

## Terms and Conditions of Service

These terms and conditions of service (**Terms**) apply to the provision of paid services by Learnium to the Customer and are to be read in conjunction with the Key Terms.

### 1 INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in the Contract.

<b>Applications</b>	the online applications provided by Learnium as part of the Services including, but not limited to, Communities.
<b>Additional Authorised Users</b>	means as defined in clause 3.1
<b>Authorised Users</b>	those members, associates, employees and agents of the Customer who are authorised by the Customer to use the Services pursuant to the User Plan, as further described in clause 2.2.5.
<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
<b>Contract</b>	means the Key Terms together with these Terms.
<b>Communities</b>	means Learnium's private social networking platform.
<b>Customer</b>	means the business to whom Learnium will provide the Services, as detailed in the Key Terms.
<b>Customer Data</b>	the data inputted by the Customer, Authorised Users, or Learnium on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.
<b>Data Protection Legislation</b>	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
<b>Effective Date</b>	the date set out in the Key Terms.
<b>GoToWebinar Platform</b>	means the webinar and online conference platform licenced by LogMeIn Technologies UK Limited ( <b>LogMeIn</b> ) and which is known as 'GoToWebinar'.
<b>GTW Licence(s)</b>	means any licences to use the GoToWebinar Platform purchased by Learnium from LogMeIn and allocated to the Customer to facilitate the Customer's use of the Services.
<b>GTW Terms of Service</b>	means any terms of service that apply to the use of GTW Licences, which as at the date of writing can be found at <a href="https://www.logmeininc.com/legal/terms-and-conditions">https://www.logmeininc.com/legal/terms-and-conditions</a> .

<b>Heightened Cybersecurity Requirements</b>	any laws, regulations, codes, guidance (from regulatory and advisory bodies. Whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the Customer or an Authorised User relating to security of network and information systems and security breach and incident reporting requirements, which may include the cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.
<b>Intellectual Property Rights</b>	means any and all intellectual property rights including, without limitation, patents, registered designs, copyrights, website rights, design rights, database rights, trademarks, trade names, rights in get-up, rights to use and protect the confidentiality of confidential information, rights in computer software, domain names (including applications for any of the foregoing) and know-how, and all other intellectual property rights, in each case whether registered or unregistered and all other forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist in any part of the world from time to time:
<b>Initial Plan Term</b>	the initial term of the Contract as set out in the Key Terms.
<b>Key Terms</b>	means the key terms documents made between the Customer and Learnium setting out various details including but not limited to the Services, Plan Fees and the Term.
<b>Learnium</b>	means Learnium Limited, a company incorporated in England and Wales with company number 08764021 and whose registered address is at The Wesley Clover Innovation Centre, Coldra Wood, Chepstow Road, Newport, United Kingdom, NP18 2YB.
<b>Normal Business Hours</b>	8.00 am to 6.00 pm local UK time, each Business Day.
<b>Plan Fees</b>	the fees payable by the Customer to Learnium for the User Plan as set out in the Key Terms.
<b>Plan Term</b>	has the meaning given in clause 14.1 (being the Initial Plan Term together with any subsequent Renewal Periods).
<b>Privacy Policy</b>	means Learnium's privacy notice relating to the privacy and security of the Customer Data available at <a href="https://www.learnium.com/terms/">https://www.learnium.com/terms/</a> or such other website addresses 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.
<b>Renewal Period</b>	the period described in clause 14.1.
<b>Services</b>	the paid services provided by Learnium to the Customer pursuant to the terms of the Contract via learnium.com or any other website

	notified to the Customer by Learnium from time to time, as more particularly described in the Key Terms.
<b>Supplemental Services</b>	any third party services, software, licences or platforms, access to which is provided as part of the Services, as more particularly described in the Key Terms (including, but not limited to, the provision of GTW Licences or Zoom Licenses).
<b>Support Services</b>	means the standard support services provided in relation to the Services, as more particularly described in the Key Terms.
<b>Terms of Use</b>	means Learnium's user terms of service as amended from time to time, a copy of which can be found at <a href="https://www.learnium.com/terms/">https://www.learnium.com/terms/</a> .
<b>UK Data Protection Legislation</b>	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
<b>Unauthorised User</b>	means as defined in clause 2.2.7.
<b>User Plan</b>	the user plan purchased by the Customer pursuant to clause 9.1 which entitle Authorised Users to access and use the Services in accordance with these Terms.
<b>Virus</b>	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
<b>Vulnerability</b>	a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.
<b>Zoom Platform</b>	means the webinar and online conference platform licenced by Zoom Video Communications Inc. ( <b>Zoom Inc.</b> ) and which is known as 'Zoom'.
<b>Zoom Licence(s)</b>	means any licences to use the Zoom Platform purchased by Learnium from Zoom Inc. and allocated to the Customer to facilitate the Customer's use of the Services.

