktrace shall offer You a full refund of the Fees paid in respect of the Cancellation, however no refund shall be provided for any Cancellation received less than ten (10) days prior to commencement of the Course or Exam that the Attendee is expected to attend.
- 6.3 Darktrace shall use reasonable endeavours to reschedule a cancelled Exam or Course, however if an Exam or Course cannot be rescheduled the Enrolment will be terminated.

7. YOUR OBLIGATIONS

7.1 You shall ensure, and procure that Attendees will:

- 7.1.1 attend each Course and/or Exam at the time and date scheduled and participate in any such activity as directed by the Darktrace Instructor;
- 7.1.2 be aware of and adhere to Darktrace policies related to health, safety, security, emergencies, and any other such policy as Darktrace may reasonably notify You and/or the Attendee of in advance;
- 7.1.3 not copy, photograph or record in any way whatsoever, in whole or in part, any material acquired during a Course or an Exam including, but not limited to, questions, answers, content observed and Training Materials unless permitted to do so in writing by the Darktrace Instructor;
- 7.1.4 not discuss or share any content of a Course or Exam during or following the certification process; and
- 7.1.5 maintain responsibility for hardware, software, internet access and other costs required to take the Exam or attend the Course. Darktrace shall not be responsible in any way for any disruption to the Attendee's Course or Exam due to equipment or network malfunctions.

7.2 You shall ensure that any Attendee is aware of, and observes compliance with, the terms of this Agreement including, but not limited to, clause 9 and clause 12.

8. FEES AND PAYMENT

- 8.1 Unless otherwise agreed, Fees are payable immediately on Enrolment and in advance of the course commencing. Before You can complete the Enrolment request, You and/or Your Representative will be asked to provide payment details for payment of the Fees.
- 8.2 If it has been agreed that You will be invoiced for the Fees, Fees are payable within thirty (30) days of the date of the relevant invoice.
- 8.3 By providing Darktrace with Your payment details, You confirm and agree that Darktrace may use those details in order to collect payment of the Fees. Darktrace shall not use these details for any other purpose unless otherwise directed by You or Your Representative in writing.
- 8.4 Darktrace reserves the right to cancel or suspend an Attendee's Enrolment and/or Exam and your right to register an Attendee for Enrolment and/or Exam if You fail to make payment of all or part of the Fees when due, reserving all other rights and remedies as may be provided by law. Darktrace may impose late charges on overdue payments at a rate equal to two percent (2%) per annum above the official dealing rate of the Bank of England, calculated from the date that payment was due until the date payment is made, and all reasonable expenses incurred in collection including, but not limited to, legal fees.
- 8.5 In the event that Darktrace has suspended or cancelled an Attendee's Enrolment and/or an Exam, You will be responsible for paying all Fees associated with the suspended or cancelled Enrolment and/or Exam unless otherwise set out in this Agreement. If an Enrolment or Exam has been suspended, the Attendee shall be enrolled onto the next available equivalent course and/or Exam once payment has been received by Darktrace. No refunds will be offered for Enrolments and/or Exams which have been suspended and/or cancelled as a result of Your failure to pay the Fees.

9. INTELLECTUAL PROPERTY

9.1 Except as expressly set forth herein:

- 9.1.1 this Agreement does not grant either Party any rights, implied or otherwise, to the other's Intellectual Property; and
- 9.1.2 Darktrace, its suppliers and licensors retain all right, title and interest in its Intellectual Property including, but not limited to, the Course, the Training Materials and the Products and all copies thereof, including all enhancements, error correction, new releases, updates, derivations, and modifications thereto (collectively "**Darktrace Intellectual Property**"). You agree to inform Darktrace promptly of any suspected or actual infringement or other improper action with respect to Darktrace Intellectual Property that comes to Your attention.

