

Learning Pool Terms and Conditions

1. Interpretation

1.1. In these Terms and Conditions:

Customer means the licensee of the Services;

Customer Content means any content and/or materials created or made available by the Customer and/or its Users through the Platform or through use of the Software, including any contributions made by Users, and any substantial amendments or changes to other Content;

Customer Materials means any training and development records, scores, data, statistics and any other information and related materials directly or indirectly made available, provided by or input by the Customer and/or the Users;

Commencement Date shall be as set out in an Order;

Confidential Information means any information (in any media and whether or not stated to be confidential or marked as such) data, designs, drawings, documents, specifications, software listings, source or object codes relating to the Supplier, any Intellectual Property Rights, and any information which relates to the business, affairs, activities, financial position, trade secrets, know how, personnel or suppliers of any party and the Software;

Contract means each contract between the Supplier and the Customer for the supply of the Services, and incorporating these Terms and Conditions, the website usage policy, privacy policy and technical specifications as specified in clause 2.3 below and an accepted Order;

Content means any content or materials accessible through or available on the Platform, other than Customer Content;

Data Protection Legislation means all applicable data protection and privacy legislation and regulatory requirements in force from time to time in the UK including without limitation the Data Protection Act 2018 (and regulations made thereunder); the UK GDPR as defined in section 3(1) (as supplemented by section 205(4)) of the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) (as amended) Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures shall have the meanings set out in the Data Protection Legislation;

Fee means the charges specified in an Order for the provision of the Services or as otherwise communicated to the Customer in writing by the Supplier from time to time;

Initial Term means the initial term as set out in an Order;

Intellectual Property Rights patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks 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, rights in computer software, 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;

Modification means any new version of the Software and any release of the Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, in each case which the Supplier agrees (in its sole discretion) to make available to the Customer. For the avoidance of doubt, the parties acknowledge that the Supplier is not under any obligation to make Modifications available;

Order means each of Customer's order(s) for the Services under these Terms and Conditions, in each case being on the order form provided by the Supplier and mutually executed by the parties;

Platform means the platform which hosts and from which Customer accesses the Services;

Services means the provision of training and e-Learning content services to be supplied by the Supplier to the Customer pursuant to a Contract as set out in the Order;

Software means the software to be supplied by the Supplier as part of the Services pursuant to a Contract as set out in the Specification, together with any related documentation and/or user manual and any Modifications and references to the Software include reference to any part(s) thereof;

Specification means the specific list of the Services and Software being licensed by Customer as set forth in an Order;

Supplier means Learning Pool Limited, a company incorporated in Northern Ireland with company number NI060102, whose registered office is at The Old City Factory, 100 Patrick Street, Derry, N Ireland BT48 7EL;

Term means the Initial Term and thereafter from year to year, subject to earlier termination in accordance with these Terms and Conditions and for the avoidance of doubt an Order may set out a different Initial Term for different elements of the Services and in such cases references herein to the Term and/or Initial Term shall be a reference to the Term and/or Initial Term for the relevant element of the Services;

Terms and Conditions means the terms and conditions set out in this document as amended from time to time in accordance with clause 2;

Users shall have the meaning set out in the Specification;

Working Day means a day other than Saturday or Sunday or a public holiday in England.

1.2. In these Terms and Conditions a reference to:-

- 1.2.1.a clause or paragraph is a reference to a clause or paragraph of these Terms and Conditions;
- 1.2.2.a person includes a natural person, a corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.3.a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.4. written or writing and any similar expression includes a reference to any communication effected by electronic mail, or similar means; and
- 1.2.5.a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.3. In these Terms and Conditions:-

- 1.3.1. unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;
- 1.3.2. unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- 1.3.3. any obligation on a party not to do something includes an obligation not to allow that thing to be done;
- 1.3.4. unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in Northern Ireland from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020; and
- 1.3.5. 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.

1.4. Each Contract shall be binding on, and enure to the benefit of, the parties to the relevant Contract 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.

