General Terms and Conditions Stichting eX:plain

Article 1. Definitions

In these General Terms and Conditions the following terms have the following meaning:

General Terms and Conditions:	these General Terms and Conditions of Stichting eX:plain, adopted by the board on 4 December 2018.
Other Party:	natural person not acting in the performance of a profession or business (= consumer) entering into an agreement with Stichting eX:plain; or an undertaking, irrespective of its legal form, entering into an agreement with Stichting eX:plain.
Controller	a natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; if the purposes of and means for this processing are determined in European Union law or member state law, that law may stipulate who the Controller is or according to what criteria the Controller is appointed.
Processor	a natural or legal person, public authority, agency or other body which processes personal data on behalf of the Controller.
Agreement:	the rendering of services, performance of instructions, the sale and/or delivery of goods and/or the issuing of user rights to digital content and digital services by Stichting eX:plain for the benefit of the Other Party and all additions to this and as further described in an Agreement.
Distance Agreement:	an Agreement whereby in the context of a system organised by Stichting eX:plain for the sale at distance of services, goods and/or user rights to digital content/digital services, up to and including the entering into of the Agreement exclusive use is made of, or partly made of, one or more technologies of distance communication.

Article 2. Identity of the organisation

Stichting eX:plain, registered with the Chamber of Commerce under number 41189888, trading under the names:

- Stichting eX:plain
- eX:plain
- Smart Educational Tools
- Smart Educational Tools by eX:plain
- Associatie voor Examinering
- VCA Infra
- Xquiry
- Proctoring Services
- iEXA
- Examenbureau Medisch-Wetenschappelijk Onderzoeker (EMWO)

Based at Disketteweg 6, 3821AR Amersfoort, the Netherlands, VAT identification number NL 8048.47.058.B.01.

Article 3. Applicability and scope

1. These General Terms and Conditions apply to every offer of Stichting eX:plain and to every Agreement between the Other Party and Stichting eX:plain.
2. Departures from these General Terms and Conditions are only valid if such have been expressly agreed in writing with Stichting eX:plain in advance and then only apply for a specific offer or specific Agreement.
    a. A specific offer in any event includes examination. In this context, the examination regulations and examination registration conditions for the particular examinations line (as published on the website) prevail over the provisions in these general terms and conditions.
3. Stichting eX:plain is entitled to amend these General Terms and Conditions. The amendments come into force on the date of commencement as notified to the Other Party. Stichting eX:plain shall notify the Other Party of the amended General Terms and Conditions and/or send the amended General Terms and Conditions to the Other Party on time. If no date for entering into force is notified, the amendments come into force for the Other Party as soon as it has been notified of the amendment.
4. Any general terms and conditions in use by the Other Party do not apply to Agreements to which Stichting eX:plain is a party, unless otherwise agreed in writing.

Article 4. The offer

1. The offer contains a sufficiently detailed and accurate description of the offered services, goods, digital content/services in order to allow for a proper assessment of the offer.
2. The offer for carrying out Instructions is submitted by Stichting eX:plainin writing or electronically, with reference to or the electronic or written provision of the General Terms and Conditions.
3. All offers contain such information that it is clear to the Other Party which rights and duties are attached to the acceptance of the offer. This relates in particular to:

b. the price including all ancillary costs and taxes;
c. the manner in which the agreement shall be formed and which acts are required for this;
d. whether or not the right of withdrawal applies;
e. the manner of payment, delivery and performance of the agreement;
f. any additional (regulated) conditions that apply;
g. the period of validity of the offer.

4. Apparent mistakes/errors in the offer do not bind Stichting eX:plain. If the offer is based on information and specifications provided by the Other Party, Stichting eX:plain may assume their accuracy.
5. The offer is without obligation. Stichting eX:plain may change or withdraw the offer as long as the offer has not yet been accepted in its entirety by the Other Party.

Article 5. Formation and amendment of the Agreement

1. An Agreement to carry out Instructions is formed by acceptance of the offer by the Other Party and the compliance of the conditions set for this:
   a. by explicit acceptance (in whatever form) of a written or electronic offer by the Other Party and receipt of notification of acceptance by Stichting eX:plain;
   b. or by the joint signature of a separate written Agreement.
2. If the Other Party has accepted the offer by electronic means, Stichting eX:plain confirms receipt of the acceptance of the offer by electronic means.
3. As long as the receipt of this acceptance has not been confirmed, the Other Party can terminate the agreement.
4. The provisions of paragraph 1 and 2 of this article apply mutatis mutandis to amendments to and/or supplementation of the agreement.
5. Insofar as the Agreement relates to the rendering of services this is a best efforts obligation for Stichting eX:plain, unless it is expressly clear from the nature of the Agreement that it relates to a result obligation.
6. After a Distance Agreement has been formed, the information referred to in Article 2 and Article 4(3) is provided in writing or made available in another accessible and permanent manner to the Other Party.