9.2 Darktrace shall indemnify You, Your respective officers, directors, and employees (and any successors and assigns of the foregoing) (collectively the "**Customer Indemnitees**") against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim that the Darktrace Certification provided or made available by Darktrace under this Agreement, infringes a European or U.S. patent, any copyright, or misappropriates any third party trade secrets. The indemnification obligations of Darktrace will be dependent on You:

- 9.2.1 notifying Darktrace in writing within twenty (20) days of receiving notice of any threat or claim of such action;
- 9.2.2 giving Darktrace exclusive control and authority over the defence or settlement of such action (provided that: (a) any settlement will not entail an admission of fault or guilt by You or any of Customer Indemnitee; and (b) the settlement includes, as an unconditional term, the claimant's or the plaintiff's release of Customer Indemnitees from all liability in respect of the claim);
- 9.2.3 not entering into any settlement or compromise of any such action without Darktrace's prior written consent; and
- 9.2.4 providing reasonable assistance requested by Darktrace at Darktrace's expense.

You will be obliged to mitigate Your losses insofar as it is reasonable in the circumstances.

9.3 The obligations set out in clause 9.2 do not apply to the extent that a third party claim is caused by, or results from any act or omission of You and/or the Customer Indemnitees including, but not limited to:

- 9.3.1 modification of any Training Materials, Course and/or Examination content, if the claim would have been avoided by the use of the unmodified Training Materials, Products, Course and/or Examination content or other intellectual property that is the subject of the claim;
 - 9.3.2 You and/or the Customer Indemnitees continuing the allegedly infringing activity after being notified thereof and being provided with modifications that would have avoided the alleged infringement (which in implementing such modifications, Darktrace will use commercially reasonable efforts to substantially preserve the quality of the Training Materials, Course, Products, Exam and/or Darktrace Certification or other intellectual property that is the subject of the claim);
 - 9.3.3 Your use of, or a Customer Indemnitee's use of, the Training Materials, Products or other intellectual property that is the subject of the claim in a manner not in accordance with this Agreement or other written instructions of Darktrace;
- 9.4 If an infringement claim is made under clause 9.3, or Darktrace reasonably believes that the Darktrace Certification, Training Materials, Course, Exam and/or Products, or other intellectual property which Darktrace reasonably believes is or may be the subject of a claim, then Darktrace will, at its option and at no additional cost to You:
- 9.4.1 procure for You the right to use the relevant intellectual property;
 - 9.4.2 replace the Training Materials, Course, Exam, or Darktrace Certification with non-infringing Training Materials, Course, Exam or Darktrace Certification (as applicable);
 - 9.4.3 modify the Training Materials, Course, Exam, or Darktrace Certification to avoid the alleged infringement; or
 - 9.4.4 terminate this Agreement immediately and provide You with a pro rata refund of the Fees paid by You from the date of the claim or potential claim arising to the then-current date, whereupon this Agreement will automatically terminate.
- 9.5 This clause 9 is a complete statement of Your and Your Customer Indemnitees' remedies for third party claims for infringement as described in clause 9.2.

10. LIABILITY

- 10.1 Nothing in this Agreement will exclude or limit either Party's liability for:
- 10.1.1 death or personal injury due to negligence;
 - 10.1.2 fraud;
 - 10.1.3 fraudulent misrepresentation; and/or
 - 10.1.4 any other liability which cannot be limited or excluded by law.
- 10.2 To the fullest extent permitted by law, Darktrace shall not be liable to You for any special, indirect, consequential and/or incidental loss or damage; loss of revenue or business; loss of goodwill or reputation; loss of or corruption or damage to data; sanctions imposed on You arising out of or in connection with Your non-compliance with any legal or regulatory requirements; and/or loss of management time, howsoever arising, and whether or not You have been advised of the possibility of such loss, corruption or damage.
- 10.3 Darktrace shall not be liable for any loss, damage or other cost resulting from any decisions that are made in reliance on any Training Materials including, without limitation, security, maintenance and/or management decisions, and You acknowledge and agree Your use of the Training Materials and any of their contents is at Your own risk.
- 10.4 Darktrace's total aggregate liability to You in connection with this Agreement shall be limited to the Fees paid by You in relation to the relevant Exam.
- 10.5 Except where expressly provided otherwise in an agreement all information provided directly or indirectly through the Training Materials, a Course or Exam is provided "as is" and without warranty of any kind. Darktrace disclaims all warranties with respect to this information, whether express or implied, including the implied warranties of merchantability, satisfactory quality and fitness for a particular purpose.

