



ICAEW FALSE ASSURANCE FILM LICENCE (COMMENTARY VERSION)

Online confirmation of purchase will be treated as an electronic signature to this agreement on the commencement date.

By ticking the box to indicate you agree to the licence agreement before purchasing and downloading the film you are acknowledging (1) that you have read and understood the licensing terms (2) that you agree to be bound by the licence terms and (3) if entering into the agreement on behalf of a company you have the power and authority to bind that company or legal entity to the terms of this agreement.

COMMERCIAL TERMS

THIS AGREEMENT is entered into on the date of online purchase between:

- (1) **INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES**, incorporated in England by Royal Charter, of Chartered Accountants' Hall, Moorgate Place, London EC2P 2BJ **ICAEW**"); and
 - (2) **Your firm** as identified during the online purchase process (**Licensee**"),
- together the "**parties**".

Commencement Date	Date of online purchase
End Date	3 years from Commencement Date
Fees	Price as purchased
Payment Date	Date of online purchase
Purpose	the use of the film as part of training for partners, directors and staff of the Licensee
Fixed Compensation Fee for Non-permitted Use	£5000.00 plus VAT

The parties hereby agree to these Commercial Terms and the Terms and Conditions appended hereto.

BACKGROUND

- (A) ICAEW has developed a commentary version of an educational film called "False Assurance" ("the Film") and the supporting training materials ("the Supporting Materials");
- (B) The Licensee wishes to use the film for the Purpose during the Licence Period.
- (C) ICAEW has agreed to license the Licensee to use the Film and the Supporting Materials on the terms of this agreement.

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this agreement, capitalised terms shall have the meanings given to them below (unless otherwise defined in the Commercial Terms):

Authorised Person: a partner, director or employee of the Licensee

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

Commercial Terms: the terms set out on the front page of this agreement and identified under the heading "Commercial Terms".

Confidential Information: any information (including, without limitation, in written, oral, visual or electronic form, or on tape or disk) which is not publicly available including, but not limited to, any information specifically designated by the disclosing party as confidential; any information supplied to the disclosing party by any third party in relation to which a duty of confidentiality is owed or arises; and any other information which should otherwise be reasonably regarded as possessing a quality of confidence. This includes know-how and information about design, development, specifications, manuals, instructions, customer lists, sales, marketing, promotion, distribution, business plans, forecasts, and technical or other expertise.

Derivative Work: work generated or developed following the date of this agreement which is based on the Film or an underlying work in relation to this (including translations; any new subtitled versions, voiceovers or musical arrangements; any sound recordings, abridgements or condensations; or any other form in which any part of the Film may be recast, transformed or adapted).

Film: the commentary version of the educational film called "False Assurance" developed by ICAEW .

Insolvency Event: in relation to a party, means any of the following events:

- (a) the party ceases (or is unable) to pay its creditors (or any class of them) in the ordinary course of business, or announces its intention to cease to do so or, in relation to an individual, that individual is, or is likely to become, bankrupt;
- (b) a receiver, receiver and manager, administrator, liquidator or similar officer is appointed to that party or any of its assets;
- (c) such party enters into, or resolves to enter into, a scheme or arrangement, compromise or composition with any class of creditors;

- (d) a resolution is passed or an application to a court is taken for the winding up, dissolution, official management or administration of that party; or
- (e) anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off [or unfair competition], rights in designs, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Licence Period: the period beginning on the Commencement Date and ending on the End Date (inclusive).

Non-permitted Use: use by the Licensee of the Film and / or the Supporting Materials outside of the Purpose

Producer: means Area Seventeen Limited, of 44 Lexington Street, London W1F 0LW.

Supporting Materials: the documents and other materials which have been created by ICAEW to assist Licensees with ideas on how to use or teach issues arising out of the Film.