Article 6. Other Party's right of withdrawal (consumers)

In the event of delivery of physical products:

1. In the event of a Distance Agreement relating primarily to the purchase of goods, the Other Party (consumer) has a period of 14 days to terminate the agreement without having to state reasons. This period ('cooling-off period') commences on the day following the day of receipt of the product by or on behalf of the Other Party.
2. In the event of a continuing performance agreement, the provision in the previous paragraph only applies to the first delivery.
3. The Other Party can use the model form to notify its wish to terminate the Agreement.
4. During the cooling-off period the Other Party shall handle the product and the packaging with due care. The Other Party shall only unpack or use the product to the extent required to be able to judge whether it wishes to keep the product.
5. If the Other Party exercises its right to withdrawal, it will return the product with all delivered accessories and - if reasonably possible - in the original condition and packaging within 14

days after the cancellation of the Agreement in accordance with the reasonable and clear instructions provided by Stichting eX:plain.

6. If after the periods referred to in paragraph 1 and 5 the Other Party has not made it known that it wishes to exercise its right of withdrawal or has not returned the product to Stichting eX:plain respectively, the purchase is a fact.

In the event of the rendering of services:

7. In the event of a Distance Contract which primarily relates to the rendering of services, the Other Party (consumer) can terminate the Agreement within a term of 14 days without having to state reasons. This period commences on the day the Agreement is entered into.
8. During the cooling off period referred to in paragraph 7, the service can only commence at the request of the Other Party.
9. To exercise its right of withdrawal, the Other Party shall adhere to the reasonable and clear instructions issued by Stichting eX:plain with the offer and/or at the latest on delivery.

Article 7. Obligations of Stichting eX:plain in the event of withdrawal

1. After receipt of a notification of withdrawal, Stichting eX:plain shall immediately send an acknowledgement of receipt.
2. If the Other Party (consumer) exercises its right of withdrawal, at the most the costs of return shipment of goods and/or a proportional part of the price for services rendered are for the Other Party's account.
3. If the Other Party (consumer) has paid an amount, Stichting eX:plain shall refund this amount as soon as possible but at the latest 14 days after withdrawal. This on condition that Stichting eX:plain has already received the product back or conclusive evidence of complete return has been submitted by the Other Party (consumer).

Article 8. Exclusion of the right of withdrawal

1. Stichting eX:plain can exclude the right of withdrawal of the Other Party (consumer) for goods and services as set out in paragraphs 2 and 3 below. The exclusion of the right of withdrawal only applies if this has been clearly stated in the offer and prior to the entering into of the Agreement.
2. Exclusion of the right of withdrawal and/or amendment of the conditions for withdrawal is only possible for items:
    a. which have been produced by Stichting eX:plain in accordance with the specifications of the Other Party;
    b. such as digital content/services for which the Other Party has received an access code;
    c. delivered in combination with digital content/services and for which the Other Party has received an access code.
3. Exclusion of the right of withdrawal and/or adjustment of the conditions for withdrawal is only possible for services:
    a. which have been produced by Stichting eX:plain in accordance with the specifications of the Other Party;
    b. of which the delivery has commenced with the express agreement of the Other Party before the cooling off period had expired;

c. for which by or on behalf of Stichting eX:plain additional conditions (whether or not regulated) have been determined such as - but not limited to - the organisation and administration of exams and other forms of assessment.

Article 9. Delivery and performance

1. The periods stated in an offer, confirmation and/or Agreement within which the Instructions must be performed are determined by Stichting eX:plain to the best of its ability and shall be observed as far as possible, but are never deemed to be strict deadlines. In the event of late delivery, Stichting eX:plain shall not be in default automatically/by operation of law.
2. A wrong or damaged delivery of goods shall immediately be replaced without costs for the Other Party.