11. TERM AND TERMINATION

- 11.1 This Agreement is effective from the Effective Date and will remain in full force and effect until each Attendee has achieved a Darktrace Certification.
- 11.2 Darktrace may terminate this Agreement at any time by giving You no less than thirty (30) days' notice.
- 11.3 Either Party may terminate this Agreement if:
- 11.3.1 the other Party is in material breach of this Agreement and fails to cure such breach within ten (10) days after receipt of written notice; or
 - 11.3.2 the other Party ceases its business operations or becomes subject to insolvency proceedings, which proceedings are not dismissed within thirty (30) days.
- 11.4 Without prejudice to any other right or remedy available to Darktrace:
- 11.4.1 Darktrace may restrict, suspend or terminate Your right to enrol an Attendee on a course or to take an Exam if a court or other government authority issues an order prohibiting Darktrace from allowing You or Your Attendee from achieving a Darktrace Certification. Provided that Darktrace is reasonably and lawfully able to do so, it will inform You of the reason for suspension and/or termination;

- 11.4.2 Darktrace may terminate, suspend or limit Your and/or Your Attendee's participation in and/or access to the course, Training Materials, Exam and/or award of a Darktrace Certification without liability if Darktrace provides You with written notice that it has reasonable suspicion that You are using the offering: (i) in breach of this Agreement; and/or (ii) in a manner that is otherwise unlawful, and in each instance You do not cure the condition identified in such notice within five (5) business days.
- 11.5 Upon termination or expiration of this Agreement:
- 11.5.1 You will no longer be able to facilitate an Enrolment, register an Attendee for an Exam or seek Darktrace Certification(s);
- 11.5.2 any Attendee which has not yet completed a course, has registered for an Exam but not yet sat the Exam, or is otherwise in the process of obtaining a Darktrace Certification will be withdrawn from the relevant course, Exam and/or Darktrace Certification with immediate effect;
- 11.5.3 You will return, and shall ensure that all Attendees and/or Representatives return, any and all materials including, but not limited to, Training Materials, to Darktrace within fourteen (14) days;
- 11.5.4 all undisputed Fees owing to Darktrace at the date on which termination or expiry takes effect will become due and payable.
- 11.6 The following provisions will survive any termination of this Agreement: 8, 9, 10, 11, 12, 13 and 14.

12. CONFIDENTIALITY

- 12.1 Each Party will treat the other Party's Confidential Information as confidential. Confidential Information of one Party (the "**Disclosing Party**") may only be used by the other Party (the "**Receiving Party**") for the purpose of fulfilling obligations or exercising rights under this Agreement, and may only be shared with employees, agents or contractors of the Receiving Party who have a need to know such information to support such purpose ("**Authorised Representatives**"). Each Party will procure that any of its Authorised Representatives to whom Confidential Information is disclosed are bound by contractual obligations equivalent to those in this clause 12. Notwithstanding the foregoing, the Receiving Party shall remain liable for the acts or omissions of its Representatives. Confidential Information will be protected using a reasonable degree of care to prevent unauthorised use or disclosure for five (5) years from the date of receipt or (if longer) for such period as the information remains confidential. These obligations do not cover information that:
- 12.1.1 was known or becomes known to the Receiving Party on a non-confidential basis from a third party, provided that: (a) the Receiving Party has no knowledge of or reason to believe that the third party is subject to a confidentiality agreement with the Disclosing Party in respect of the information; and (b) such information is not of a type or character that a reasonable person would have regarded as confidential;
- 12.1.2 is independently developed by the Receiving Party without violating the Disclosing Party's rights;
- 12.1.3 is or becomes publicly known other than through disclosure by the Receiving Party or one of its Authorised Representatives in breach of this Agreement; or
- 12.1.4 was lawfully in the possession of the Receiving party before the information was disclosed by the Disclosing Party.
- 12.2 A Party may disclose Confidential Information to the extent disclosure is required by law of a governmental agency provided that, to the extent that it is lawful to do so, the Receiving Party notifies the Disclosing Party of the request giving it reasonable opportunity to respond, and cooperate with the Disclosing Party's reasonable, lawful efforts to resist, limit or delay disclosure at the Disclosing Party's expense, and except for making such required disclosure, such information will otherwise continue to be Confidential Information.
- 12.3 On termination of the Agreement, each Party will promptly return or destroy all Confidential Information of the other Party, save that Darktrace shall be entitled to retain one copy of the Confidential Information as required for legal and/or regulatory purposes.

