

THIS LICENCE is dated [DATE]

PARTIES

- (1) Brilliantio Ltd incorporated and registered in England with company number 03645364 whose registered office address is at 52 John Batchelor Way, Penarth CF64 1SD (**Licensee**);
and
- (2) **NAME OR LIMITED COMPANY NAME OF Licensor:**

BACKGROUND

- (A) The Licensee runs the businesses Brilliantio® and Brilliantio Academy, and operates on the websites and sub-sites of brilliantio.com, brilliantioacademy.com, udemy.com and skillshare.com (**Sites**).
- (B) The Licensor is the proprietor of the Intellectual Property Rights in the Content and The Licensee wishes to use the Content on the Sites and offline for certain other purposes.
- (C) The parties have agreed that the Licensor shall provide the Content to The Licensee and allow The Licensee to use the Content subject to the terms and conditions set out in this licence.

AGREED TERMS

1. INTERPRETATION

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

Content: all text, information, data, software, executable code, images, performances, trainings, audio or video material in whatever medium or form provided to the Licensee by the Licensor.

Derivative Work: original content that is based on the Content, such as a translation, musical arrangement, dramatisation, fictionalisation, motion picture version, sound recording, art reproduction, abridgement, condensation, summary, analysis, extract or any other form in which a work may be recast, transformed or adapted.

Effective Date: 15th March 2020

Revenue Share: the revenue share payable in respect of the licence of the Content [as set out in clause 5.1 and Schedule 1.

Intellectual Property Rights: all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, Trade Marks, patents, petty patents, utility models, design rights, semi-conductor topography

rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off.

Trade Marks: any and all trade marks, trade names, service marks, trade dress, logos, URLs or identifying slogans, whether or not registered.

Territory: worldwide.

1.2. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3. **Writing or written** includes faxes and e-mail.

2. GRANT OF LICENCE

2.1. Subject to clause 2.2, during the term of this licence, the Licensor grants to the Licensee a non-exclusive licence (including the right to sub-licence) to distribute the Content in the Territory on the Sites and such other media as the Licensor shall agree in return for the payment by the Licensee of the Revenue Share as set out in clause 5 and Schedule 1.

2.2. The licence granted under clause 2.1 permits the Licensee to:

- (a) modify, electronically reproduce and distribute, and publicly perform and display the Content on the Sites (including packaging the Content with other content from third parties);
- (b) reproduce and distribute through any media now known, or hereafter developed, excerpts of the Content in advertisements for, and in marketing and promotional materials related to, the Sites; and
- (c) make Derivative Works, reproduce, publicly perform and display and distribute such Derivative Works in conjunction with the Content through the Sites, including in any media now known or hereafter developed.

2.3. During the term of this licence, the Licensor agrees that it shall not:

- (a) grant distribution or publication rights to any of the Content to any competitor of The Licensee including through a direct data feed, co-branding or premium placement arrangement; or
- (b) advertise or promote the Content on or in connection with any competitor of The Licensee; or
- (c) license any of its Trade Marks for use on the website of any competitor of the Licensee.

3. PARTIES' RESPONSIBILITIES

- 3.1. The Licensor shall be responsible for the accuracy and completeness of the Content and shall ensure that all Content is kept up to date.
- 3.2. The Licensee has no obligation to the Licensor, and undertakes no responsibility, to review the Content (including user-generated content) to determine whether any such Content may result in any liability to any third party.
- 3.3. Notwithstanding anything to the contrary contained in this licence, if the Licensee reasonably believes that any Content may create any liability for the Licensee or adversely affect its reputation or standing, the Licensee may remove such Content as the Licensee believes, in its sole discretion, is prudent or necessary to minimise or eliminate the Licensee's potential liability.
- 3.4. Notwithstanding any provision of this licence, the Licensee does not undertake to distribute or display the Content on the Sites or otherwise make use of it, nor does it undertake that the Sites will be operational at all times.
- 3.5. The Licensee shall add all disclaimers and all other information required by the Licensor to be added to the Content before it is used in any way and the Licensee shall ensure that the end user of the Content's attention is drawn to such disclaimer and any other such information.

4. TRADE MARKS

- 4.1. Each party acknowledges and agrees for all purposes that all Trade Marks associated with the other party or the other party's services, products, literature, promotional materials or otherwise, whether or not registered, constitute the other party's exclusive property.
- 4.2. Subject to clauses 4.3 and 4.4, each party (**Proprietor**) grants to the other party (**Grantee**) a non-exclusive, non-transferable, non-assignable, royalty-free licence to use those Trade Marks that the Proprietor has consented to the other making use of. The Grantee shall use such Trade Marks solely for the purposes of performing its obligations under this licence, including in connection with any advertising, marketing and promotional activities undertaken and materials developed pursuant to this licence.
- 4.3. The Grantee shall not use, register or attempt to register in any jurisdiction, or otherwise appropriate or adopt, any name, mark or logo that is confusingly similar to the Proprietor's Trade Marks.
- 4.4. At no time during the term of the licence or thereafter shall the Grantee attack, challenge or file any application with respect to any Proprietor Mark.