**Zoom Terms of Service** means any terms of service that apply to the use of Zoom Licences, which as at the date of writing can be found at <https://zoom.us/terms>.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Terms.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 A reference to controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures shall have the meaning given to such expressions in the UK Data Protection Legislation.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of these Terms.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of these Terms under that statute or statutory provision.
- 1.10 A reference to writing or written includes e-mail but not facsimile.
- 1.11 References to clauses and schedules are to the clauses and schedules of these Terms; references to paragraphs are to paragraphs of the relevant schedule to these Terms.

## **2 USER PLAN**

- 2.1 Subject to the Customer paying the Plan Fee and paying for Additional Authorised Users in accordance with clause 3.3 and clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of the 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 Plan Term solely for the Customer's internal business operations.
- 2.2 In relation to the Authorised Users, the Customer undertakes that:
  - 2.2.1 it shall procure that each of its Authorised User's comply with Learnium's Terms of Use;
  - 2.2.2 the maximum number of Authorised Users that it authorises to access and use the Services shall not exceed the number permitted under the User Plan it has purchased from time to time;
  - 2.2.3 it will not allow or suffer any user name, password or other log in details of any Authorised User to be used by more than one individual ;
  - 2.2.4 each Authorised User shall keep a secure password for his use of the Services and that each Authorised User shall keep his password confidential;

- 2.2.5 it shall permit Learnium or Learnium's designated auditor to audit the Services in order to establish the number of individuals accessing the Services at any time and the Customer's data processing facilities to audit compliance with these Terms. Each such audit may be conducted no more than once per quarter, at Learnium's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
  - 2.2.6 if any of the audits referred to in clause 2.2.5 reveal that any log in details or password has been provided to any individual who is not an Authorised User, then without prejudice to Learnium's other rights, the Customer shall promptly disable such passwords and Learnium shall not issue any new passwords to any such individual; and
  - 2.2.7 if any of the audits referred to in clause 2.2.5 reveal that the number of individuals accessing the Services at any time is in excess of the number of Authorised Users permitted under the User Plan (as set out in the Key Terms) (**Unauthorised Users**), then without prejudice to Learnium's other rights, the Customer shall pay to Learnium an additional fee in respect of each such Unauthorised User equal to the Additional Authorised User fee set out in the Key Terms within 10 Business Days of the date of the relevant audit.
- 2.3 The Customer shall not, and shall procure that its Authorised Users shall not, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- 2.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 2.3.2 facilitates illegal activity;
  - 2.3.3 depicts sexually explicit images;
  - 2.3.4 promotes unlawful violence;
  - 2.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - 2.3.6 is otherwise illegal or causes damage or injury to any person or property;
- and Learnium reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 2.4 The Customer shall not (and shall procure that its Authorised Users shall not):
- 2.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Terms:
    - 2.4.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Applications (as applicable) in any form or media or by any means; or

- 2.4.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Applications; or
  - 2.4.2 access all or any part of the Services in order to build a product or service which competes with the Services; or
  - 2.4.3 subject to clause 22.1, 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
  - 2.4.4 attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 2; or
  - 2.4.5 introduce or permit the introduction of, any Virus or Vulnerability into Learnium's network and information systems.
- 2.5 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.
- 2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

### **3 ADDITIONAL USERS**

- 3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Plan Term, request that additional Authorised Users (in excess of the number of Authorised Users permitted under the User Plan (as set out in the Key Terms)) (**Additional Authorised Users**) be permitted to access the Services and Learnium shall grant access to the Services to such Additional Authorised Users in accordance with the provisions of these Terms.
- 3.2 If the Customer wishes to obtain access to the Services for Additional Authorised Users, the Customer shall notify Learnium in writing. Learnium shall evaluate such request and respond to the Customer with approval or rejection of the request. Where Learnium approves the request, Learnium shall allow access to the Services by the Additional Authorised Users within 5 Business Days of its approval of the Customer's request.
- 3.3 If Learnium approves the Customer's request to allow access to Additional Authorised Users, the Customer shall, within 30 days of the date of Learnium's invoice, pay to Learnium the relevant fees for such Additional Authorised Users as set out in the Key Terms, if such Additional Authorised Users are granted access to the Services part way through the Initial Plan Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by Learnium for the remainder of the Initial Plan Term or then current Renewal Period (as applicable).

