

SOFTWARE AND SERVICES AGREEMENT

Order form



Information for the Customer

This Order Form is used to enter into a Contract under which Titus Learning will provide: (a) certain hosted software products available for access by the Customer; and (b) certain Services.

The first Order Form entered into by the parties ("**Initial Order Form**") attaches Titus Learning's master terms and conditions ("**Master Terms and Conditions**").

When the Initial Order Form and each subsequent Order Form is completed and signed by the parties, it operates as a separate Contract incorporating the Master Terms and Conditions. Each completed Statement of Work which relates to a signed Order Form forms part of the relevant Contract.

Commercial terms

Order Form Number	
The Customer	
Company Number	
Registered Address	
VAT Registration Number	
Initial Term	
Effective Date	
Data Processing Activities	As set out in the Annex to this Order Form.

Products

-
-
-

Charges and payment schedule

All invoices shall be submitted in accordance with the schedule outlined below. All amounts are payable within 28 days of the date of invoice. All fees quoted are exclusive of any tax, levy or similar governmental charge (including value added or sales tax) which shall be paid by the Customer at the rate and in the manner prescribed by law.

Item	Details	Price	Invoicing
Set up and configuration			
Training			
Project management			
Fully managed hosting			

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Support			
Year one total:			
Year two total:			
Year three total:			
Total for Initial Term:			

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Services	
Hosting Services (as more particularly described in Part 1 of the Service Level Agreement)	Required? <i>(delete as applicable)</i> Yes / No
Support Services (as more particularly described in Part 2 of the Service Level Agreement)	Required? <i>(delete as applicable)</i> Yes / No <i>(If required, select relevant support band by ticking the applicable box below)</i>
	Standard support <i>(delete as applicable)</i> Yes / No Enhanced support <i>(delete as applicable)</i> Yes / No
Professional Services	Agreed between the parties pursuant to separate SOWs from time to time.
Signature	
I confirm I have read and agree to this Order Form and the Master Terms and Conditions, together with Schedule 1 (SLA) and Schedule 2 (Data Processing).	
Signed for and on behalf of Titus Learning by: Signed..... Name..... Position..... Date.....	Signed for and on behalf of the Customer by: Signed..... Name..... Position..... Date.....

ANNEX TO ORDER FORM: DATA PROCESSING ACTIVITIES

The Processing under this Contract shall be in accordance with Schedule 2 – Data Processing.

The details of the Processing taking place under this Contract are set out below.

Data Subjects	Customers and potential customers of the Customer Employees of the Customer and employees of its customers Individuals (including students) accessing the Titus Solution from education establishments and membership organisations
Categories of data	Name Email address IP Address Username and password Address Phone number Employment details Date of birth
Categories of special category data	None
Processing purposes	• To enable Titus Learning to provide the Titus Solution; • to undertake any Services pursuant to this Contract; and • for the purposes of data monitoring and analysis with a view to making improvements, enhancements and/or updates to the Solution
Nature of processing	Processing in the nature of obtaining, storing and processing personal data to respond to queries, provide reports and associated services in the provision of the Solution and / or the Services, and for monitoring and analysis with a view to making improvements, enhancements and/or updates to the Solution.
Duration of processing	Duration of this Contract.
[Sub-processors]	[INSERT AS APPROPRIATE]

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Master Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract the following words shall have the following meanings:

"Acceptance Criteria" shall have the meaning set out in Clause 4.1.

"Business Day" means any day other than a Saturday or Sunday or a public or bank holiday in England.

"Charges" means, as the case may be, the Hosting Fees, Excess Fees, Set Up Fees, Training Fees, Support Fees, Professional Service Fees and such other fees detailed in the Order Form.

"Confidential Information" means all information on any medium in respect of the business and financing of the parties, including any ideas, business methods, finance, prices, business, financial, marketing, development, manpower plans, market opportunities, processes, plans, intentions, product information, design rights, trade secrets, customer lists or details, computer systems, software, and know-how belonging to and imparted by either party, any other matters connected with the products or services manufactured, marketed, provided or obtained by the parties, and information concerning the parties' relationships with actual or potential clients or customers and the needs and requirements of such persons or operations.

"Contract" means the Order Form, these Master Terms and Conditions, each Statement of Work related to the Order Form, and the Schedules.

"Control" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and Controls, Controlled and under common Control shall be interpreted accordingly.