13. DATA PROTECTION

- 13.1 The Parties acknowledge that in order for an Attendee to achieve the Darktrace Certification, Personal Data may be processed in accordance with the Data Privacy Laws, and the Parties shall comply with the data processing requirements as set out in Appendix 1.

14. GENERAL

- 14.1 This Agreement, the appendices, and any documents referenced herein represent the entire agreement between the Parties on the subject matter hereof and supersedes all prior discussions, agreements and understandings of every kind and nature between the Parties and excludes, without limitation, any terms appearing on a purchase order, invoice or any of Your paperwork or other terms (in each case whether by way of conduct or otherwise).
- 14.2 Each Party acknowledges and agrees that, in connection with this Agreement, it has not been induced to enter into this Agreement in reliance upon, and does not have any remedy in respect of, any representation or other promise of any nature other than as expressly set out in this Agreement. Each Party acknowledges and agrees that it has had the opportunity to review this Agreement with legal counsel of its choice and there will be no presumption that ambiguities will be construed or interpreted against the drafter.
- 14.3 No modification of this Agreement will be effective unless in writing and signed by both Parties.
- 14.4 The illegality or unenforceability of any provision of this Agreement will not affect the validity and enforceability of any legal and enforceable provisions hereof.
- 14.5 Neither Party will be liable for any failure or delay in performing services or any other obligation under this Agreement, nor for any damages suffered by the other by reason of such failure or delay which is, indirectly or directly, caused by an event beyond such Party's reasonable control including, but not limited to, riots, natural catastrophes, terrorist acts, governmental intervention, refusal of licences by any government or other government agency, or other acts of God (each a "**Force Majeure Event**"), and such non-performance, hindrance or delay could not have been avoided by the nonperforming Party through commercially

reasonable precautions and cannot be overcome by the non-performing Party through commercially reasonable substitute services, alternate sources, workarounds or other means. During the continuation of a Force Majeure Event, the non-performing Party will use commercially reasonable efforts to overcome the Force Majeure Event and, to the extent it is able, continue to perform its obligations under the Agreement.

- 14.6 Any notice will be delivered by hand or sent by recorded delivery, registered post or registered airmail and satisfactory proof of such delivery must be retained by the sender. All notices will only become effective on actual receipt. Any notices required to be given in writing to Darktrace or any questions concerning this Agreement should be addressed to: Attn: Legal Department, Darktrace Limited, Maurice Wilkes Building, Cowley Road, Cambridge CB4 0DS, United Kingdom.
- 14.7 Save for Affiliates or as otherwise set out in this Agreement, this Agreement does not grant any rights under the Contracts (Rights of Third Parties) Act 1999 to any third party to enforce any term of this Agreement.
- 14.8 You will permit Darktrace or an independent certified accountant appointed by Darktrace access, on written notice, to Your premises and Your books of account and records at any time during normal business hours for the purpose of inspecting, auditing, verifying or monitoring the manner and performance of Your obligations under this Agreement. Darktrace will not be able to exercise this right more than once in each calendar year.
- 14.9 Nothing in this Agreement will be construed to create a partnership, joint venture, or agency relationship between the Parties.
- 14.10 You shall not be entitled to assign this Agreement without the prior written consent of Darktrace.
- 14.11 Any dispute or claim relating in any way to this Agreement will be governed by the laws of England and Wales, and any claim arising out of or in relation to this Agreement will be subject to arbitration under the exclusive jurisdiction of the International Chamber of Commerce ("**ICC**") in London, save that each Party may enforce it or its Affiliates' intellectual property rights in any court of competent jurisdiction including but not limited to equitable relief. Where arbitration applies, it shall be conducted in English under the Rules of Arbitration of the ICC by three arbitrators in accordance with article 12 of said Rules. The award shall be final and binding on the Parties. Except to the extent entry of judgment and any subsequent enforcement may require disclosure, all matters relating to the arbitration, including the award, shall be held in confidence.
- 14.12 Each Party shall comply with all applicable laws including, but not limited to, the Bribery Act 2010 and the Modern Slavery Act 2015.
- 14.13 No failure by a Party to exercise any right under this Agreement or to take action against the other in the event of a breach of this Agreement shall constitute a waiver of such right or any other rights under this Agreement.
- 14.14 The Parties agree that with respect to a breach by a Party of clauses 9 and 12 monetary damages may not be an adequate or sufficient remedy for a breach of this Agreement. Therefore, in addition to any applicable monetary damages, a Party will also be entitled to apply for injunctive or other such equitable relief.

