

# CONDITIONS OF LICENCE AND USE OF THE ASME INSTITUTIONAL MARK

## INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

**Brand Manual/Guidelines:** the Licensor's guidelines prescribing the permitted form and manner in which the Mark may be used, including any amendments or additions notified in writing by the Licensor to the Licensee from time to time.

**Business Day:** a day other than a Saturday, Sunday or public holiday in Scotland when banks in Edinburgh are open for business.

**Licence:** the licence of the Mark as provided in these conditions.

**Licensee:** the Institutional Member of the Licensor which has applied for the right to use the Mark.

**Licensor:** **ASSOCIATION FOR THE STUDY OF MEDICAL EDUCATION**, Registered as a Charity in England and Wales Number 251087 and in Scotland Number SC040103.

**Mark:** the ASME Institutional Logo

1.2 Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular and a reference to one gender shall include a reference to the other genders.

1.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## 2. GRANT

2.1 The Licensor grants to the Licensee a non-exclusive licence to use the Mark in accordance with the Brand Manual and these conditions.

2.2 The Licensee shall comply strictly with the directions of the Licensor regarding the use of the Mark and the form and manner of the application of the Mark, including the directions contained in the Brand Manual.

## 3. TITLE, GOODWILL AND REGISTRATIONS

3.1 The Licensor warrants, and the Licensee acknowledges, that the Licensor is the owner of the Mark.

3.2 The Licensee shall procure that all descriptive literature, website and all other materials carrying the Mark, be marked in accordance with the directions therefor contained in the Brand Manual/Guidelines.

3.3 Any goodwill derived from the use by the Licensee of the Mark shall accrue to the Licensor.

3.4 The Licensee shall not do, or omit to do, or permit to be done, any act that will or may weaken, damage or be detrimental to the Mark or the reputation or goodwill associated with the Mark or the Licensor, or that may invalidate or jeopardise any registration of the Mark.

3.5 The Licensee shall not apply for, or obtain, registration of the Mark in any country.

## 4. PROTECTION OF THE MARK

4.1 The Licensee shall immediately notify the Licensor in writing giving full particulars if any of the following matters come to its attention:

- (a) any actual, suspected or threatened infringement of the Mark;
- (b) any actual or threatened claim that the Mark is invalid;
- (c) any actual or threatened opposition to the Mark;
- (d) any claim made or threatened that use of the Mark infringes the rights of any third party;
- (e) any person applies for, or is granted, a registered trade mark by reason of which that person may be, or has been, granted rights which conflict with any of the rights granted to the Licensee under these conditions; or
- (f) any other form of attack, charge or claim to which the Mark may be subject.

4.2 In respect of any of the matters listed in condition 4.1:

- (a) the Licensor shall, in its absolute discretion, decide what action if any to take;
- (b) the Licensor shall have exclusive control over, and conduct of, all claims and proceedings;
- (c) the Licensee shall not make any admissions other than to the Licensor and shall provide the Licensor with all assistance that it may reasonably require in the conduct of any claims or proceedings; and

(d) the Licensor shall bear the cost of any proceedings and shall be entitled to retain all sums recovered in any action for its own account.

4.3 The provisions of section 30 of the Trade Marks Act 1994 (or equivalent legislation) are expressly excluded.

4.4 Nothing in these conditions shall constitute any representation or warranty that the Mark is valid or that the exercise by the Licensee of rights granted will not infringe the rights of any person.

## **5. LIABILITY, INDEMNITY AND INSURANCE**

5.1 To the fullest extent permitted by law, the Licensor shall not be liable to the Licensee for any costs, expenses, loss or damage (whether direct, indirect or consequential, and whether economic or other) arising from the Licensee's exercise of the rights granted to it under these conditions.

5.2 The Licensee shall indemnify the Licensor against all liabilities, costs, expenses, damages or losses (including any direct or indirect consequential losses, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Licensor arising out of or in connection with the Licensee's exercise of its rights granted under these conditions or any breach by the Licensee of the terms of these conditions.

5.3 Nothing in these conditions shall have the effect of excluding or limiting any liability for death or personal injury caused by negligence or for fraud.