1.5. The headings in these Terms and Conditions are for convenience only and shall not affect its interpretation.

2. Contract

- 2.1. All Services are provided pursuant to one or more Orders. An Order constitutes an offer by the Customer to purchase Services in accordance with these Terms and Conditions.
- 2.2. An Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date a Contract shall come into existence. Each accepted Order shall form a separate Contract.
- 2.3. These Terms and Conditions, an accepted Order, together with the website usage and privacy policy, the technical specifications and fair usage policy (as set out at <https://www.learningpool.com/privacy-and-cookies-policy>, <https://learningpool.com/technical-requirements/> and <https://learningpool.com/fair-usage-policy/> and any separate data protection agreement or standard contractual clauses entered into between the parties contains the entire agreement between the parties with respect to its subject matter and may not be varied except by a written agreement between the parties. If there is any conflict between any of the provisions of these Terms and Conditions and an Order, the terms of the Order shall take precedence.
- 2.4. These Terms and Conditions apply to each Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate or which are implied by law, trade custom, practice, or course of dealing.
- 2.5. The Supplier reserves the right to amend the Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services.

3. Provision and Usage of the Services

- 3.1. The Customer shall not permit any other persons other than the Users to use the Services unless the Customer has obtained prior written consent from the Supplier. The Customer shall be solely responsible for the Customer Content and/or Content that is made available to such Users.
- 3.2. The Customer shall not, nor permit or allow the Users or others to:
 - 3.2.1. permit, facilitate or assist a third party (other than the Users) to use or access the Services; or
 - 3.2.2. make the Software available to or use the Services on behalf of or for the benefit of any third party (other than the Users) in any way whatsoever; or
 - 3.2.3. reverse engineer, decompile, disassemble, amend, modify, vary, adapt, translate, create derivative works based on the Services, or perform any similar type of operation on the Software for any purpose; or
 - 3.2.4. sub-licence, assign, rent, lease or transfer the licence, the rights granted to the Customer, or the Software or make or distribute copies of the Software or any Content except as permitted by the relevant Contract; or
 - 3.2.5. vary, delete or obscure any notices of proprietary rights or any product identification or restrictions; or
 - 3.2.6. use the Services to store or transmit infringing, libellous or otherwise unlawful or tortious material or to store or transmit material in violation of third party privacy rights; or
 - 3.2.7. carry out itself, or request, permit or authorise any third party to provide any support or maintenance services in respect of the Services unless it has obtained the Supplier's prior written consent.
- 3.3. The Customer shall be responsible for monitoring any Customer Content and Customer Materials, including without limitation any comments made by its Users and shall be responsible for deleting anything which does not comply with clause 3.4 or otherwise comply with the relevant Order. The Supplier shall not be responsible or liable for the content of any Customer Content or Customer Materials. The Supplier does not control the submission of content but reserves the right (without any obligation to do so) to monitor delete, move and edit any Content, Customer Content or Customer Materials.
- 3.4. The Customer shall ensure that any Customer Content and/or Customer Materials shall not:
 - 3.4.1. infringe or violate someone else's rights; or
 - 3.4.2. contain or link to any unlawful, threatening, harassing, libellous, harmful, vulgar, obscene, abusive, defamatory, indecent material, material which is deliberately intended to upset other users, or which is otherwise objectionable or breaches any law; or
 - 3.4.3. encourage conduct that constitutes a criminal offence or otherwise breaches any applicable laws regulations or codes of practice; or
 - 3.4.4. contain any material which the Customer does not have permission to use (including material which may be protected by copyright, trademarks, database rights or any other form of Intellectual Property Rights); or

- 3.4.5. contain viruses, malicious code, or any other components with harmful or contaminating effects; or
 - 3.4.6. contain unauthorised commercial communications (such as spam); or
 - 3.4.7. contain false or misleading information; or
 - 3.4.8. be used to bully or harass anyone; and
 - 3.4.9. the Customer must not and shall procure that the Users shall not use the Software or the Services, for anything unlawful, misleading, malicious or discriminatory.
- 3.5. The Customer shall during the Term effect and maintain adequate security measures to safeguard the Software and the Services from access or use by any unauthorised person, shall retain same and all copies thereof under the Customer's effective control and shall maintain a full and accurate record of the Customer's copying of any materials provided and produce such record to the Customer on request from time to time.
- 3.6. Where the Specification sets out a maximum number of Users the Customer shall pay an additional charge for each additional User beyond such maximum at Supplier's list rates.
- 3.7. The Specification sets out the storage limit that applies in relation to the Customer's use of Learning Locker (if applicable). If the Customer exceeds the storage limit the Customer shall pay an additional charge.
- 3.8. The Supplier may limit the amount of data a Customer can save to other Services other than Learning Locker in accordance with the fair usage policy set out at <https://learningpool.com/fair-usage-policy/>. The amount of storage will depend on the type of contract and number of users. The Customer can request the size of its data storage from Supplier's service desk. The Customer can also free up storage by removing data, or alternatively the Customer can request the Supplier to assist with its clean-up service. If the Supplier detects that the Customer structurally saves more data than the Supplier, at its sole discretion, considers to be fair and normal, the Supplier will contact the Customer to discuss and both parties will agree a resolution. It may be possible to expand a Customer's storage subject to payment of a fee to be agreed.
- 3.9. The Customer shall notify the Supplier immediately if it becomes aware of any unauthorised use of the whole or any part of the Software and/or Services by any person.