"Controller" shall have the meaning set out in the Data Protection Legislation.

"Customer" means the 'Customer' set out in the Order Form.

"Customer Content" means all data, materials and information supplied by the Customer to Titus Learning in connection with the provision and use of the Solution and which may include Customer Personal Data.

"Customer Personal Data" means Personal Data Processed by Titus Learning on behalf of the Customer under or in connection with this Contract.

"Data Processing Schedule" means the data processing schedule set out at Schedule 2.

"Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR (as defined in section 3(10) and supplemented by section 205(4) of the Data Protection Act 2018 ("**DPA 2018**")); DPA 2018; and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended 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).

"Data Subject" shall have the meaning set out in the Data Protection Legislation.

"Deliverables" means any output of Professional Services provided by Titus Learning to the Customer, but excluding the Proprietary Materials, the Products and the Customer Theme.

"Customer Theme" means the theme and related visual features generated by the Customer by using the relevant functionality within the Titus Solution.

"Effective Date" means the date of the last signature of the Order Form.

"End User" means individuals to whom the Customer permits access to the Products, including employees or contractors of the Customer or those of its end client, where applicable.

"Excess Fees" has the meaning given in Clause 7.2.

"Extended Term" has the meaning given in Clause 16.1.

"Force Majeure Event" means any acts, events, omissions or accidents beyond a parties' reasonable contemplation and control including, without limitation, strikes, lockouts or other industrial disputes (whether involving the work force of the party so prevented or any other party), protest, act of God, war, riot, civil commotion, pandemic or other public health emergency or restrictions, terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm or default of suppliers or subcontractors.

"Hosting Fees" means the fees payable in respect of the Hosting Services stated on the Order Form (including but not limited to any uplift resulting from the Customer exceeding the applicable usage limits), and as increased in accordance with the terms of this Contract.

"Hosting Services" means the provision and maintenance of the hosted environment, as set out in Part 1 of the Service Level Agreement.

"Hosting Provider" means the third party hosting provider engaged by Titus Learning from time to time, to deliver Hosting Services.

"Initial Order Form" means the first order form completed and signed by the parties (which attaches these Master Terms and Conditions).

"Initial Term" means the 'Initial Term' set out in the Order Form.

"Intellectual Property Rights" means any and all patents, trademarks, trade names, business names and domain names, service marks, logos, copyright, rights to inventions, moral rights, rights in design, rights in databases, know-how, Confidential Information and the rights to use and protect the confidentiality of Confidential Information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world, together with all or any goodwill relating thereto.

"Master Terms and Conditions" means these master terms and conditions set out in clauses 1 to 18 inclusive.

"Moodle Software" means third party software programs (which may include Open-Source Software) which are procured by Titus Learning from Moodle Pty Ltd and (where indicated in the Order Form) shall be provided to the Customer in accordance with the Moodle Specific Terms.

"Moodle Specific Terms" means the terms applicable to Moodle Software, in particular as applicable: (a) in respect of Moodle Workplace, the Moodle Workplace licence available from Titus Learning Ltd; and (b) for all other Moodle Software, the GNU General Public Licence (versions 2, 3 or any later version as applicable) set out

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at <https://docs.moodle.org/dev/License> (each as modified or updated from time to time).

"Open-Source Software" means any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source definition from time to time (set out at www.opensource.org) or any libraries or code licensed from time to time under the GNU General Public Licence (as set out at www.gnu.org), or anything similar.

"Order Form" means the Initial Order Form or Subsequent Order Form (as applicable), and includes any data processing activities annex to the Order Form.

"Personal Data" shall have the meaning set out in the Data Protection Legislation.

"Processing" shall have the meaning set out in the Data Protection Legislation (and "Process" and "Processed" shall be construed accordingly).

"Processor" shall have the meaning set out in the Data Protection Legislation.

"Products" means the software products purchased by the Customer as set out in the Order Form, comprised of (as the case may be) the Moodle Software, the Totara Software, and/or the Third Party Software.

"Professional Services" means any professional services, including consultancy, software development, configuration, and / or training delivered by Titus Learning, as set out in the Order Form and / or ordered by the Customer and agreed by Titus Learning in a Statement of Work (excluding Hosting Services, Training Services and Support Services).

"Professional Service Fees" means the amount payable for Professional Services as set out in the Order Form and / or in any Statement of Work.

