

This Contract is dated [DATE]

## Customer Terms of Service

Version 2.1 – Effective 24 May 2018

These Customer Terms of Service describe the Customer's rights and responsibilities when using the Learnium tools and platforms (the **Services**). If you are a Customer, these Customer Terms of Service govern your access and use of the Services. If you are being invited or join a network set up by a Customer you are an **Authorised User** and the User Terms of Service govern your access and use of the Services. The Customer will inform Authorised Users of all Customer policies and practices that are relevant to their use of the Services and ensure that the transfer and processing of Personal Data is lawful.

### Parties

- (1) Learnium Limited incorporated and registered in England and Wales with company number 08764021 whose registered office is at The Wesley Clover Innovation Centre, Coldra Wood, Chepstow Road, Newport, United Kingdom, NP18 2YB (**Learnium**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED ADDRESS] (**Customer**)

each a **Party** and together the **Parties**.

The Customer is the institution, organisation or, if it's for personal use, the network owner and provides access to the Service to Authorised Users.

These base Customer Terms of Service can be extended with Customer-Specific Terms and together they form the **Contract** between the Customer and Learnium.

### 1. Customer Choices and Responsibilities

- 1.1 The Customer can create one or more **Networks**. These are virtual spaces used by the Customer and its Authorised Users.
- 1.2 A **Subscription** allows an Authorised User to access the Services. All Authorised Users require a Subscription, which is acquired when the Authorised User joins the Services. Subscriptions can be either paid or free depending on the role of the Authorised User. The Customer controls which type of Subscription every Authorised User has access to.
- 1.3 Subject to the terms and conditions of this Contract, Learnium hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Authorised Users to use the Services during the term of this Contract solely for the Customer's internal business operations.
- 1.4 In relation to the Authorised Users, the Customer undertakes that:

- (a) it will not allow or suffer any Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services;
- (b) each Authorised User shall keep a secure password for use of the Services, that such password shall be changed no less frequently than annually and that each Authorised User shall keep their password confidential;
- (c) it shall permit Learnium or Learnium's designated auditor to audit the Services in order to audit compliance with this Contract. Each audit may be conducted no more than once per quarter, at Learnium's expense, and on reasonable prior notice; and
- (d) if any of the audits referred to in clause 2.2(c) reveal that the Customer has underpaid Subscription fees to Learnium, then without prejudice to any other rights, the Customer shall pay to Learnium an amount equal to such underpayment.

1.5 The Customer shall not:

- (a) except as may be allowed by any applicable law:
  - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services in any form or media or by any means; or
  - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services; or
- (b) access all or any part of the Services in order to build a product or service which competes with the Services; or
- (c) use the Services to provide services to third parties; or
- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services other than as provided under this Contract.

1.6 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify Learnium.

## 2. User Subscriptions

2.1 The Customer may, during the term of the Contract, purchase Subscriptions (**Paid Subscriptions**). The Customer may also take free subscriptions (**Free Subscriptions**),

subject to the number of Free Subscriptions constituting reasonable and fair use of the Services by the Customer.

- 2.2 If the Customer requests to purchase Paid Subscriptions, the Customer shall, within 30 days of the date of Learnium's invoice, pay to Learnium the relevant fees for such Paid Subscriptions. Learnium's current price list can be accessed on its website at [www.learnium.com/pricing](http://www.learnium.com/pricing).
- 2.3 If any fees that are owed to Learnium are more than 30 days overdue, Learnium may decide to downgrade the Customer to Free Subscriptions only until those fees are paid in full. The Customer acknowledges that a downgrade will result in a decrease in functionality, features and potential loss of Customer Data.

### 3. Learnium's Responsibilities

- 3.1 Learnium shall, during the term of this Contract, provide the Services to the Customer and the Authorised Users using commercially reasonable efforts to make the Service available 24 hours a day, seven days a week, except for:
  - 3.1.1 planned maintenance that may exceed 10 minutes of continuous time in which case Learnium shall provide the Customer with advance notice; and
  - 3.1.2 unscheduled maintenance performed outside normal business hours, provided that Learnium has used reasonable endeavours to give the Customer notice in advance.

### 4. Data Protection

- 4.1 Learnium shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Customer Data available at [www.learnium.com/terms](http://www.learnium.com/terms) or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by Learnium in its sole discretion.
- 4.2 Both Parties will comply with all applicable requirements of the General Data Protection Regulation and any national implementing laws, regulations and secondary legislation, as amended from time to time (the **Data Protection Legislation**). This clause 4 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. Terms defined in the Data Protection Legislation have the same meanings when used in this clause 4.
- 4.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and Learnium is the data processor. Schedule 1 sets out the scope, nature and purpose of processing by Learnium, the duration of the processing and the types of Personal Data and categories of data subject.
- 4.4 Without prejudice to the generality of clause 4.2, the Customer shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Learnium for the duration and purposes of this Contract.