### **4 SERVICES**

- 4.1 Learnium shall, during the Plan Term, provide the Services to the Customer on and subject to the terms of these Terms.
- 4.2 Learnium shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 4.2.1 planned maintenance carried out during any maintenance window of 10.00 pm to 2.00 am UK time; and

4.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that Learnium has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.

4.3 Learnium will, as part of the Services and at no additional cost to the Customer, provide the Customer with Learnium's Support Services during Normal Business Hours. Learnium may amend the Support Services in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at Learnium's then current rates. Details of these can be provided on request.

## 5 CUSTOMER DATA

5.1 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

5.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against Learnium shall be for Learnium to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Learnium in accordance with its internal archiving procedures. Learnium shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Learnium to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable under clause 5.9).

5.3 Learnium shall, in providing the Services, comply with the Privacy Policy.

5.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

5.5 The parties acknowledge that:

5.5.1 if Learnium processes any personal data on the Customer's behalf when performing its obligations under these Terms, the Customer is the controller and Learnium is the processor for the purposes of the Data Protection Legislation; and

5.5.2 Appendix A 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.

5.6 Without prejudice to the generality of clause 5.4, the Customer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the personal data to Learnium for the duration and purposes of these Terms so that Learnium may lawfully use, process and transfer the personal data in accordance with these Terms on the Customer's behalf.

5.7 Without prejudice to the generality of clause 5.4, Learnium shall, in relation to any personal data processed in connection with the performance by Learnium of its obligations under these Terms:

5.7.1 process that personal data only on the documented written instructions of the Customer unless Learnium is required by the laws of any member of the European Union or by the laws of the European Union applicable to Learnium and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and

any other law that applies in the UK) to process personal data (**Applicable Laws**). Where Learnium is relying on 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;

- 5.7.2 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
  - 5.7.3 not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
    - 5.7.3.1 the Customer or Learnium has provided appropriate safeguards in relation to the transfer;
    - 5.7.3.2 the data subject has enforceable rights and effective legal remedies;
    - 5.7.3.3 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
    - 5.7.3.4 Learnium complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
  - 5.7.4 assist the Customer, at the Customer's cost, 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;
  - 5.7.5 notify the Customer without undue delay on becoming aware of a personal data breach;
  - 5.7.6 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 Applicable Law to store the personal data (and for these purposes the term "delete" shall mean to put such data beyond use); and
  - 5.7.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 5 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of Learnium, an instruction infringes the Data Protection Legislation.
- 5.8 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, 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).

- 5.9 The Customer consents to Learnium appointing third-party processors of personal data under these Terms. Learnium confirms that it has entered or (as the case may be) will enter with each such third-party processor into a written agreement substantially on that third party's standard terms of business and in either case which Learnium confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Learnium, Learnium shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 5.
- 5.10 Learnium may at any time on not less than 30 days' notice revise, amend or replace this clause 5 as necessary to comply with any changes in the Data Protection Legislation during the term of the Contract.

## **6 THIRD PARTY PROVIDERS**

- 6.1 The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. 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. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not Learnium. Learnium recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Learnium does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services or the Supplemental Services.
- 6.2 Without prejudice to the generality of the foregoing, the Customer undertakes to comply (and shall procure that its Authorised Users comply) with the GTW Terms of Service in using the GTW Licences or the Zoom Terms of Service in using the Zoom Licenses as if the Customer were the original customer under those terms.

## **7 LEARNIUM'S OBLIGATIONS**

- 7.1 Learnium undertakes that the Services will be performed with reasonable skill and care.
- 7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Learnium's instructions, or modification or alteration of the Services by any party other than Learnium or Learnium's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Learnium will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1.
- 7.3 Learnium:
- 7.3.1 does not warrant that:
    - 7.3.1.1 the Customer's use of the Services will be uninterrupted or error-free;
    - 7.3.1.2 that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements;
    - 7.3.1.3 the Applications or the Services will be free from Vulnerabilities; or

7.3.1.4 the Applications or Services will comply with any Heightened Cybersecurity Requirements.