5. FEES AND PAYMENT

- 5.1. In consideration of the Licensor licensing the Content to the Licensee, the Licensee shall pay the revenue share specified in Schedule 1 to the Licensor ("Revenue Share"). Where the Content is published and promoted on a third party platform - notably Udemy - the third party platform is liable to pay the revenue share directly to the Licensor and Licensee.
- 5.2. All Revenue Shares are exclusive of VAT unless expressly stated otherwise.
- 5.3. If the Licensee fails to make any payment due to the Licensor under this agreement within thirty days of the due date for payment, then, without limiting the Licensor's remedies under Clause 8, the Licensee shall pay interest on the overdue amount at the rate of 1% per annum above Barclay Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Licensee shall pay the interest together with the overdue amount.
- 5.4. Unless the Licensor notifies the Licensee otherwise in writing, the Licensee shall make all payments by electronic bank transfer to the following bank account:

PAYPAL ACCOUNT EMAIL:

6. WARRANTIES

- 6.1. Each party warrants to the other that it has full power and authority to enter into and perform this licence.
- 6.2. The Licensor warrants to the Licensee that the Content and the Licensor's Trade Marks:
- (a) do not infringe any third party's Intellectual Property Rights, other proprietary rights or rights of publicity or privacy;
 - (b) do not violate any law, statute, ordinance or regulation (including the laws and regulations governing export control);
 - (c) are not defamatory, trade libellous, unlawfully threatening or unlawfully harassing;
 - (d) are not obscene or pornographic;
 - (e) do not violate any laws regarding unfair competition, anti-discrimination or false advertising; and
 - (f) do not contain any viruses, Trojan horses, worms, time bombs, cancel bots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. The Licensee retains all Intellectual Property Rights in the Sites, the Derivative Works and its Trade Marks, and nothing in this licence shall be taken to grant any rights to the Licensor in respect of such Intellectual Property Rights.
- 7.2. Title to and ownership of all Intellectual Property Rights embodied by or otherwise incorporated into the Content shall remain with the Licensor. Except as expressly provided in this licence, nothing shall be construed to grant to the Licensee any right, title or interest in or to the Content.
- 7.3. The Licensor shall indemnify the Licensee against all costs, claims, damages, losses and expenses arising as a result of any claim or action that the Content, the Delivery Materials or the Licensor's Trade Marks infringe Intellectual Property Rights belonging to a third party.

8. TERM AND TERMINATION

- 8.1. This licence shall commence on the Effective Date and shall continue until otherwise terminated in accordance with clauses 8.2, 8.3 or 8.4 below.
- 8.2. The Licensee may terminate this licence at any time without notice if:
- (a) the Licensee is in the opinion of the Licensor not providing Content of the standard or at the speed that the Licensee expects; or
 - (b) the Licensor acts in any manner which in the opinion of the Licensee brings or is likely to bring the Licensee into disrepute or is materially adverse to the interests of the Licensee.
- 8.3. Either party may terminate this licence immediately at any time by written notice to the other party if:
- (a) that other party commits any material breach of its obligations under this licence which (if remediable) is not remedied within 30 days after the service of written notice specifying the breach and requiring it to be remedied; or
 - (b) that other party:
 - (i) ceases to trade (either in whole, or as to any part or division involved in the performance of this licence); or
 - (ii) becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party; or
 - (iii) a person (including the holder of a charge or other security interest) is appointed to manage or take control of the whole or part of the business or assets of that party, or notice of an intention to appoint such a person

is given or documents relating to such an appointment are filed with any court; or

- (iv) the ability of that party's creditors to take any action to enforce their debts is suspended, restricted or prevented or some or all of that party's creditors accept, by agreement or pursuant to a court order, an amount of less than the sums owing to them in satisfaction of those sums; or
- (v) any process is instituted which could lead to that party being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purpose of solvent amalgamation or reconstruction).

8.4. On expiry or termination of this licence, all provisions of this licence shall cease to have effect and the Licensee shall have no further rights to use the Content or any Derivative Works except that any provision which can reasonably be inferred as continuing, or is expressly stated to continue, shall continue in full force and effect.

9. CONFIDENTIALITY

9.1. You shall not use or disclose to any person either during or at any time after your engagement by us any confidential information about our business or affairs or any of our business contacts or clients or franchisees, or about any other confidential matters which may come to your knowledge in the course of providing the Services. For the purposes of this clause 9, **confidential information** means any information or matter which is not in the public domain and which relates to our affairs or any of our business contacts or clients.