- 4.5 Without prejudice to the generality of clause 4.2, Learnium shall, in relation to any Personal Data processed in connection with the performance of its obligations under this Contract:
- 4.5.1 process that Personal Data only on the written instructions of the Customer unless Learnium is required by the Applicable Laws to process Personal Data. Where Learnium is relying on the Applicable Laws as the basis for processing Personal Data, Learnium shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Learnium from so notifying the Customer;
  - 4.5.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - 4.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and do not process Personal Data except in accordance with this Contract;
  - 4.5.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - 4.5.4.1 The Customer or Learnium have provided appropriate safeguards in relation to the transfer;
    - 4.5.4.2 the data subject has enforceable rights and effective legal remedies;
    - 4.5.4.3 Learnium complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - 4.5.4.4 Learnium complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
  - 4.5.5 assist the Customer in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 4.5.6 notify the Customer without undue delay on becoming aware of a Personal Data breach;
  - 4.5.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by the Applicable Laws to store the Personal Data; and

- 4.5.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 4 and allow for audits by the Customer or the Customer's designated auditor.
- 4.5.9 subject to clause 4.5.10, notify the Customer immediately if it:
  - 4.5.9.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 4.5.9.2 receives a request to rectify, block or erase any Personal Data;
  - 4.5.9.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 4.5.9.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - 4.5.9.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 4.5.9.6 becomes aware of the loss or potential loss of any Personal Data.
- 4.6 The Customer acknowledges and agrees that Learnium may allow the sub-processors listed in Schedule 2 to process the Personal Data. Learnium may also allow any other sub-processor to process any Personal Data related to this Agreement for the purposes of:
  - 4.6.1 Technical maintenance of the Applications;
  - 4.6.2 Cloud hosting;
  - 4.6.3 Analytics and usage monitoring;
  - 4.6.4 Customer Relationship Management including Customer support and management; and
  - 4.6.5 Customer and Authorised User support.
- 4.7 Before appointing a sub-processor, Learnium must:
  - 4.7.1 enter into a written agreement with the sub-processor which gives effect to the terms set out in this clause 4 such that they apply to the sub-processor; and
  - 4.7.2 provide the Customer with such information regarding the sub-processor as the Customer may reasonably require.
- 4.8 The provisions of this clause shall apply during the term of this Contract and indefinitely after its expiry or termination.

## 5. Third-Party Products

- 5.1 Learnium enables the Customer to install Third-Party Products. It is the decision of the Customer if it wants to enable these products. Customers should be mindful of any Customer Data that will be shared with the Third-Party Product. Learnium is not responsible for these

products and provides no warranties or support for these products. Learnium makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party.

## 6. Ownership

- 6.1 The Customer acknowledges and agrees that Learnium owns all intellectual property rights in the Services. Except as expressly stated herein, this Contract does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services. Learnium grants the Customer a non-transferable, non-exclusive license for Customer and its Authorised Users to use the Services in accordance with this Contract and the User Terms.
- 6.2 The Parties acknowledge that the Customer owns all data produced by the Authorised Users (**Customer Data**).
- 6.3 The Customer grants Learnium a license to use the Customer Data to:
- (a) provide, maintain and update the Service;
  - (b) to lawfully respond to data requests from law enforcing agencies; and
  - (c) as otherwise expressly permitted by the Customer.
- 6.4 The Customer grants Learnium the right to use Customer's name and logo as a reference for marketing or promotional purposes.

## 7. Indemnity

- 7.1 The Customer shall defend, indemnify and hold harmless Learnium against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services, provided that:
- (a) the Customer is given prompt notice of any such claim;
  - (b) Learnium provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - (c) the Customer is given sole authority to defend or settle the claim.

## 8. Limitation of Liability

- 8.1 Except as expressly and specifically provided in this Contract:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Contract; and
- (c) Learnium provides the Service on an “as is” and “as available” basis and does not warrant that the Services will be uninterrupted, secure or error-free.

8.2 Nothing in this agreement excludes the liability of Learnium:

- (a) for death or personal injury caused by Learnium's negligence; or
- (b) for fraud or fraudulent misrepresentation.

8.3 Subject to clause 8.1 and clause 8.2:

- (a) Learnium shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Contract; and
- (b) Learnium's total aggregate liability in contract (including in respect of the indemnity at clause 7), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the Paid Subscriptions during the 12 months immediately preceding the date on which the claim arose.

## 9. Term and Termination

9.1 This Contract shall commence on the date stated at its head and shall continue until all Subscriptions have expired or been terminated, or the Contract has been otherwise terminated.

9.2 Free Subscriptions continue until terminated by the disabling or deletion of the relevant Authorised User account.

9.3 Paid Subscriptions continue for an initial 1 year period. At the end of this initial period, Paid Subscriptions automatically renew for an additional 1 year period unless one Party has given the other a written notice of non-renewal at least 30 days before the end of the 1 year term.

9.4 Without affecting any other right or remedy available to it, either Party may terminate this Contract with immediate effect by giving written notice to the other Party if:

- (a) the other Party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other Party 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 or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1) (e) or 123(2) of the Insolvency Act 1986;
- (c) the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other Party;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other Party;
- (e) 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 other Party;
- (f) the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;
- (h) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.4(b) to clause 9.4(h) (inclusive);

9.5 Learnium may terminate the Contract immediately if it determines that the Customer or its Authorised Users are using the Services in violation of any applicable laws.