4. Term and Termination

- 4.1. The term of the Order shall commence on the Commencement Date and shall continue for the Term subject to earlier termination in accordance with these Terms and Conditions or the Order.
- 4.2. The Customer may terminate a Contract on expiry of its Initial Term by giving at least 2 months' notice in writing prior to expiry of its Initial Term.
- 4.3. Unless otherwise agreed in writing, after expiry of its Initial Term, a Contract shall continue from year to year and the Customer may terminate the contract by giving written notice at least 1 month prior to each anniversary that follows the end of the Initial Term.
- 4.4. Without affecting any other right or remedy available to it, the Supplier may terminate an Order or these Terms and Conditions with immediate effect by giving written notice to the Customer if:
- 4.4.1. the Customer fails to pay the Fee in accordance with the relevant Contract (time being of the essence) or is otherwise in material breach of these Terms and Conditions (as determined by the Supplier acting reasonably); or

- 4.4.2. the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- 4.4.3. any distress or execution shall be levied upon any of the Customer's goods; or
- 4.4.4. the Customer is unable to pay its debts as they fall due; or
- 4.4.5. the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 4.4.6. in the event of a change of Control of the Customer that results in a competitor of the Supplier assuming control of the Customer's business. For the purposes of these Terms and Conditions, "**Control**" means, in relation to your body corporate, the ability of a person to ensure that the activities and business of the body corporate are conducted in accordance with the wishes of that person, and a person shall be deemed to have control of the body corporate if that person (directly or indirectly);
 - 4.4.6.1. possesses, is entitled to acquire or has the ability to control the majority of the issued share capital or voting rights in the body corporate;
 - 4.4.6.2. has the right to receive the majority of the income of the body corporate on any distribution by it of all of its income or the majority of its assets on a winding up; or
 - 4.4.6.3. has the right to appoint a majority of the body corporate's directors or otherwise determine the decisions of the board of directors.
- 4.5. The Supplier may (without limiting any other remedy) at any time terminate a Contract by giving written notice to the Customer if the Customer commits any material breach of that Order or these Terms and Conditions and (if capable of remedy) fails to remedy the material breach within 30 days after being required by written notice to do so.
- 4.6. Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under an Order between the Customer and Supplier if the Customer fails to pay any amount due under that Contract on the due date for payment (time being of the essence), the Customer becomes subject to any of the events listed in clause 4.4 above, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 4.7. The Customer may terminate an Order by giving written notice to the Supplier if the Supplier commits a material breach of that Order and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so.
- 4.8. Failure or delay by the Supplier in enforcing or partially enforcing any provision of a Contract will not be construed as a waiver of any of its rights under the Contract.
- 4.9. Any waiver by the Supplier of any breach of, or any default under, any provision of a Contract will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms.
- 4.10. The termination of an Order for any reason shall not affect any accrued right or liability of either party and shall not affect any other right or remedy of either party. Each right or

remedy is without prejudice to any other right or remedy whether under these Terms and Conditions or not.