9.2. The restriction in clause 9.1 does not apply to:

- (a) any use or disclosure authorised by us or as required by law; or
- (b) any information which is already in, or comes into, the public domain otherwise than through your unauthorised disclosure.

10. LIABILITY

10.1. Save where expressly provided, all conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the maximum extent permitted by law.

10.2. Nothing in this licence shall operate to exclude or limit the Licensor's liability for:

- (a) death or personal injury caused by its negligence;
- (b) any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;

(c) fraud; or

(d) any other liability which cannot be excluded or limited under applicable law.

10.3 The Licensor shall have no liability for any losses or damages which may be suffered by the Licensee (or any person claiming under or through the Licensee), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

(a) loss of use;

(b) loss of profits;

(c) loss of anticipated savings;

(d) loss of business opportunity;

(e) loss of contracts;

(f) loss of goodwill; or

(g) loss arising from damaged, corrupted or lost data.

10.4 Subject to clause 10.2 the Licensor's liability, whether in contract, tort (including negligence), or otherwise and whether in connection with this licence or any collateral contract, shall not exceed £1,000,000.

11. NOTICES

11.1. A notice given under this licence shall be sent to the address given in the parties clause and shall be delivered personally or sent by pre-paid first class post, recorded delivery or registered post.

11.2. A notice is deemed to have been received:

(a) if delivered personally, at the time of delivery; or

(b) in the case of pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting.

11.3. To prove service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.

12. PUBLICITY

All media releases, public announcements and public disclosures by the Licensor relating to this licence or its subject matter, including promotional or marketing material, shall be co-ordinated with and approved by the Licensee prior to release.

13. ASSIGNMENT

The Licensor may not assign or transfer any of its rights or obligations under this licence. The Licensee may assign or transfer any of its rights or obligations under this licence provided it gives advance notice to the Licensor.

14. THIRD PARTY RIGHTS

14.1. The right of the parties to terminate, rescind or agree any amendment, variation, waiver or settlement under this licence is not subject to the consent of any person who is not a party to this licence.

14.2. This licence is made solely for the benefit of the parties to it and is not intended to benefit, or be enforceable by, any other person.

15. VARIATION AND WAIVER

15.1. A variation of this licence shall be in writing and signed by or on behalf of both parties.

15.2. A waiver of any right under this licence is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. No waiver shall be implied by taking or failing to take any other action.

15.3. Unless specifically provided otherwise, rights arising under this licence are cumulative and do not exclude rights provided by law.

16. SEVERANCE

16.1. If any provision (or part of a provision) of this licence is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

16.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

17. GOVERNING LAW AND JURISDICTION

17.1. This licence and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England.

17.2. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this licence.

This licence has been entered into on the date stated at the beginning of it.

SCHEDULE 1: Revenue Share

The Licensee undertakes to pay to the Licensor, in each year of this agreement, 50 % of the net sales of the Licensed Products ("**Revenue Share**").

Where the Licensed Products are published and sold on a third party platform - notably Udemy - the third party platform will be entirely responsible and liable for all payments and reporting.

Net sales shall mean the total amount invoiced by the Licensee for the Licensed Products after deducting:

- (a) allowances for trade discounts;
- (b) returns for which the Licensee has issued a credit note;
- (c) sales and excise taxes (including value added tax and duties, if any).
- (d) merchant fees (e.g. PayPal, Stripe, etc)
- (e) affiliate and Joint Venture partner fees

The Licensee shall make payments of the Royalty to the Licensor on account of the amount payable within 45 days of sale ("**Payment Dates**") in each year of the term of this agreement.

Within 45 days of each Payment Date, the Licensee shall deliver to the Licensor a written statement detailing:

- (a) the quantity of the Licensed Products sold on or before that Payment Date and that have not been included in a previous statement;
- (b) the price charged and any discount allowed;
- (c) the net sale price;
- (d) the revenue share due.

SCHEDULE 2

ONLINE COURSE, PERFORMANCES AND ACCOMPANYING WRITTEN MATERIALS ENTITLED:

RIGHTS INFORMATION:

LIST BELOW THIRD PARTY MATERIAL TOGETHER WITH ITS SOURCE AND CONFIRMATION THAT THE MATERIAL IS CLEARED FOR COMMERCIAL USE.

IMAGES/PHOTOS/GRAPHICS:

AUDIO/MUSIC:

VIDEO:

WRITTEN:

OTHER:

Signed by [NAME OF LICENSOR]

.....

Licensor

A handwritten signature in black ink, appearing to read 'Paul Jenkins', with a long horizontal flourish extending to the right.

Signed by Paul Jenkins

.....

for and on behalf of Brilliantio Ltd

Director