7.3.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.4 These Terms shall not prevent Learnium from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under these Terms.

7.5 Learnium warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Terms.

## **8 CUSTOMER'S OBLIGATIONS**

The Customer shall (and shall procure that its Authorised Users shall):

8.1 provide Learnium with:

8.1.1 all necessary co-operation in relation to the Contract; and

8.1.2 all necessary access to such information as may be required by Learnium;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

8.2 without affecting its other obligations under the Contract, comply with all applicable laws and regulations with respect to its activities under the Contract;

8.3 carry out all other Customer responsibilities set out in the Contract in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Learnium may adjust any agreed timetable or delivery schedule as reasonably necessary;

8.4 ensure that the Authorised Users use the Services in accordance with the terms and conditions of the Contract and shall be responsible for any Authorised User's breach of the Contract;

8.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for Learnium, its contractors and agents to perform their obligations under the Contract, including without limitation the Services;

8.6 ensure that its network and systems comply with the relevant specifications provided by Learnium from time to time; and

8.7 be, to the extent permitted by law and except as otherwise expressly provided in the Contract, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Learnium's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## **9 CHARGES AND PAYMENT**

9.1 The Customer shall pay the Plan Fees to Learnium for the User Plan in accordance with this Contract.

9.2 Learnium shall invoice the Customer:

9.2.1 on or about the Effective Date for the Plan Fees payable in respect of the Initial Plan Term; and

9.2.2 subject to clause 14.1, on or around each anniversary of the Effective Date for the Plan Fees payable in respect of the next Renewal Period,

and the Customer shall pay each invoice within 30 days after the date of such invoice.

9.3 If Learnium has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Learnium:

9.3.1 Learnium may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and Learnium shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

9.3.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of Barclay's Bank plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.4 All amounts and fees stated or referred to in these Terms:

9.4.1 shall be payable in pounds sterling;

9.4.2 are, subject to clause 13.3.2, non-cancellable and non-refundable;

9.4.3 are exclusive of value added tax, which shall be added to Learnium's invoice(s) at the appropriate rate.

9.5 If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space specified in the Key Terms, Learnium shall charge the Customer, and the Customer shall pay, Learnium's then current excess data storage fees. Learnium's excess data storage fees current as at the Effective Date are set out in the Key Terms.

9.6 Learnium shall be entitled to increase the Plan Fees, the fees payable in respect of the Additional Authorised Users purchased pursuant to clause 3.3, the support fees payable pursuant to clause 4.3 and/or the excess storage fees payable pursuant to clause 9.5 at the start of each Renewal Period upon 60 days' prior notice to the Customer and the Key Terms shall be deemed to have been amended accordingly.

## **10 PROPRIETARY RIGHTS**

10.1 The Customer acknowledges and agrees that Learnium and/or its licensors own all Intellectual Property Rights in the Services. Except as expressly stated herein, these Terms does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services.

10.2 Learnium confirms that it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of these Terms.

## **11 CONFIDENTIALITY**

11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:

11.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

11.1.2 was in the other party's lawful possession before the disclosure;

11.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

11.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.

11.2 Subject to clause 11.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of these Terms.

11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of these Terms.

11.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

11.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Learnium's Confidential Information.

11.6 Learnium acknowledges that the Customer Data is the Confidential Information of the Customer.

11.7 No party shall make, or permit any person to make, any public announcement concerning these Terms without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

11.8 The above provisions of this clause 11 shall survive termination of the Contract, however arising.

## **12 INDEMNITY**

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 and/or Supplemental Services (including, but not limited to, the Customer and its Authorised Users' use of the GoToWebinar Platform or Zoom Platform and/or any breach by the Customer or its Authorised Users of the GTW Terms of Service or Zoom Terms of Service).

### **13 LIMITATION OF LIABILITY**

13.1 Except as expressly and specifically provided in these Terms:

13.1.1 the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. Learnium shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Learnium by the Customer in connection with the Services, or any actions taken by Learnium at the Customer's direction;

13.1.2 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 the Contract; and

13.1.3 the Services are provided to the Customer on an "as is" and "as available" basis and Learnium does not warrant that the Services will be uninterrupted, secure or error-free. In particular, Learnium makes no representation, warranty or commitment and shall have no liability or obligation whatsoever to the Customer in relation to the availability of, content on or use of the GoToWebinar Platform or Zoom Platform.