Terms and Conditions: these terms and conditions, including all clauses and the Schedule (which forms part of the Terms and Conditions and shall have effect as if set out in full in the body of the Terms and Conditions) but excluding the Commercial Terms.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A "**person**" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a "**company**" shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 References to "**this agreement**" refer to these Terms and Conditions and the Commercial Terms. Any reference to this agreement includes the Schedules.
- 1.7 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to "**writing**" or "**written**" includes e-mail.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 Any words following the terms "**including**", "**include**", "**in particular**", "**for example**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. GRANT OF LICENCE

- 2.1 ICAEW hereby grants to the Licensee a non-transferable, non-exclusive licence to use the Film and the Supporting Materials (and any Derivative Works created by the Licensee in accordance with this Agreement) during the Licence Period for the Purpose.
- 2.2 The Licensee shall use the Film and the Supporting Materials solely for the Purpose and shall not provide any person that is not an Authorised Person with a copy of the Film or a link to download the Film or any of the Supporting Materials without ICAEW's prior written consent.
- 2.3 The Licensee shall not grant sub-licences, in whole or in part, of any of the rights granted under this agreement, or sub-contract any aspects of exploitation of the rights licensed to it, without ICAEW's prior written consent.
- 2.4 ICAEW may issue new versions of the Film and the Supporting Materials to the Licensee from time to time which, for the avoidance of doubt, will be provided free of charge to the Licensee, and may require the return or destruction of any copy of the Film and Supporting Materials held by the Licensee that has been replaced by a new version. The Licensee agrees to affect such return or destruction within a reasonable period.

3. ICAEW'S WARRANTIES, OBLIGATIONS AND RIGHTS

- 3.1 ICAEW expressly reserves all rights in the Film and the Supporting Materials for exploitation by ICAEW or by third parties authorised by it.
- 3.2 ICAEW warrants that:
- (a) it has the right to enter into this licence and to grant to the Licensee a licence to use the Film and the Supporting Materials as contemplated by this licence;
 - (b) the Film and the electronic file in which it is delivered to the Licensee are free from viruses and other malicious code;
 - (c) the Film is not defamatory, libellous, obscene, or otherwise unlawful;
 - (d) the Film does not, and will not, infringe any third party Intellectual Property Rights; and

- (e) the Film and the Supporting Materials comply with all applicable laws and regulations.
- 3.3 Pursuant to clause 9 of this Agreement, ICAEW may require the Licensee to cease all use of any of the Film if it reasonably believes that the Licensee's use of the Film infringes the Intellectual Property Rights of any third party, or breaches any applicable law or regulation. In this instance, ICAEW may, at its option either:
 - (a) provide the Licensee with an alternative version of the Film so as to avoid the infringement; or
 - (b) (if it is not reasonably or commercially practicable to create alternative content) terminate this Agreement immediately on written notice. The right to terminate the Agreement shall also extend to the Licensee.
- 3.4 If ICAEW or the Licensee terminates under 3.3(b) above, ICAEW will refund to the Licensee the percentage of the Licence Fee referable to the unused period of the Licence at the date of termination (calculated pro rata) within 28 days from the date of termination.

4. LICENSEE'S OBLIGATIONS AND RIGHTS

- 4.1 The Licensee shall not change, amend or develop the Film or the Supporting Materials in any way (nor create any Derivative Works) without ICAEW's prior written consent.
- 4.2 The Licensee shall not be entitled to:
 - (a) provide a link or share the password which allows the downloading of the Film to anyone other than Authorised Persons;
 - (b) attach digital files of the Film or any of the Supporting Materials to any email transmitted to any person other than an Authorised Person;
 - (c) download the Film to any dongle or other removable media and then pass this on to any person other than an Authorised Person;
 - (d) upload the Film or any of the Supporting Materials to any online learning environment or external website which would allow the Film to be downloaded or copied by persons other than Authorised Persons; nor
 - (e) otherwise permit any copies of the Film and the Supporting Materials to leave its possession without ICAEW's prior written consent.
- 4.3 If the Film or the Supporting Materials are used outside of the Purpose stated in the Commercial Terms, or are shared with a person other than an Authorised Person without ICAEW's prior permission, then, without prejudice to any rights of ICAEW arising in relation to such breach, the Licensee undertakes within seven (7) days of the Licensee becoming aware of such use or sharing, or the Licensee receiving notification from ICAEW of evidence of such use or sharing, to pay the Fixed Compensation Fee for Non-permitted Use as specified in the Commercial Terms, and to take steps to ensure that there is no further breach
- 4.4 The Licensee shall comply with all applicable laws in performing its obligations and exercising its rights under this agreement.