APPENDIX 1: DATA PROCESSING AGREEMENT (“DPA”)

1. DEFINITIONS

1.1 For the purposes of this DPA, the terms defined in this Appendix shall have the meanings as set forth in the Agreement. Any terms not specifically defined by this DPA or the Agreement shall have the meaning given by GDPR.

2. SUBJECT MATTER OF THE DATA PROCESSING AGREEMENT

- 2.1 This Data Processing Agreement (“DPA”) applies to the processing of Your Personal Data under the Agreement.
- 2.2 You will be the Data Controller and Darktrace will be the Data Processor as defined under GDPR. Each Party agrees that it shall comply with its obligations as a Data Controller and a Data Processor, respectively under the Data Privacy Laws in exercising its rights and performing its obligations under this Agreement.
- 2.3 This DPA is an Appendix to the Agreement.

3. NATURE AND PURPOSE OF PROCESSING REGULATED DATA

3.1 The Data Processor shall process Personal Data in order to provide the Course and/or Exam as set forth in the Agreement and/or Guide.

4. TYPES AND CATEGORIES OF PERSONAL DATA

4.1 Categories of Data Subjects may include:

- 4.1.1 Attendees, including volunteers, agents, temporary workers, independent contractors;
- 4.1.2 Customer clients, including prospects;
- 4.1.3 Customer officers, directors; and
- 4.1.4 any other categories of Data Subjects that may be contained in the Data Controller’s network.

4.2 Types of Personal Data may include:

- 4.2.1 IP addresses;
- 4.2.2 Host names;
- 4.2.3 File names;
- 4.2.4 Full Names;
- 4.2.5 Driver’s licence, passport and/or national identity card;
- 4.2.6 Email addresses;
- 4.2.7 and any other types of Personal Data that may be contained in the Data Controller’s network or provided to Darktrace by an Attendee.

5. RIGHTS AND OBLIGATIONS OF THE CONTROLLER

5.1 The Data Controller hereby instructs the Data Processor to take such steps in the processing of Personal Data as are reasonably necessary for the performance of the Data Processor’s obligations under the Agreement, and agrees that such instructions, comprising the terms of this DPA and the Agreement, constitute its full and complete instructions as to the means by which Personal Data shall be processed by the Data Processor.

6. RIGHTS AND OBLIGATIONS OF THE PROCESSOR

- 6.1 The Data Processor shall only process Personal Data in accordance with the Data Controller’s written instruction as specified herein and shall not use Personal Data except to register an Enrolment, administer a Course and/or Exam, confer upon an Attendee a Darktrace Certification as instructed in the Agreement, or as otherwise instructed by You in writing, unless such processing is required by law to which the Data Processor is subject, in which case the Data Processor shall, to the extent permitted by law, inform the Data Controller of that legal requirement prior to carrying out the applicable processing.
- 6.2 The Data Processor shall immediately inform the Data Controller if, in the Data Processor’s reasonable opinion, an instruction from the Data Controller infringes the Data Privacy Laws.
- 6.3 The Data Processor shall not transfer Personal Data outside the European Economic Area (“EEA”) without the prior written consent of the Data Controller and not without procuring provision of adequate safeguards (as defined by the European Commission from time to time).
- 6.4 In the event that the UK ceases to be a member of the European Union or ceases to be considered by the European Commission to be an adequate country pursuant to Article 45 of GDPR, then the Parties agree that Darktrace shall apply the EU Model Clauses as set out at www.darktrace.com/en/resources/legal-customer-model-clauses.pdf to any relevant transfer of data and such EU Model Clauses shall be deemed incorporated from the date of first transfer.
- 6.5 The Data Processor shall take reasonable steps to ensure the reliability of its agents and employees who have access to any Personal Data.