- 4.11. Termination of one Contract for any reason shall not affect any other Contract.
- 4.12. Upon termination of a Contract by the Customer in accordance with clause 4.7, the Supplier shall be liable to refund to the Customer the portion of the Fee as represents the unexpired term calculated on a monthly pro rata basis and this shall be the Customer's sole remedy.
- 4.13. The termination of a Contract shall not affect:
 - 4.13.1. any payment which is owing by either party to the other; or
 - 4.13.2. any provision of these Terms and Conditions which is expressed to come into force or continue in force on or after termination.
- 4.14. Upon termination the Customer shall no longer have access to any Content, or any Customer Content and Customer Materials stored through the Services pursuant to that Contract. It is the Customer's responsibility to ensure any Customer Materials and Customer Content are appropriately saved or backed up elsewhere both on an ongoing basis during the Term and on termination or expiry of an Order (subject to clause 4.15 below).
- 4.15. Upon termination of a Contract the Customer shall and shall procure that the Users immediately cease to use the Services provided pursuant to that Contract. The Customer shall and shall procure that the Users delete the Software, any cache or store of Content held by it and any Confidential Information and Personal Data obtained or produced in the course of use of the Services pursuant to that Order (in whatever form and whether or not same is incorporated into other documentation) and, if requested by the Supplier, shall certify in writing that this has been done. Where a subscription to Supplier product is terminated for any reason the Customer must remove all Content, Customer Content and any e-learning modules in each case that originated from a Learning Pool product, or that are based on or incorporate any Content from a Learning Pool product, from their system (including without limitation their Learning Management System, intranet and/or website) and including without limitation any content that the Customer may have customised from catalogue modules.

5. Payment

- 5.1. As consideration for the provision of the Services, the Customer shall pay the Fee to the Supplier. Payment of the Fee (including VAT or other tax where applicable) is due within 30 days of the date of the Supplier's invoice unless otherwise specified in writing by the Supplier. Time for payment shall be of the essence and no payment shall be deemed to have been received until the Supplier has received cleared funds.
- 5.2. Unless otherwise agreed in writing the Supplier will issue invoices in respect of the Fee annually in advance on the Commencement Date and each anniversary thereof during the Term.
- 5.3. All amounts payable by the Customer to the Supplier under a Contract are exclusive of any value added tax chargeable from time to time, which the Customer shall be additionally liable to pay at the applicable rate from time to time, subject to receipt of a valid VAT invoice.

- 5.4. The Supplier may review and increase the Fee from time to time after the expiry of the Initial Term. The Supplier will give at least 60 days' written notice of any increase to the Customer and the next payment will be at the new level.
- 5.5. Notwithstanding the Supplier's rights under clause 5.4, the Fee will increase with effect from the expiry of the Initial Term in line with the percentage increase in the Consumer Price Index over the preceding term, and the first such increase shall take effect on the expiry of the Initial Term.
- 5.6. All payments payable to the Supplier under a Contract shall become due immediately upon termination of the Contract despite any other provision.
- 5.7. The Customer shall make all payments due under a Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Supplier to the Customer.
- 5.8. If the Customer fails to pay in full on the due date for payment any amount which is payable to the Supplier pursuant to a Contract then, without limiting any other rights the Supplier may have, any amount not paid when due shall bear a late payment charge, until paid, at the rate of 1.5% per month (or portion thereof) or, if lesser, the maximum amount permitted by law..
- 5.9. If the Supplier has to refer unpaid invoices to its legal representatives as well as recovering the invoiced amount and interest it will seek to recover any legal or collection fees incurred.

6. Ownership and Rights

- 6.1. The Software, the Platform, the Content and all Intellectual Property Rights in respect of same or arising out of or in connection with the Services (other than in respect of the Customer Content) shall belong exclusively to the Supplier. Nothing in any Contract shall function to transfer any Intellectual Property Rights to the Customer and all rights not expressly granted to the Customer are reserved by the Supplier.
- 6.2. Provided that the Customer has paid the applicable Fee, the Supplier grants to the Customer a worldwide, non-exclusive, royalty-free licence during the Term to use (and permit the Users to use) the Services and the Software subject to any maximum number of Users and, where applicable, data storage and transfer limitations in accordance with the fair usage policy set out at <https://learningpool.com/fair-usage-policy/>. The Customer shall be responsible for all Users' compliance with all Contracts and is liable for the acts and omissions of all Users.
- 6.3. The Customer, as legal and beneficial owner, hereby irrevocably and unconditionally grants to the Supplier a worldwide, non-exclusive, royalty free licence to access and use any Customer Content and Customer Materials and any Intellectual Property Rights in respect of same during the Term for the purposes of providing the Services (which includes the right to collect, duplicate, rearrange, adapt, store, sort, process, analyse, present and use the Customer Materials and Customer Content in conjunction with the Software), complying with any Contract, responding to service or technical problems or Customer requests.