"Proprietary Materials" means the software and other material proprietary to Titus Learning, which are or have been developed independently of this Contract (whether prior to the Effective Date or otherwise).

"Schedules" means the schedules attaching to these Master Terms and Conditions, namely the Service Level Agreement and the Data Processing Schedule.

"Service Level Agreement" means the service level agreement, comprised of Parts 1 and 2 of Schedule 1.

"Services" means the Set Up Services, Support Services, Training Services, the Professional Services and (unless indicated otherwise in the Order Form) the Hosting Services.

"Set Up Fees" means the fees payable in respect of the Set Up Services stated on the Order Form, and as increased in accordance with the terms of this Contract.

"Set Up Services" means Titus Learning's standard set up and configuration services supplied in order to set up the Titus Solution for use by the Customer in accordance with the specification agreed between the parties, and as may be more particularly described in the applicable Order Form.

"Statement of Work" or "SoW" means a statement of work substantially in the form agreed between the parties (and completed in accordance with Clause 9.1) which is related to the Order Form and sets out the Professional Services to be carried out by Titus Learning at the request of the Customer. For the avoidance of doubt, each SoW entered into the parties does not form a separate agreement, but is incorporated into and subject to the Order Form to which it relates and these Master Terms and Conditions.

"Sub-processor" means any person or entity appointed by or on behalf of Titus Learning to process Personal Data on its behalf, in connection with this Contract;

"Subsequent Order Form" means each order form subsequent to the Initial Order Form completed and signed by the parties which is in substantially the same form as the Initial Order Form.

"Support Fees" means the fees payable in respect of the Support Services stated on the Order Form (and / or in accordance with Part 2 of Schedule 1), and as increased in accordance with the terms of this Contract.

"Support Services" means the support (which shall, as specified in the Order Form, either be 'standard' or 'enhanced') provided by Titus Learning to the Customer to support the Customer's use of the Products, as set out in Part 2 of the Service Level Agreement.

"Term" means the duration of this Contract until the date of its termination in accordance with its terms.

"Third Party Licence" means any licence of Third Party Software (and where relevant the Moodle Specific Terms and Totara Specific Terms) granted to the Customer pursuant to Clause 5.4.

"Third Party Software" means software programs which are procured by Titus Learning from third party licensors other than Moodle and Totara and (where indicated in the Order Form) shall be provided to the Customer.

"Titus Affiliate" means any existing or future individual or entity that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with Titus Learning.

"Titus Learning" means Titus Learning Ltd. (company number 08799881) whose registered office is at Salts Mill, Victoria Road, Saltaire, England, BD18 3LA.

"Titus Solution" means the solution made available by Titus Learning comprising, as applicable, the Proprietary Materials, Products and Customer Theme, made available to the Customer pursuant to this Contract.

"Totara Software" means software programs (which may include Open-Source Software) which are procured by Titus Learning from Totara Learning Solutions Limited and (where indicated in the Order Form) shall be provided to the Customer in accordance with the Totara Specific Terms.

"Totara Specific Terms" means the Totara Product License and Subscription Agreement which Customer shall sign directly with Totara on the Effective Date, as provided by Titus Learning.

"Training Fees" means the fees payable in respect of the Training Services stated on the Order Form, and as increased in accordance with the terms of this Contract.

- 1.2 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

2. FORMATION

- 2.1 The Contract is formed and takes effect on the Effective Date.

- 2.2 In the event of a conflict between the Order Form, these Master Terms and Conditions, the Schedules and any Statement of Work, the documents shall take precedence in the following order; (i) the Order Form; (ii) the relevant Statement of Work; (iii) these Master Terms and Conditions; and (iv) the Schedules.

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- 2.3 No variation to this Contract shall be effective unless agreed in writing and counter-signed by an authorised signatory of Titus Learning and an authorised signatory of the Customer.

3. THE TITUS SOLUTION

- 3.1 Subject to the Customer delivering the Customer Content to Titus Learning and complying with its obligations under this Contract, Titus Learning agrees to provide the Titus Solution to the Customer during the Term in accordance with this Contract.
- 3.2 Titus Learning may amend, modify, or upgrade the functionality and the look and feel of the Titus Solution and / or any hardware or software which is used in relation to the Titus Solution from time to time. Any such amendment, modification or upgrade will be made in good faith by Titus Learning with the intent that it will not in its view materially degrade the functionality of the Titus Solution for the Customer.
- 3.3 Unless otherwise agreed between the parties, the Customer shall be responsible for undertaking any penetration testing of the Titus Solution.