4.5 The Licensee shall use reasonable endeavours to ensure that the Film and the Supporting Materials stored by it are kept secure and shall use its best endeavours to:

- (a) ensure the Film and the Supporting Materials are only used for the Purpose; and
- (b) prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Film and the Supporting Materials.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 ICAEW retains ownership of all Intellectual Property Rights in the Film and the Supporting Materials and in any Derivative Works created under this agreement. Nothing in this agreement shall permit the Licensee to own any Intellectual Property Rights in the Film or the Supporting Materials or any Derivative Works.

5.2 The Licensee shall do all things and execute all documents reasonably required by ICAEW to give effect to clause 5.1.

6. FEES

6.1 The Licensee undertakes to pay to ICAEW the Licence Fee as set out in the Commercial Terms in accordance with the Payment Date.

7. TAXES AND WITHHOLDINGS

7.1 All payments to be made by the Licensee under this agreement are exclusive of any VAT which shall, where applicable, be paid by the Licensee at the prevailing rates on the due date for payment and on receipt of a valid VAT invoice from ICAEW.

7.2 All payments to be made by the Licensee under this agreement (except any deduction or withholding which is required by law) shall be paid free and clear of any deductions or withholdings for, or on account of tax, set-offs or counterclaims.

8. WARRANTIES

8.1 Each party warrants to the other that it has full power and authority to enter into, and perform, its obligations under this agreement.

9. INFRINGEMENT

9.1 The Licensee shall promptly notify ICAEW of any actual or suspected infringement of the Film and the Supporting Materials that comes to its attention ("**Infringement**").

9.2 The Licensee shall co-operate with ICAEW by taking all steps reasonably required by ICAEW (at ICAEW's expense) in connection with any Infringement, including, without limitation, legal proceedings in the name of ICAEW or in the joint names of the parties. ICAEW shall be responsible for the cost of any legal proceedings and any necessary expenses incurred by the Licensee in the course of such proceedings, and is entitled to any damages, account of profits and/or awards of costs recovered. The Licensee shall use its reasonable commercial endeavours to assist ICAEW in any legal proceedings relating to any Infringement.

10. TERMINATION

- 10.1 ICAEW may terminate this agreement with immediate effect by giving written notice to the Licensee if the Licensee challenges or disputes ICAEW's ownership of, or rights in, the Film and the Supporting Materials, or the validity of those rights.
- 10.2 Without affecting any other right or remedy available to it, ICAEW may terminate this agreement with immediate effect by giving written notice to the Licensee if the Licensee:
- (a) has breached any term of this agreement which is not capable of being remedied
 - (b) has breached any term of this agreement which is capable of being remedied, and has failed to remedy such breach within 30 days of the date of notice from ICAEW requiring rectification of the breach;
 - (c) undergoes a change in the person or persons in effective control of the Licensee, including any change in the underlying beneficial ownership of the Licensee;
 - (d) is undergoing an Insolvency Event; and/or
 - (e) has, in the sole opinion of ICAEW, acted in a manner likely to prejudice the reputation of ICAEW or its business interests.
- 10.3 Without prejudice to any other right or remedy, the Licensee may terminate this agreement, effective immediately, by giving notice in writing to ICAEW, if ICAEW:
- (a) has breached any term of this agreement which is not capable of being remedied;
 - (b) has breached any term of this agreement which is capable of being remedied, and has failed to remedy such breach within 30 days of the date of notice from the Licensee requiring rectification of the breach;
 - (c) undergoes a change in the person or persons in effective control of ICAEW, including any change in the underlying beneficial ownership of ICAEW;
 - (d) is undergoing an Insolvency Event; and/or
 - (e) has, in the sole opinion of the Licensee, acted in a manner likely to prejudice the reputation of the Licensee or its business interests.
- 10.4 On any expiration or termination of this agreement:
- (a) all rights and authorisations granted by ICAEW to the Licensee under this agreement shall automatically terminate and immediately revert to ICAEW; and
 - (b) the Licensee shall, at ICAEW's option and according to ICAEW's instructions, immediately return to ICAEW or destroy all copies of the Film and Supporting Materials in the Licensee's possession or subject to its control;
 - (c) prevent any access to the Film via any internal learning management system; and