Article 10. Protection of personal data

1. If and to the extent Stichting eX:plain can be designated as Controller (GDPR 2016/679) and the Other Party is also a Controller, then:
   a. Stichting eX:plain and the Other Party will comply with all obligations that apply for it as Controller on the basis of the legislation and regulations for the protection of personal data;
   b. Stichting eX:plain and the Other Party indemnify each other against all claims from third parties which are filed against Stichting eX:plain or the Other Party on account of a violation of the applicable personal data protection legislation and regulations attributable to Stichting eX:plain or the Other Party or to the Processor (a third party) engaged by it;
   c. the parties will acknowledge the rights of the data subject and inform each other if a data subject exercises a right. The party that has received the request will inform the data subject that the request has been passed on and will be processed by both parties.
2. If Stichting eX:plain can be designated as Controller (GDPR 2016/679) and the Other Party is the Processor, then:
   a. Stichting eX:plain will comply with all obligations that apply for it as Controller on the basis of the legislation and regulations for the protection of personal data;
   b. the Other Party indemnifies Stichting eX:plain against all claims from third parties, including data subject(s) and competent authorities, which are filed against Stichting eX:plain on account of a violation of the applicable personal data protection legislation and regulations attributable to the Other Party or a subprocessor engaged by it, and the Other Party will compensate Stichting eX:plain for all damage the latter suffers as a result of the aforementioned violation;
   c. Stichting eX:plain has the right to conduct audits and other checks, including technical checks, at the Processor. The costs of these audits and checks are at Stichting eX:plain's expense;
   d. a potential data leak is reported by the Processor or data subject to the contact person at Stichting eX:plain via data@explain.nl within 24 hours after it has been discovered;
   e. personal data made available are destroyed by the Processor subject to agreement (if the statutory retention periods allow this) and/or provided to Stichting eX:plain;
   f. the Processor does not need to request permission from Stichting eX:plain for the use or replacement of a subprocessor, but the Processor must inform Stichting eX:plain about

such use or replacement of a Processor. The Processor is responsible for ensuring the Processor complies with article 10.1, a. to e.

3. If Stichting eX:plain is the Processor (GDPR 2016/679) and the Other Party is the Controller, then:
   a. Stichting eX:plain will comply with all obligations that apply for it as Processor on the basis of the legislation and regulations for the protection of personal data;
   b. the Controller indemnifies Stichting eX:plain against all claims from third parties, including data subject(s) and competent authorities, which are filed against Stichting eX:plain on account of a violation of the applicable personal data protection legislation and regulations attributable to the Controller and/or Processor, and the Controller will compensate Stichting eX:plain for all damage that Stichting eX:plain suffers as a result of the aforementioned violation;
   c. Stichting eX:plain will cooperate in all reasonableness with audits and other technical checks announced in advance in a timely fashion. The costs of these audits and checks are at the Controller's expense;
   d. Stichting eX:plain will report a potential data leak to the contact person at the Controller within 24 hours after it has been discovered;
   e. personal data made available are destroyed subject to agreement (if the statutory retention periods allow this) and/or provided to the Controller;
   f. Stichting eX:plain does not need to request permission from the Controller for the use or replacement of a Processor but Stichting eX:plain will inform the Controller, on request, about the use or replacement of a Processor.

Article 11. Risk, claims and complaints, transfer of risk

1. Complaints and objections concerning the services rendered by Stichting eX:plain, instructions carried out or general complaints or objections relating to the manner in which Stichting eX:plain has performed the Agreement must be notified by the Other Party as soon as possible after the fact has occurred, but at the latest within 30 calendar days after the performance of the Agreement, to Stichting eX:plain in writing. Complaints about invoices must be submitted to Stichting eX:plain within 14 calendar days after the invoice date. If the Other Party fails to submit an objection or complaint on time or in the correct manner, this leads to the lapsing of all rights and claims.
2. The Other Party must immediately or as soon possible inspect all delivered items (including goods and services) in order to ascertain whether the delivered items correspond with the Agreement. This includes inspection whether:
   I. the correct items (including goods and services) have been delivered;
   II. the agreed quantity has been delivered;
   and
   III. the delivered items (including goods and services) comply with the agreed quality requirements or, if such is not possible, the quality is sufficient for normal use.
3. The risk of loss or damage of the delivered items transfers as soon as they have been delivered to the delivery address as provided by the Other Party. If the Other Party instructs its own carrier, the risk transfers as soon as Stichting eX:plain hands the item over to this carrier.

Article 12. Payment

1. Stichting eX:plain invoices the agreed rates and prices. Unless otherwise agreed in writing, the Other Party must pay the amounts owed within 30 calendar days from the invoice date without being able to rely on discount, settlement or suspension. In the event of a failure to pay or in the event of late payment , the Other Party is in default by operation of law without any notice of default by Stichting eX:plain being required. From the due date of the invoice until the day full payment is made, the Other Party owes commercial interest on the outstanding invoice amounts, unless pursuant to the lawonly statutory interest can be claimed.
2. If the Other Party is in default with the payment of any invoice, Stichting eX:plain is entitled to suspend the further performance of its work and/or to immediately adjust the Agreement, such that it acquires security for the further payments by the Other Party, by demanding advance or cash payment for example, or by having guarantees issued. In that event, Stichting eX:plain is the party (i) determining which security must be provided by the Other Party and (ii) the extent of the security to be provided.
3. If Stichting eX:plain is forced to pass on the claim on the Other Party for collection - whether or not at law - the Other Party is also obliged to pay all judicial and extrajudicial costs (with a minimum of 15% of the principal sum) to Stichting eX:plain.