4. SET UP AND ACCEPTANCE TESTING

- 4.1 Titus Learning shall provide the Set Up Services. Upon completion of the Set Up Services Titus Learning shall notify the Customer to confirm that the Titus Solution is ready for acceptance testing by the Customer, which shall be carried out by reference to the acceptance criteria agreed between the parties ("**Acceptance Criteria**").
- 4.2 Acceptance of the Titus Solution shall occur two weeks from Titus Learning's notification given under Clause 4.1, unless Titus Learning has received a written notice from the Customer setting out a valid detailed basis for the rejection of any element of the Titus Solution. The Customer acknowledges that it may only reject the Titus Solution or any element thereof if it does not materially comply with its specification or the Acceptance Criteria.
- 4.3 To the extent that the Customer uses the Titus Solution in a production environment or otherwise commercially exploits the Titus Solution, or if the Customer does not reject the Titus Solution in writing or does not specify a reasonable, detailed basis to reject the Titus Solution within the acceptance period specified in Clause 4.2, then the Titus Solution shall be deemed accepted by the Customer.
- 4.4 In respect of any Deliverables provided as part of Professional Services, Titus Learning shall notify the Customer when such Deliverables are ready for acceptance testing (by reference to the criteria agreed in the relevant Statement of Work) and the acceptance testing process set out in Clause 4.2 and 4.3 shall apply and be followed in respect of such Deliverables.

5. OWNERSHIP AND LICENCES

- 5.1 Except as expressly set out herein, nothing in this Contract shall have the effect of transferring to the Customer ownership of any Intellectual Property Rights.
- 5.2 Ownership of the Proprietary Materials, the Products, the Customer Theme and (unless otherwise agreed in a Statement of Work) any Deliverables shall at all times remain with Titus Learning or the relevant third party licensors, as applicable. The Customer will not remove or obliterate any copyright, trade mark or proprietary rights notices from any of the aforementioned materials.
- 5.3 Subject to the Customer complying with its obligations under this Contract, Titus Learning grants to the Customer a non-transferable, non-sub-licensable right to

use (and to permit End Users to use) the Proprietary Materials, the Customer Theme and (unless otherwise agreed in a Statement of Work) any Deliverables for the Term solely for the Customer's internal business purposes (and those of its clients where applicable).

- 5.4 The licence granted pursuant to Clause 5.3 shall:

- 5.4.1 in respect of the Proprietary Materials and (unless otherwise agreed in a Statement of Work) the Deliverables, be non-exclusive; and
- 5.4.2 in respect of the Customer Theme, be exclusive.

- 5.5 Subject to Clause 5.6 Titus Learning shall provide:

- 5.5.1 the Third Party Software to the Customer under the standard licence terms provided by the relevant third parties from time to time;
- 5.5.2 Moodle Software pursuant to the relevant Moodle Specific Terms;
- 5.5.3 Totara Software pursuant to the relevant Totara Specific Terms,

copies of which shall be provided to the Customer upon request, and the Customer agrees to be bound to the relevant third parties by such licence terms. The Customer shall comply with the Third Party Licences and shall indemnify and hold Titus Learning harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of such terms howsoever arising. Titus Learning may treat the Customer's breach of any Third Party Licence as a material breach of this Contract.

- 5.6 The Customer acknowledges that to the maximum extent permitted by law, Titus Learning offers no warranties or assurance and accepts no liability whatsoever in relation to the Totara Software, Moodle Software and/or any Third Party Software.

- 5.7 The Customer hereby acknowledges and agrees that the Products may include Open-Source Software. Any Open-Source Software provided by Titus Learning shall be used according to the terms and conditions of the specific licence under which the relevant Open-Source Software is distributed, but is provided "AS IS" and expressly subject to the disclaimer in Clause 12.3.