- (d) delete any copies of the Film or the Supporting Materials from its servers, websites, intranet, laptops, removable media or other storage device.

11. LIABILITY

- 11.1 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.
- 11.2 Nothing in this licence shall operate to exclude or limit a party'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.
- 11.3 Neither party shall have any liability for any losses or damages which may be suffered, 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, loss of profits; loss of anticipated savings, loss of business opportunity, loss of contracts, loss of goodwill or loss arising from damaged, corrupted or lost data; or
 - (b) indirect or consequential loss.
- 11.4 Subject to clause 11.2, ICAEW's liability, whether in contract, tort (including negligence), or otherwise and whether in connection with this licence or any collateral contract, shall not exceed the amount of the Fees paid by the Licensee.

12. THIRD PARTY RIGHTS

- 12.1 No one other than a party to this agreement shall have any right to enforce any of its terms.

13. ASSIGNMENT AND OTHER DEALINGS

- 13.1 Save as provided in paragraph 2.3 above, neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any manner with this agreement or any of its rights and obligations under this agreement without the prior written consent of the other.

14. FORCE MAJEURE

- 14.1 Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for twenty-eight (28)

days, the party not affected may terminate this agreement forthwith by giving written notice to the affected party.

15. SEVERANCE

15.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

15.2 If any provision or part-provision of this agreement is held to be invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

16. COUNTERPARTS

16.1 This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

17. NO PARTNERSHIP OR AGENCY

17.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

17.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

18. CONFIDENTIALITY

18.1 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement and / or the Purpose.

18.2 Each party undertakes that it shall not at any time during this agreement, and for a period of ten (10) years after the expiry or termination of this agreement, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party, nor any of the terms of this agreement. Notwithstanding anything else in this clause, each party may disclose the other party's Confidential Information:

- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement, provided that the party making such disclosure procures that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential information comply with the obligations set out in this clause 25.2 as if they were a party to this agreement; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority, provided that (where legally permitted) the party making such disclosure notifies the other party of such disclosure and exercises all legal rights available to preserve the confidentiality of the other party's Confidential Information to the extent reasonably possible.

19. NOTICES

19.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by e-mail to the number or address notified by the other party to it as being the e-mail address for notices

19.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or (in the absence of a signed delivery receipt) at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at the time recorded by the delivery service or (where the party giving the notice is unable to determine the time recorded by the delivery service) at 9.00 am on the second Business Day after posting;
- (c) if sent by e-mail, at 9.00 am on the next Business Day after transmission.

19.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

20. INADEQUACY OF DAMAGES

20.1 Without prejudice to any other rights or remedies that ICAEW may have, the Licensee acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement by the Licensee. Accordingly, ICAEW shall be entitled to seek the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.

21. FURTHER ASSURANCE

21.1 At its own expense each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this agreement.

22. WAIVER

22.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No

single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

23. ENTIRE AGREEMENT

23.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

23.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

24. VARIATION

24.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

25. GOVERNING LAW

25.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

26. JURISDICTION

26.1 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule
Items to be provided by ICAEW to the Licensee

1. A downloadable password protected electronic version of the film will be provided by a Vimeo link.
2. The following Supporting Materials will be provided in soft copy form:
 - (a) The Who's Who character guide.
 - (b) ICAEW's list of discussion questions.