7. Warranties and Undertakings

- 7.1. The Customer hereby undertakes, agrees and warrants as follows:

- 7.1.1. subject to clause 7.1.2 below, that the Customer Content does not contain any Personal Data and that the Customer shall protect Personal Data in accordance with the principles and provisions defined in the Data Protection Legislation and will ensure the reliability of its staff and Users who have access to data (and that all necessary steps and procedures have been undertaken to anonymise data where appropriate); and
- 7.1.2. that any authors of the Customer Content and Customer Materials have given their consent to such publication, use and processing; and
- 7.1.3. it owns or has obtained valid licences to use any Intellectual Property Rights necessary for the fulfilment of its obligations hereunder and otherwise in respect of the Customer Content and Customer Materials including without limitation the obligations under clause 6; and
- 7.1.4. that the Customer Content and Customer Materials will not infringe any Intellectual Property Rights and it is legal to use same as envisaged by these Terms and Conditions ; and
- 7.1.5. that it has (and will continue to have) all necessary licences, rights, consents, and permissions which are required to grant the licence in clause 6.3; and
- 7.1.6. that it shall and shall procure that the Users shall comply with all applicable laws, statutes, regulations and codes from time to time in force; and
- 7.1.7. to ensure that, prior to use of the Software and/or Services by the Users all such Users are notified of these Terms and Conditions and the terms of the relevant Contract; and
- 7.1.8. that the signatory to the relevant Contract for and on behalf of the Customer is authorised and fully empowered to execute on its behalf.
- 7.2. The Customer accepts that the Supplier shall have no liability whatsoever for any Customer Content or Customer Materials and that the Customer accepts full responsibility and liability for any Customer Content or Customer Materials.
- 7.3. The Customer shall indemnify the Supplier against all claims, costs, demands, actions, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any breach of this clause 7.

8. Data Protection

- 8.1. The parties undertake to comply with all applicable requirements of the Data Protection Legislation in so far as same relate to the provisions and obligations of the relevant Contract. This clause is in addition to, and does not relieve, remove or replace a party's obligations or rights under the Data Protection Legislation.
- 8.2. Without prejudice to the generality of clause 8.1, the Customer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of any Personal Data to the Supplier. The Customer shall indemnify and keep the Supplier fully and effectually indemnified from and against any actions, losses, demands, liabilities and expenses (including without limitation any legal costs) arising out of any breach or non-performance by the Customer of this clause 8.

8.3. The Supplier will only process Personal Data to the extent, and in such a manner, as is set out below, as is necessary for the provision of the Services or in accordance with the Customer's written instructions from time to time, unless required by applicable laws to otherwise process that Personal Data.

8.3.1. **Subject matter and Duration.** The subject matter is personal data which the Supplier processes in connection with the provision of the Services. As between the Supplier and Customer, the duration of the data processing is determined by the duration of the contract and is retained after termination of the contract until deleted in accordance with the Supplier's cancellation policy although it may take a further 12 months for all data to roll out of encrypted back ups. The Supplier may retain personal data for a longer period in the event of a complaint or if it reasonably believes there is a prospect of litigation.

8.3.2. **Purpose.** The purpose of the data processing is the provision, maintenance, development, analysis, improvement and enhancement of the Services initiated by the Customer from time to time (including without limitation customer and technical support).

8.3.3. **Nature of the processing:** Compute, storage and such other Services as described in the contract and maintenance, development, analysis, improvement and enhancement of the Services and customer and technical support, and initiated by Customer from time to time.

8.3.4. **Type of personal data** such as name, email address and department, Customer Data uploaded to Learning Pool platforms for the purposes of learning, technical data such as IP address, browser type and version, location, operating system/platform, usage data on how Users use the Supplier's services.

8.3.5. **Categories of data subjects:** The data subjects may include Customer's employees, suppliers and end-users.

8.3.6. For the avoidance of doubt, the Supplier shall be entitled to collect anonymous and/or aggregated data regarding the Customers' employees, suppliers and end-users use of the Services, provided that no individual natural person can be identified from such data ("**Aggregate Data**"). The Aggregate Data will be used to analyse behaviour, trends and needs and to improve, and enhance the Services and for other development, creation of new features, diagnostic and corrective purposes in connection with the Services. The Supplier shall own all right, title and interest in and to the Aggregate Data and the Supplier shall not be required to process such data in accordance with this clause 8.