Article 13. Engagement of third parties

Stichting eX:plain is entitled to engage third parties in the performance of an Agreement. Stichting eX:plain remains responsible for the performance of the Agreement and the quality of the work of the third parties.

Article 14. Retention of title

Items delivered by Stichting eX:plain to the Other Party remain the property of Stichting eX:plain until the agreed price (if applicable, including VAT) including the costs of insurance, packaging, shipment and transport has been paid by the Other Party, as well as any interest and (extrajudicial) costs payable. Until the moment of full payment of the agreed price (if applicable, including VAT) and the costs and interest as referred to in the previous sentence, the Other Party is obliged to care for such items with due care and not dispose of such either wholly or in part or in any way or bring such into the possession of third parties in any other way.

Article 15. Non-attributable failure (force majeure)

If, due to force majeure, performance of the Agreement has become impossible for longer than 30 calendar days or permanently, each of the parties is entitled to terminate the Agreement in writing with immediate effect. Force majeure shall be interpreted in accordance with the provisions in section 75, book 6 of the Dutch Civil Code. Such a termination does not entitle any party to any form of compensation, unless the other party enjoys a benefit which it would not have had if proper performance had taken place. In that case the benefit must be paid as compensation.

In the event of termination, all that was already performed up to the moment of termination (including the costs incurred up to this date) shall be settled between the parties, such with due observance of the provisions in article 11 of these General Terms and Conditions.

Article 16. Liability for loss

1. Stichting eX:plain does not accept any liability or obligation whatsoever to pay compensation, unless there is an intentional act or gross negligence on the part of Stichting eX:plain.
2. If any liability for loss were to arise for Stichting eX:plain, the Other Party must (i) notify Stichting eX:plain immediately but at the latest within 2 months after the loss has arisen or it has become aware of the loss, in writing, properly substantiating the loss and the cause, (ii) grant Stichting eX:plain where possible a reasonable term to clear any shortfalls and (iii) Stichting eX:plain is only liable if Stichting eX:plain continues to be in default.
   On exceeding the aforementioned term of 2 months after the loss has arisen or the loss has become known, the Other Party can no longer exercise any rights against Stichting eX:plain.
3. Stichting eX:plain's liability is in any case, irrespective of the size and form of the loss, limited to the amount paid out by its insurer. If, for whatever reason, the insurer does not pay out or if no insurance has been taken out, Stichting eX:plain's liability is in all cases, irrespective of the extent and form of the loss, limited to the nett invoice amount (if applicable therefore exclusive of VAT), as included in the offer or Agreement directly related to the liability and arisen loss. Stichting eX:plain is never liable for loss of profit, indirect and/or consequential loss which arises from a defective delivery or service.
4. Stichting eX:plain is never liable for direct or indirect loss of the Other Party as a result of the manner in which the Other Party uses or applies all that described in the Instructions. Stichting eX:plain is also never liable for products and services of third parties which the Other Party purchases from third parties, even if Stichting eX:plain has recommended or brokered such.

Article 17. Intellectual property

1. Unless otherwise agreed in writing, Stichting eX:plain has and retains the copyrights and all other intellectual property rights relating to the works it uses and/or has used and/or develops and/or has developed in the context of the performance of the Agreement. Exclusively if such has been set out in the Agreement, the Other Party is entitled to reproduce these works for use in its own organisation.
2. Unless otherwise agreed, Stichting eX:plain grants user rights/licences exclusively to the Other Party. Unless expressly otherwise agreed in writing, the Other Party is not entitled to give the aforementioned rights to third parties.

Article 18. Confidentiality

Stichting eX:plain and the Other Party shall, even after the termination of the Agreement, observe confidentiality in respect of all information which they make and shall make available to each other in the formation and performance of the Agreement and of which the confidential character is indicated or must reasonably be assumed. Information on the working method and the approach of Stichting eX:plain is only disclosed by the Other Party to third parties with the written permission of Stichting eX:plain.

Article 19. Voidness

Voidness of a part of an Agreement or of part of these General Terms and Conditions does not result in the general voidness of the Agreement or these General Terms and Conditions. The relevant provision must be interpreted and amended in accordance with the reasonable intention of the parties.

Article 20. Applicable law

The Agreements entered into by Stichting eX:plain with the application of these General Terms and Conditions are governed by Dutch law. Subject to cases in which by or pursuant to Dutch legislation a different body is or shall be competent to hear the dispute, the disputes arising from or relating to Agreements are submitted to the competent court of the Midden-Nederland District Court. The Other Party (consumer) has the right to notify Stichting eX:plain within one month that it opts for dispute resolution by the court with jurisdiction according to the law.

Article 21.

These General Terms and Conditions are included on the website of Stichting eX:plain and are sent on request free of charge.