9.6 On termination of this Contract for any reason:

- (a) all licences granted under this Contract shall immediately terminate and the Customer shall immediately cease all use of the Services;

- (b) each Party shall return and make no further use of any equipment, property, and other items (and all copies of them) belonging to the other Party;
- (c) Learnium may destroy or otherwise dispose of any of the Customer Data in its possession in accordance with clause 4.5.7, unless Learnium receives, no later than ten days after the effective date of the termination of this Contract, a written request for the delivery to the Customer of the Customer Data. Learnium shall use reasonable commercial endeavours to deliver the Customer Data within 30 days of receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Learnium in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination shall not be affected or prejudiced.

## 10. Customer Warranties

- 10.1 The Customer warrants that it has the necessary authority to enter into this Contract and that it is and for the duration of the Contract will be responsible for the conduct of its Authorised Users.

## 11. Confidentiality

- 11.1 During the term of the Contract, each Party may disclose to the other Confidential Information including planned product features, technology and Customer Data. Confidential Information does not include information that is publicly available.
- 11.2 A Party receiving Confidential Information will use all reasonable effort to prevent the unauthorised disclosure of the Confidential Information. Neither Party is prohibited from sharing the Confidential Information with legal of financial advisors that are bound to confidentiality obligations.
- 11.3 If either Party is required by law to disclose Confidential Information, it will notify the other Party in advance where permitted by law.

## 12. Entire Agreement

- 12.1 This Contract 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.
- 12.2 Each Party acknowledges that in entering into this Contract it does not rely on, and 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 Contract.

### 13. Assignment

- 13.1 Save for assignment to an affiliate or organisation resulted from a merger, acquisition, sale or corporate restructuring, neither Party shall, without the prior written consent of the other, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.

### 14. No partnership or agency

- 14.1 Nothing in this Contract is intended to or shall operate to create a partnership between the Parties, or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

### 15. No waiver

- 15.1 No failure or delay by a Party to exercise any right or remedy provided under this Contract 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.

### 16. Force Majeure

- 16.1 The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

### 17. Severability

- 17.1 This Contract will be enforced to the fullest extent permitted under applicable law. If any of these terms is deemed to be unlawful by a court of competent jurisdiction, the provisions will be modified so as to best achieve the objective of the original provision, and the remaining provisions will remain in effect.

## 18. Governing law

- 18.1 This Contract 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.
- 18.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

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

Signed by [NAME OF DIRECTOR]

\_\_\_\_\_

for and on behalf of Learnium Limited

Director

Signed by [NAME OF DIRECTOR]

\_\_\_\_\_

for and on behalf of [NAME OF CUSTOMER]

Director

## SCHEDULE 1

### THE PROCESSING OF PERSONAL DATA

This schedule sets out the scope, nature and purpose of the processing of Personal Data by Learnium on behalf of the Customer and constitutes the written instructions of the Customer referred to in clause 4.5.1. Learnium may only process Personal Data on behalf of the Customer in accordance with the requirements of clause 4 and this schedule.

#### 1. THE SCOPE, NATURE AND PURPOSE OF PROCESSING

1.1 Learnium may process Personal Data in order to provide the Services to the Customer and to Authorised Users.

#### 2. THE DURATION OF PROCESSING

2.1 The Contractor may process Personal Data for the duration of the Contract.

#### 3. THE TYPES OF PERSONAL DATA

3.1 Learnium may process Personal Data of the following types:

(a) [personal details]

(b) [family, lifestyle and social circumstances]

(c) [financial details]

(d) [employment and education details]

(e) [goods or services provided]

3.2 Learnium [may not process Special Category Data] [may process Special Category Data of the following types:

(a) [physical or mental health details]

(b) [racial or ethnic origin]

(c) [religious or philosophical beliefs]

(d) [trade union membership]

(e) [political opinions]

(f) [genetic data]

(g) [biometric data]

(h) [sex life and sexual orientation]]

#### 4. **THE CATEGORIES OF DATA SUBJECT**

4.1 Learnium may process Personal Data relating the Customer's:

(a) [employees]

(b) [students]

(c) [customers and clients]

(d) [suppliers and service providers]

(e) [advisors, consultants and other professional experts]

(f) [complainants and enquirers].

## SCHEDULE 2

### LEARNIUM SUB-PROCESSORS

To support the provision of the Services, Learnium may use Sub-Processors to process certain Personal Data. Prior to engaging any third party Sub-Processor, Learnium evaluates their security, privacy, and confidentiality procedures.

At the date of this contract, the Customer consents to Learnium utilising the services of the following entities as Sub-Processors of Personal Data for which the Customer is the Controller.

#### Infrastructure Sub-Processors

<b>Sub-Processor</b>	<b>Activity</b>	<b>Location</b>
Amazon Web Services	Cloud Service Provider	Ireland, EU

#### Other Sub-Processors

<b>Sub-Processor</b>	<b>Activity</b>	<b>Location</b>
Kayako	Customer Support	United States
Microsoft	Access to Microsoft Office Online functionality	United States
Insightly	Customer Account Management	United States
HubSpot	Customer Account Management	United States