8.3.7. The Supplier shall also be entitled to use any information submitted by Customers' employees, suppliers and end-users to provide further information about the

products/services it offers, unless the relevant employee/supplier/end-user has opted out.

- 8.4. The Supplier will ensure that all employees are informed of the confidential nature of the Personal Data and are bound by confidentiality obligations in respect of the Personal Data.
- 8.5. The Supplier must at all times implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk of accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the data, and taking into account the nature of the data to be protected having regard to the state of technological development and the cost of implementing any measures. Such 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.
- 8.6. The Supplier may only authorise a third party to process the Personal Data if the Supplier enters into a written contract with the subcontractor that contains terms substantially similar to those set out in this clause, in particular, in relation to requiring appropriate technical and organisational data security measures. Subject to the foregoing, the Customer consents to the Supplier appointing sub-processors in connection with providing the Services and provides a general authorisation to engage such sub-processors and the Supplier's website at <https://learningpool.com/subprocessors> lists those engaged by the Supplier from time to time. The Supplier may also disclose Personal Data to third parties where required by a law, court, regulator or supervisory authority or in connection with any possible sale merger or restructuring of all or any part of the Supplier's business or assets and to other companies in its group.
- 8.7. The Supplier will reasonably assist the Customer, at the Customer's cost, in responding to any reasonable 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, taking into account the nature of the Supplier's processing and the information available to the Supplier.
- 8.8. The Supplier shall notify the Customer without undue delay on becoming aware of a Personal Data Breach.
- 8.9. The Supplier will make available on request all information necessary to demonstrate compliance with the obligations set out in this clause.
- 8.10. It is agreed and acknowledged that the Services are hosted and accordingly that the Customer Content stored through same will be hosted within the UK or EEA. The Supplier shall not host the Customer Content outside of the UK or EEA unless the transfer complies with the Data Protection Legislation, or as necessary to provide the Services initiated by Customer, or as necessary to comply with the law or binding order of a governmental body or the Supplier has obtained the Customer's prior written consent (not to be unreasonably withheld or delayed). If and to the extent that the Standard Contractual Clauses (being those adopted pursuant to EC decision 2010/87/EU) apply, nothing in this Section varies or modifies the Standard Contractual Clauses. For these purposes the Customer shall

promptly comply with any reasonable request from the Supplier, including any request to enter into any further or other Standard Contractual Clauses.

- 8.11. The Standard Contractual Clauses will apply to Customer Data that is transferred outside the EEA and the UK, either directly or via onward transfer, unless the country is recognised by the appropriate authority as providing an adequate level of protection for personal data (as described in the GDPR) and Appendices 1 and 2 shall be deemed completed as set forth clauses 8.3 and 8.5 above respectively. The Standard Contractual Clauses will not apply to Customer Data that is not transferred, either directly or via onward transfer, outside the EEA and the UK. Notwithstanding the foregoing, the Standard Contractual Clauses (or obligations the same as those under the Standard Contractual Clauses) will not apply if the Supplier has adopted Binding Corporate Rules for Processors or an alternative recognised compliance standard for the lawful transfer of personal data (as defined in the GDPR) outside the EEA and the UK. It is acknowledged that transfers of data from the EEA to the UK are not currently restricted but if restrictions are imposed Standard Contractual Clauses will apply to Customer Data that is transferred from the EEA to the UK, either directly or via onward transfer, unless and until the UK is recognised by the appropriate authority as providing an adequate level of protection for personal data (as described in the GDPR) and Appendices 1 and 2 shall be deemed completed as set forth clauses 8.3 and 8.5 above respectively.
- 8.12. Where requested by the Supplier, the Customer shall enter into further or other applicable Standard Contractual Clauses or similar terms forming part of an applicable certification scheme, and where this happens if there is a conflict between any other agreement between the parties including without limitation these Terms and Conditions, the terms of the Standard Contractual Clauses or similar terms forming part of an applicable certification scheme shall take precedence.