6. CUSTOMER CONTENT

- 6.1 The Customer acknowledges and accepts that it shall provide the Customer Content and be solely responsible for the Customer Content's accuracy.
- 6.2 The Customer hereby grants Titus Learning the right to:
- 6.2.1 use the Customer Content solely in connection with provision of the Titus Solution, the Services and this Contract; and
- 6.2.2 issue a client press release after the formation of this Contract and use the Customer's name and logo(s) in any marketing material and PR announcements from time to time.
- 6.3 The Customer warrants that the Customer Content:
- 6.3.1 is owned by the Customer or the Customer has the right to use the same in accordance with the provisions of this Contract;
- 6.3.2 does not infringe the Intellectual Property Rights or any other rights of any third party; and
- 6.3.3 does not contain anything libellous, blasphemous, defamatory, indecent or obscene or which infringes the statutory, common law or other right of any third party.

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6.4 The Customer shall indemnify and keep indemnified Titus Learning against any loss, damage, costs or expenses incurred by Titus Learning as a result of the storage, access or use of the Customer Content in conjunction with the Titus Solution or the breach by the Customer of the warranties contained in Clause 6.3, except to the extent that any such loss, damage, costs or expenses are incurred solely as a result of Titus Learning' breach of the warranties set out in Clause 12 below.

6.5 The Customer acknowledges and accepts that Titus Learning shall have no liability to the Customer whatsoever directly or indirectly in relation to the provision and / or content of the Customer Content, which shall at all times remain the responsibility of the Customer.

6.6 The Customer acknowledges and agrees that Titus Learning shall be entitled to: (a) use the Customer Content to provide, protect, monitor, update, maintain, fix, enhance and/or improve the Titus Solution; and/or (b) to provide anonymous statistical analysis of the performance and/or use of the Titus Solution. For these purposes 'use' includes without limitation collecting, accessing, analysing, researching, modifying, reproducing. Except as otherwise provided in this Contract, nothing in this Clause 6.6 gives Titus Learning a right to disclose the Customer Content to any third party other than its personnel and subcontractors.

7. LIMITATIONS OF USE

7.1 The Customer shall not permit any unauthorised use of the Titus Solution (which shall include, without limitation, usage beyond the usage limits specified in the Order Form) and shall ensure that any user login details and passwords supplied to it by Titus Learning are kept secure and are protected from unauthorised disclosure and / or use.

7.2 In the event the Customer exceeds the limits for the Hosting Services set out in the Order Form Titus Learning shall, without notice to the Customer, be entitled to charge for such increased capacity ("**Excess Fees**"). The Excess Fees for a particular year during the Term shall:

7.2.1 be added to Titus Learning's invoice for the subsequent year's Hosting Fees; and

7.2.2 not exceed an amount equal to 20% of the annual Hosting Fee for such year.

7.3 The Customer shall not (and shall ensure that its users shall not): (i) copy or reproduce in any way the whole or part of the Titus Solution or any information or other material relating to the Titus Solution; (ii) attempt to ascertain or list the source programs or source code relating to the Titus Solution; (iii) decompile, reverse engineer, disassemble or translate the Titus into any other computer language or attempt to do so, save to the extent permitted by law; (iv) assign, licence, loan, rent, disclose, sell or otherwise transfer all or part of the Titus Solution to any other person (other than as permitted by this Contract); (v) use the Titus Solution as part of a computer bureau business or allow a party other than an End User to access the Titus Solution; (vi) gain access or attempt to gain access to the Titus Solution or data (other than the Customer Content and any data output from the Titus Solution) except to the extent expressly permitted by this Contract; or (vii) modify, alter or in any way interfere with any element of the Titus Solution or data (other than the Customer Content) or merge the same with any other data, programs, material,

information or documents save to the extent permitted by law.

8. HOSTING, SUPPORT AND TRAINING SERVICES

8.1 Titus Learning shall provide to the Customer, or shall procure the provision of the following to the Customer:

8.1.1 the Hosting Services via the Hosting Provider which shall, with effect from acceptance of the Titus Solution under Clause 4, be provided in accordance with Part 1 of the Service Level Agreement, save where the Order Form specifies that such services are not required;

8.1.2 the Support Services, which shall, with effect from acceptance of the Titus Solution under Clause 4, be provided in accordance with Part 2 of the Service Level Agreement.; and

8.1.3 the Training Services.

9. PROFESSIONAL SERVICES AND SOWs

9.1 A Statement of Work is deemed completed and binding when it has been signed, or accepted in writing, by both parties.

9.2 Where the parties have agreed that Titus Learning will provide Professional Services to the Customer, Titus Learning shall use reasonable endeavours to provide the agreed Professional Services in accordance with this Contract.