13.2 Nothing in these Terms excludes the liability of Learnium:

13.2.1 for death or personal injury caused by Learnium's negligence; or

13.2.2 for fraud or fraudulent misrepresentation.

13.3 Subject to clause 13.1 and clause 13.2:

13.3.1 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 these Terms; and

13.3.2 Learnium's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Terms shall be limited to the total Plan Fees paid for the User Plan during the 12 months immediately preceding the date on which the claim arose.

### **14 TERM AND TERMINATION**

14.1 The Contract shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Initial Plan Term and, thereafter, the Contract shall be automatically renewed for successive periods of 12 months (each a Renewal Period), unless:

14.1.1 either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Plan Term or any Renewal Period, in which case the Contract

shall terminate upon the expiry of the applicable Initial Plan Term or Renewal Period;  
or

14.1.2 otherwise terminated in accordance with the provisions of these Terms;

and the Initial Plan Term together with any subsequent Renewal Periods shall constitute the Plan Term.

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

14.2.1 the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

14.2.2 the other party commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

14.2.3 the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

14.2.4 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;

14.2.5 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;

14.2.6 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;

14.2.7 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;

14.2.8 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;

14.2.9 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;

14.2.10 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;

- 14.2.11 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 14.2.4 to clause 14.2.10 (inclusive);
  - 14.2.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 14.3 On termination of the Contract for any reason:
- 14.3.1 all licences granted under the Contract (including in respect of any Supplemental Services) shall immediately terminate and the Customer shall immediately cease all use of the Services;
  - 14.3.2 each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party;
  - 14.3.3 Learnium may destroy or otherwise dispose of any of the Customer Data in its possession in accordance with clause 5.7.4, unless Learnium receives, no later than ten days after the effective date of the termination of the Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. Learnium shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its 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
  - 14.3.4 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 agreement which existed at or before the date of termination shall not be affected or prejudiced.

## **15 FORCE MAJEURE**

Learnium shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract, 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 Learnium 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 Learnium or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

## **16 CONFLICT**

If there is an inconsistency between any of the provisions in the main body of these Terms and the Key Terms, the provisions in the main body of these Terms shall prevail.

## **17 VARIATION**

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

## **18 WAIVER**

No failure or delay by a party to exercise any right or remedy provided under these Terms 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.

## **19 RIGHTS AND REMEDIES**

Except as expressly provided in these Terms, the rights and remedies provided under these Terms are in addition to, and not exclusive of, any rights or remedies provided by law.

## **20 SEVERANCE**

20.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.

20.2 If any provision or part-provision of the Contract is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **21 ENTIRE AGREEMENT**

21.1 The 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.

21.2 Each party acknowledges that in entering into the 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 the Contract.

21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

21.4 Nothing in this clause shall limit or exclude any liability for fraud.

## **22 ASSIGNMENT**

22.1 The Customer shall not, without the prior written consent of Learnium, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

22.2 Learnium may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

## **23 NO PARTNERSHIP OR AGENCY**

Nothing in the 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).

## **24 THIRD PARTY RIGHTS**

The Contract does not confer any rights on any person or party (other than the parties to the Contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **25 NOTICES**

25.1 Any notice required to be given under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Key Terms, or such other address as may have been notified by that party for such purposes.

25.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by e-mail shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender) or at 9am on the next Business Day if deemed receipt would have taken place outside of normal business hours in the place of receipt.

## **26 GOVERNING LAW AND JURISDICTION**

26.1 These Terms 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.

26.2 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 these Terms or its subject matter or formation (including non-contractual disputes or claims).

## **Appendix A**

### **Data Processing**

#### **1. Processing by Learnium**

##### **a. Scope and nature of processing**

Learnium collects and processes personal data of Authorised Users as part of the Customer Data on behalf of the Customer in order to provide the Services and any Supplemental Services to the Customer.

##### **b. Purpose of processing**

In order to provide the Services and any Supplemental Services to the Customer.

##### **c. Duration of processing**

For the duration of the Contract and any longer period required by law.

#### **2. Types of personal data**

First name, last name, username, password, account details, email address, telephone numbers, area of study, membership groups, interests, preferences, feedback, content posted or uploaded through use of the Services such as posts, comments and shared files.

#### **3. Categories of data subject**

Those members, associates, employees and agents of the Customer who use the Services.