## **6. ADDITIONAL LICENSEE OBLIGATIONS**

6.1 The Licensee shall only make use of the Mark for the purposes authorised by the Licensor and comply with all regulations and practices in force to safeguard the Licensor's rights in the Mark.

6.2 The Licensee shall not (nor directly or indirectly assist any other person to): use the Mark except as permitted under these conditions; nor do or omit to do anything to diminish the rights of the Licensor in the Mark or impair any registration of the Mark

6.3 The Licensee acknowledges and agrees that the exercise of the licence granted to the Licensee under these conditions is subject to all applicable laws, enactments, regulations and other similar instruments, and the Licensee understands and agrees that it shall at all times be solely liable and responsible for such due observance and performance.

## **7. ASSIGNMENT AND OTHER DEALINGS**

7.1 The Licensee shall not assign, transfer, sub-licence, mortgage, charge, declare a trust of or deal in any other manner with any of its rights in respect of the Mark or the Licence, or its obligations under these conditions.

7.2 The Licensor may at any time and without the consent of the Licensee assign, transfer, mortgage, charge or declare a trust of deal in any other manner in respect of the Mark or the Licence, or its obligations under these conditions

## **8. DURATION AND TERMINATION**

8.1 These conditions and the Licence granted in terms thereof shall come into force when the Licensor and Licensee agree they shall, and shall remain in force until terminated in accordance with this condition 8.

8.2 The Licensor shall have the right to terminate the Licence at any time on giving the Licensee not less than 30 days' written notice of termination.

8.3 Without prejudice to any rights that have accrued under these conditions or any of its rights or remedies, the Licensor may terminate the Licence immediately by giving written notice to the Licensee if:

(a) the Licensee fails to pay any amount due to the Licensor on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or

(b) the Licensee commits a breach of these conditions and (if such breach is remediable) fails to remedy that breach within 14 days of being notified in writing to do so.

8.4 The Licence shall automatically terminate immediately if:

(a) the Licensee ceases to be a member of the Licensor;

(b) the Licensee suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;

(c) a petition is filed, a resolution is passed, or an order is made, for or in connection with the winding up of the Licensee

(d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given, or if an administrator is appointed over the Licensee;

- (e) a person becomes entitled to appoint a receiver over the assets of the Licensee or a receiver is appointed over the assets of the Licensee;
- (f) any event occurs, or proceeding is taken, with respect to the Licensee subject that has an effect equivalent or similar to any of the events mentioned in condition 8.4(b) to condition 8.4(e) (inclusive); or
- (g) the Licensee suspends or ceases to carry on all or a substantial part of its activities or business.

## **9. EFFECT OF TERMINATION**

- 9.1 On termination of the Licence for any reason all rights and licences granted pursuant to these conditions shall cease.
- 9.2 The expiry or termination of the Licence, for any reason, shall not affect any provision of these conditions which is expressed to survive or operate in the event of expiry or termination and shall be without prejudice to the provisions of this condition 9 and to any rights of either party which may have accrued by, at or up to the date of such expiry or termination.

## **10. GENERAL**

- 10.1 No failure or delay by a party to exercise any right or remedy provided under these conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 10.2 Each of the parties acknowledges and agrees that in connection with the Mark and the Licence, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether negligently or innocently made) other than as expressly set out in these conditions.
- 10.3 Nothing in this condition shall limit or exclude any liability for fraud.
- 10.4 Nothing in these conditions is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of another party, nor authorise either party to make or enter into any commitments for or on behalf of the other party

## **11. NOTICES**

- 11.1 Any notice required to be given under these conditions shall be in writing and shall be delivered personally, or sent by email, pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice at its address or email address specified by the relevant party by notice in writing to each other party.
- 11.2 Any notice shall be deemed to have been duly received:
  - (a) if delivered personally or delivered by commercial courier, when left at the address and for the contact referred to in this condition;
  - (b) if sent by email 9.00 am on the next Business Day after sending; or
  - (c) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting.
- 11.3 The provisions of this condition 11 shall not apply to the service of any proceedings or other documents in any legal action.

## **12. GOVERNING LAW AND JURISDICTION**

- 12.1 These conditions and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with Scots Law.
- 12.2 The parties irrevocably agree that the Scottish Courts shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these conditions, the Mark or the Licence.