9.3 The Customer shall provide Titus Learning with all information, access and cooperation which Titus Learning deems necessary to facilitate the provision of any agreed Professional Services. If the Customer fails or delays in its performance of any of the foregoing, Titus Learning shall be relieved of its obligations hereunder to the extent that such obligations are dependent upon such performance.

9.4 The Customer will pay any Professional Services Fees in accordance with Clause 10 (Fees, Invoicing and Payment).

10. FEES, INVOICING AND PAYMENT

10.1 The Customer agrees to pay the Charges in accordance with the Order Form, any relevant Statement of Work and this Clause 10.

10.2 The Charges payable by the Customer to Titus Learning are due in full on the dates specified in the Order Form or Statement of Work (as applicable) and Titus Learning shall be entitled to submit invoices for the Charges on or after the dates each becomes payable.

10.3 All fees quoted are exclusive of any tax, levy or similar governmental charge (including value added or sales tax) which shall be paid by the Customer at the rate and in the manner prescribed by law. The Customer remains responsible for its own tax liability.

10.4 All work and deliverables provided by Titus Learning beyond the scope of that agreed on the Order Form or any Statement of Work will (provided the same has been agreed in advance in writing between the parties) be invoiced on a per hour basis at Titus Learning' then prevailing standard rate. Titus Learning will also be entitled to invoice the Customer for all reasonable expenses for travel, accommodation and other attributable costs incurred in undertaking this Contract.

10.5 The Customer will pay the invoiced amount within twenty eight (28) days of the date of an invoice. If the Customer fails to make a payment due to Titus Learning under this Contract by the due date, then the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or

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after judgement. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

- 10.6 No payment shall be deemed to have been received until Titus Learning or its nominee has received cleared funds.
- 10.7 All sums owing to the other party under this Contract shall become due immediately upon termination of this Contract.
- 10.8 All payments to be made by the Customer under this Contract shall be made in full to Titus Learning or its nominee without any set-off, restriction or condition and without any deduction for or on account of any counterclaim.
- 10.9 If any sum payable to Titus Learning under this Contract is not paid when due then, without prejudice to Titus Learning' other rights under this Contract, Titus Learning shall be entitled to suspend the Customer's access to the Titus Solution on fourteen (14) days' written notice until such time as payment has been made by the Customer.
- 10.10 Once per year and subject to this Clause 10.10, Titus Learning may increase the Charges, to take effect from the next anniversary of the Effective Date. Any such increase shall not exceed the average percentage increase in the Retail Prices Index for the preceding twelve (12) months.
- 10.11 Titus Learning may, by giving notice to the Customer at any time, increase the Charges to reflect any increase in the cost of the provision of the Services that is due to any corresponding increase in the price of services, materials and/or charges that Titus Learning has to pay to its sub-contractors or other parties in its supply chain, provided that such increase to the Charges shall be no more than the corresponding increase which the Titus Learning has to pay to its sub-contractor or such other party.
- 10.12 No less than four (4) months prior to the expiry of the Initial Term or any Extended Term (as the case may be) Titus Learning shall notify the Customer in writing of the Charges (excluding the Professional Service Fees) which shall apply following the renewal of this Contract pursuant to Clause 16.1. If the Customer does not agree with the Charges notified to it, it shall have the right to terminate this Contract in accordance with Clause 16.2.

11. DISPUTES

- 11.1 Any dispute arising under this Contract shall be referred to the senior management of each party who shall attempt resolution through negotiations within fourteen (14) days. The provisions of this Clause 11.1 shall not prevent either party from commencing or continuing court proceedings in relation to the relevant dispute under Clause 11.2, which Clause shall apply at all times.
- 11.2 This Contract is governed by the laws of England and the parties submit to the exclusive jurisdiction of the courts of England.

12. WARRANTIES

- 12.1 Titus Learning shall use reasonable endeavours to ensure that the Titus Solution is available to the Customer in accordance with the applicable parts of the Service Level Agreement, and shall provide the Services with reasonable care and skill.
- 12.2 Titus Learning warrants that it has all the rights necessary to perform its obligations under this Contract.

- 12.3 The Customer acknowledges and accepts that the Titus Solution is provided "AS IS" without any warranty of any kind, whether express or implied including, but not limited to, warranties as to the accuracy of the information and any implied warranties of satisfactory quality and / or fitness for a particular purpose. Titus Learning does not warrant that the Titus Solution will be error free or that such errors can be corrected, and any such errors shall be addressed in accordance with the applicable parts of the Service Level Agreement.