9. Virus and Firewall

- 9.1 The Supplier confirms that the Software includes virus checking capabilities in line with reasonable industry practice; however, the Supplier recommends that the Customer carries out its own virus checks. The Customer is responsible, in accordance with commercially reasonable industry standards, for virus checking the Customer Content and Customer Materials it uploads and any programs, macros, data files or other material accessed through the software.
- 9.2 The Supplier does not warrant that the Software is free of viruses or other harmful components nor that the function contained in the materials will be uninterrupted or error free or that defects will be corrected. If the Supplier becomes aware of a virus or harmful component in the Software it will use reasonable endeavours to correct this in a timely manner.
- 9.3 The Customer is responsible for ensuring it has adequate firewall protection or such other network security system used to restrict external or internal traffic as appropriate and the parties agree that the Supplier shall have no liability for any loss, damage, costs or expenses incurred by the Customer due to a virus or other network security failure howsoever caused.

9.4 The Customer will indemnify the Supplier for any costs, losses damages or expenses the Supplier incurs as a result of a virus introduced by the Customer or the Users due to any failure to comply with clauses 9.1 and 9.3.

10. Limitation of Liability

- 10.1. Any Content provided is intended for use as an educational tool and is not to be taken as a definitive guide to legislation or good practice. Reference to the Content is not a substitute for obtaining legal advice or referring to the appropriate national and local policy guidance, legislation or regulation.
- 10.2. The Services may contain links to other web sites and resources, either directly or through frames and the Software duplicates and collects data from such other websites and resources. Independent third parties provide these sites and the Supplier is not responsible and shall not be liable for the availability or content of these outside resources or data obtained from same and does not give any warranty or guarantee in relation to such content or the accuracy, integrity or quality of same.
- 10.3. The Services may contain content provided/posted by other users and also bulletin boards, discussion groups and other public areas that allow feedback and/or interaction between Users. The opinions, advice and statements contained in content provided/posted are those of such Users and not those of the Supplier. The Supplier does not endorse any material published by other Users and does not give any warranty or guarantee in relation to such content or the accuracy, integrity, or quality of same. The Supplier does not monitor Customer Content.
- 10.4. While any Content created solely by the Supplier will be accurate at the time of posting, and the Supplier will use reasonable endeavours to update same in a timely fashion, the Supplier makes no warranty regarding the continued accuracy of same.
- 10.5. The following provisions set out the entire financial liability of the Supplier to the Customer in respect of:
 - 10.5.1. any breach of Contract; and
 - 10.5.2. any representation, statement or tortious act or omission including negligence arising under or in connection with any Contract.
- 10.6. All warranties, conditions and other terms implied by statute or common law or otherwise are, to the fullest extent permitted by law, excluded from any Contract.
- 10.7. Nothing in these Terms and Conditions excludes or limits the liability of the Supplier for death or personal injury caused by the Supplier's negligence .

The Customer's attention is in particular drawn to the provisions of clauses 11.3 and 11.

- 10.8. Subject to clauses 10.6 and 10.7, the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of a Contract shall be limited to the yearly Fee under that Contract and subject to that overall limit to the part of any loss suffered which is proportionate to its responsibility;
- 10.9. Notwithstanding any other provision of any contract, the supplier shall not be liable to the Customer for:
 - (a) loss of profit;
 - (b) loss of business;
 - (c) depletion of goodwill and/or similar losses;

- (d) loss of anticipated savings;
 - (e) loss of goods;
 - (f) loss of contract;
 - (g) loss of use;
 - (h)(subject always to clause 8.5) loss or corruption of data or information; or
 - (l) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 10.10. The Customer acknowledges and agrees that the limitations and exclusions contained in this clause 10 are reasonable in light of all the circumstances.
- 10.11. The Supplier shall not be liable to the Customer or be deemed to be in breach of contract by reason of failure to comply with the Supplier's system requirements from time to time as set out at <https://learningpool.com/technical-requirements/>.

11. Customer Indemnity

- 11.1. The Customer hereby indemnifies and agrees to hold fully indemnified the Supplier against all claims, costs, proceedings, demands, losses, damages or liabilities arising as a result of any breach or non-performance by the Customer of any of these Terms and Conditions or the relevant Contract including without limitation a breach by the Customer of its obligations under applicable Data Protection Legislation, that the Customer Content, Customer Materials or Customer's use of the Software and/or Services infringes the rights of or has otherwise harmed a third party.