7. SECURITY

- 7.1 Taking into account the nature, scope, context and purposes of processing, the Data Processor has implemented and will maintain the administrative, physical, technical and organisational measures as described in the Darktrace Information Security Policy to protect any Personal Data accessed or processed by it against unauthorised or unlawful processing or accidental loss, destruction, damage or disclosure. The Parties agree that for the purposes of the processing hereunder, the measures contained within the Darktrace Information Security Policy are appropriate, given the nature of the data to be processed and the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction, disclosure, access or damage.

8. PERSONAL DATA BREACH NOTIFICATION

- 8.1 In the event that the Data Processor suffers a Personal Data Breach, the Data Processor shall inform the Data Controller within twenty-four (24) hours upon learning of the same and reasonably cooperate with the Data Controller to mitigate the effects and to minimise any damage resulting therefrom. To the extent reasonably possible, the notification to the Data Controller shall include:
- 8.1.1 a description of the nature of the incident, including where possible the categories and approximate number of data subjects concerned and the categories and approximate number of Personal Data records concerned;
 - 8.1.2 the name and contact details of the Data Processor's data protection officer or another contact point where more information can be obtained;
 - 8.1.3 a description of the likely consequences of the incident; and
 - 8.1.4 a description of the measures taken or proposed to be taken by the Data Processor to address the incident including, where appropriate, measures to mitigate its possible adverse effects.

9. SUBPROCESSORS

- 9.1 Save as expressly provided herein, the Data Processor will not use subprocessors for the processing of Personal Data. For the purposes of providing the Course or Exam, or registering an Enrolment:
- 9.1.1 the Data Controller hereby authorises the Data Processor to use its affiliates specified in the Support Services Datasheet to process Personal Data (the "**Affiliate Subprocessors**");
 - 9.1.2 the Data Processor shall have in place with the Affiliate Subprocessors a written agreement equivalent to the terms contained herein to protect Personal Data; and
 - 9.1.3 the EU Model Clauses shall apply to the extent the processing of Personal Data by the Affiliate Subprocessors involves a transfer of Personal Data which originates in the EEA to a third country outside of the EEA. For such purposes, the Data Controller hereby authorises the Data Processor to enter into the EU Model Clauses with the Affiliate Subprocessors on the Data Controller's behalf.
- 9.2 Save for the foregoing, the Data Processor shall not engage any subprocessors without the prior written authorisation of the Data Controller. In the event that the Data Controller authorises the use by the Data Processor of any other subprocessors, the Data Processor shall procure that such subprocessors enter into a written agreement containing provisions no less stringent than this DPA.
- 9.3 The Data Processor shall be fully liable for any breach by the subprocessors of any data protection obligations set out in this Clause.

10. ASSISTANCE WHEN HANDLING REQUESTS FROM DATA SUBJECTS

- 10.1 Taking into account the nature of processing and the information available to the Data Processor, the Data Processor will provide reasonable support to the Data Controller:
- 10.1.1 in complying with any legally mandated request for access to or correction of any Personal Data by a data subject under Chapter III GDPR (and where such request is submitted to the Data Processor, the Data Processor will promptly notify the Data Controller of it);
 - 10.1.2 in responding to requests or demands made to the Data Controller by any court or governmental authority responsible for enforcing privacy or data protection laws; or
 - 10.1.3 in its preparation of a Data Protection Impact Assessment.

11. AUDIT

- 11.1 The Data Processor agrees to maintain ISO 27001 certification for the duration of the Term. The Data Processor will use an external auditor to verify that its security measures meet ISO 27001 standards in accordance with the ISO certification process. On the Data Controller's written request, and subject to appropriate confidentiality obligations, the Data Processor will make available to the Data Controller:
- 11.1.1 a copy of the current certificate in relation to the ISO 27001 certification; and
 - 11.1.2 Information reasonably requested by the Data Controller in writing with regards to the Data Processor's processing of Personal Data under this DPA. The Data Controller agrees to exercise any right it may have to conduct an audit or inspection under GDPR (or the EU Model Clauses if they apply) by requesting the foregoing information.

12. RETURN OR DESTRUCTION OF PERSONAL DATA

- 12.1 Upon termination of the Agreement, the Data Processor shall delete or return all Personal Data in accordance with the Data Controller's written instructions.