- 12.4 The Customer is responsible for procuring and maintaining its network connections and telecommunications links from its systems to Titus Learning'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.

- 12.5 The parties acknowledge that the provisions of Clauses 12 and 14 are reasonable and reflected in the price, which would be higher without those provisions, and the parties accept such risk and / or shall insure accordingly.

13. DATA PROTECTION

- 13.1 The parties shall comply with their respective obligations set out in Schedule 2 (Data Processing).

14. LIMITATION OF LIABILITY

- 14.1 Neither party excludes or limits its liability (if any) to the other party for:
 - 14.1.1 personal injury or death resulting from its negligence;
 - 14.1.2 fraud or fraudulent misrepresentation; or
 - 14.1.3 any matter which it would be illegal to exclude or to attempt to exclude liability.
- 14.2 Save as provided for in Clause 14.1, Titus Learning will be under no liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise (in either case whether direct or indirect) for any:
 - 14.2.1 loss of profits;
 - 14.2.2 loss of business;
 - 14.2.3 depletion of goodwill and / or similar losses;
 - 14.2.4 damage to or loss of data;
 - 14.2.5 loss of revenue; and/or
 - 14.2.6 pure economic loss, or for any special, indirect or consequential loss, cost, damages, charges, or expenses howsoever arising out of, or in connection with, this Contract.
- 14.3 In respect of breaches of Schedule 2 and claims against the Customer that the use of the Proprietary Materials, Deliverables or Customer Theme infringes the Intellectual Property Rights of a third party, Titus Learning's total aggregate liability to the Customer shall not exceed 200% of the Charges paid or payable by the Customer to Titus Learning under this Contract in respect of the calendar year during which the alleged breach occurs and/or the claim is brought.
- 14.4 The Customer agrees that it will have no remedy in respect of any untrue statement or representation made to it upon which it relied in entering into this Contract and that its only remedies can be for breach of contract (unless the statement was made fraudulently).
- 14.5 Titus Learning's total aggregate Contractual Liability to the Customer under or in connection with this Contract shall not exceed the Charges paid or payable by the Customer to Titus Learning under this Contract in

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respect of the calendar year during which the Customer suffers the relevant loss. "**Contractual Liability**" means liability howsoever arising under or in relation to the subject matter of this Contract that is not: (i) unlimited by virtue of Clause 14.1 above; or (ii) excluded pursuant to Clauses 14.2 or 14.4 above; or (iii) subject to the higher cap on liability pursuant to Clause 14.3 above.

- 14.6 Except as expressly provided in this Contract, Titus Learning hereby excludes any implied condition or warranty concerning the merchantability, quality or fitness for purpose of Titus Solution whether such condition or warranty is implied by statute or common law or otherwise.

15. FORCE MAJEURE

- 15.1 Save for any payment obligations of the Customer, neither party shall be in breach of this Contract or otherwise liable to the other party in any manner whatsoever to the extent that it is prevented from performing any or all of its duties and obligations under this Contract directly or indirectly as a result of a Force Majeure Event.

16. DURATION AND TERMINATION

- 16.1 This Contract shall commence on the Effective Date and shall continue for the Initial Term after which it shall automatically renew for consecutive twelve (12) month periods (each a "**Extended Term**"), except as terminated in accordance with this Clause 16.

- 16.2 Either party may terminate this Contract at the end of the Initial Term or any Extended Term by giving the other party not less than three (3) months' prior written notice, such notice to expire on the next anniversary of the Effective Date (unless another date is agreed in writing between the parties).

- 16.3 Either party may serve a notice on the other party to terminate this Contract with immediate effect if the other party:

16.3.1 is in material breach of any of the terms of this Contract and, where the breach is capable of remedy, the other party fails to remedy such breach within thirty (30) days' service of a written notice from the party not in breach, specifying the breach and requiring it to be remedied. For the avoidance of doubt, failure to pay any sums due under or in connection with this Contract in accordance with Clause 10; or failure to use the Titus Solution in accordance with the provisions of this Contract, shall constitute such a material breach; or

16.3.2 has a winding up petition presented or enters into liquidation whether compulsorily or voluntarily (otherwise than for the purposes of amalgamation or reconstruction without insolvency) or makes an arrangement with its creditors or petitions for an administration order or has a receiver, administrator or manager appointed over any of its assets, or a court or arbiter with authority to so determine, determines that the debtor is unable to pay its debts.