12. Force Majeure

- 12.1. The Supplier reserves the right to delay or suspend provision of the Services (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business or performance of its obligations under a Contract due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental actions, imposition of sanctions, embargo or breaking off of diplomatic relations, nuclear, chemical or biological contamination or sonic boom, collapse of buildings, terrorist attack, civil war, war or national emergency, threat or preparation for war, armed conflict, riot, civil commotion, fire, explosion, accident, flood or other weather event, drought, earthquake or other natural disaster, epidemic, pandemic, disease, infestation, restrictions on transport or movement, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers non-performance by suppliers or subcontractors and interruption or failure of utility service Provided That, if the event in question continues for a continuous period in excess of 90 days either party shall be entitled to give notice in writing to the other party to terminate the Contract.

13. Service Levels

- 13.1. Subject to clause 14.2 below, the Supplier will use reasonable endeavours to comply with the service levels set out at <https://learningpool.com/what-happens-when-i-contact-support/>.
- 13.2. Access to the Service may occasionally be restricted to allow for repairs, maintenance or the introduction of new facilities or services.

- 13.3. The parties agree and acknowledge that the Supplier is unable to guarantee or predict the speed of operation of software, tools or download times.
- 13.4. The above provisions of this clause are subject in each case to the Customer providing at its own expense access to the appropriate Customer personnel and suitable access (including without limitation remote access and access to premises) to the Customer's facilities and systems and that the Customer make available such passwords as may be required and sufficient material, information and assistance to enable the Supplier to provide the Services in accordance with the relevant Contract. The Customer shall ensure the accuracy of all such information.

14. Notices

- 14.1. A notice relating to a Contract will be validly given only if it is in writing and delivered personally or by courier, or sent by first class post (or air mail if overseas), recorded delivery, or electronic mail, to the party in question (marked for the attention of the person specified in the relevant Order, or such other officer of that party as is notified to the other party in writing for this purpose) at the address or email address set out in the Contract or such other address or email address as the party in question may specify by notice.
- 14.2. In the absence of evidence of earlier receipt, a notice is deemed given:
 - 14.2.1. if delivered personally or by courier, when left at the relevant address;
 - 14.2.2. if sent by post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting it (exclusive of the day of posting) or if sent by air mail, six days after posting it (exclusive of the day of posting); and
 - 14.2.3. if sent by electronic mail, on a Working Day prior to 4.00 pm, at the time of transmission or sending and otherwise on the next Working Day.
- 14.3. Each party shall immediately give notice to the other of a change in its address or email address.

15. Confidentiality

- 15.1. Each party undertakes that it shall not at any time during the Term, and for a period of five years thereafter, disclose to any person any Confidential Information except as permitted by clause 8, clause 17 or this clause.
- 15.2. Each party may disclose the other party's confidential information:
 - 15.2.1. to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the relevant Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 15; and
 - 15.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 15.3. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under a Contract.
- 15.4. The Supplier may wish to seek publicity for work undertaken on the Customer's behalf. It may use references to the Customer and the Services dealt with in proposals or other similar submissions made to other prospective Customers.

16. Miscellaneous

- 16.1. The Customer shall not be entitled to assign a Contract or any part of it without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed.
- 16.2. The Supplier may assign or subcontract a Contract or any part of it to any person, firm or company.
- 16.3. A person who is not a party to a Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of the Contract, but nothing in the Contract shall affect any right or remedy of a third party which exists or is available otherwise than as a result of that Act.
- 16.4. If any provision of a Contract is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the Contract shall continue to be valid as to its other provisions and the remainder of the affected provision.
- 16.5. Each party shall from time to time do all such acts and execute all such documents as may be reasonably necessary in order to give effect to the provisions of a Contract.

17. Freedom of Information

- 17.1. Where the Customer is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) and notifies the Supplier accordingly, the Supplier undertakes to use reasonable endeavours to assist and cooperate with the Customer to enable the Customer to comply with its obligations under the FOIA and EIR within the relevant timescales.
- 17.2. Where the Customer is obliged under FOIA or EIR to disclose information concerning the Supplier or the Services it shall only do so following consultation with the Supplier and having taken its views into account, unless consultation is not reasonable or appropriate based on the circumstances known to the Customer at the relevant time. Where the Supplier has not been consulted the Customer shall give the Supplier reasonable advance written notice before any such disclosure is made.

18. Governing Law and Jurisdiction

The formation, existence, construction, performance, validity and all aspects of any Contract shall be governed by Northern Irish law and the parties submit to the non-exclusive jurisdiction of the Northern Irish Courts.

Updated: March 2023