- 16.4 The termination of this Contract howsoever arising is without prejudice to the rights, duties and liabilities of either the Customer or Titus Learning accrued prior to termination. The terms and conditions which expressly or by implication have effect after termination shall continue to be enforceable notwithstanding termination.

- 16.5 Titus Learning shall be entitled to suspend provision of the Titus Solution to the Customer if the Customer is in

material breach of the provisions of this Contract, until either the breach is remedied or this Contract terminates, whichever occurs first.

- 16.6 Upon termination or expiry of this Contract for any reason: (i) unless otherwise agreed in a particular Statement of Work, all existing Statements of Work shall automatically terminate; (ii) the Customer shall within ten (10) Business Days return or destroy all Confidential Information or other property of or relating to and provided by Titus Learning; (iii) the Customer shall immediately cease to use and / or access the Titus Solution; (iv) subject to Clause 13, Titus Learning shall within ten (10) Business Days cease to use and shall return or destroy all Customer Content and Confidential Information supplied to it by the Customer; and (v) any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Contract shall remain in full force and effect.

17. CONFIDENTIALITY

- 17.1 Each party that receives ("**Receiving Party**") Confidential Information from the other ("**Disclosing Party**"), whether before or after the date of this Contract shall: (i) keep the Confidential Information confidential; (ii) not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with Clauses 17.2 or 17.3; and (iii) not use the Confidential Information for any purpose other than the performance of its obligations or its enjoyment of rights under this Contract ("**Permitted Purpose**").

- 17.2 The Receiving Party may disclose Confidential Information to any of its officers, directors, employees, agents and advisers who reasonably need to know for the Permitted Purpose (each a "**Permitted Third Party**"), provided that the Receiving Party shall remain liable to the Disclosing Party for the acts, omissions, and compliance with the terms of this Clause 17 of such Permitted Third Party as if such Permitted Third Party were the Receiving Party (and a party to this Contract). The Receiving Party shall ensure that each Permitted Third Party is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Clause 17.

- 17.3 If required by law, the Receiving Party may disclose Confidential Information to a court or regulatory authority or agency, provided that the Receiving Party shall (if legally permissible) provide reasonable advance notice to the Disclosing Party and co-operate with any attempt by the Disclosing Party to obtain an order for providing for the confidentiality of such information.

18. GENERAL

- 18.1 **Remedies.** Each right or remedy of each party under any Contract is without prejudice to any other right or remedy under this or any other contract.

- 18.2 **Severance.** If part of this Contract is held unlawful or unenforceable that part shall, to the extent required, be struck out and the remainder of this Contract shall remain in full force and effect.

- 18.3 **No Waiver.** No delay, neglect or forbearance by either party in enforcing its rights under this Contract shall be a waiver of or prejudice those rights.

- 18.4 **Assignment** Subject to clause 18.5, neither party may assign, license or otherwise transfer all or any part of its rights or obligations under this Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed) except that Titus

SOFTWARE AND SERVICES AGREEMENT

Master Terms and Conditions

Learning may assign its rights under this Contract to any Titus Affiliate. The rights and liabilities of the parties hereto are binding on, and shall inure to the benefit of, the parties and their respective successors and permitted assigns.

- 18.5 **Subcontracting.** Titus Learning may appoint subcontractors to carry out all or any part of its rights or obligations under this Contract provided that it gives prior written notice to the Customer.
- 18.6 **Third Party Rights.** The parties hereby exclude to the fullest extent permitted by law any rights of third parties to enforce or rely upon any of the provisions of this Contract, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 18.7 **Counterparts.** The Order Form and any Statement of Work may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original.
- 18.8 **Notices.** All notices (which include invoices and correspondence) under this Contract shall be in writing and shall be delivered by first-class post addressed to the recipient at the recipient's postal address (as set out in the Order Form or as may be notified by the recipient

to the other party from time to time). A notice shall be deemed to have been duly served on the next Business Day after it was posted, provided that where such posting occurs either after 4pm on a Business Day, or on a day other than a Business Day, service shall be deemed to occur at 10am on the second following Business Day (such time being local time at the address of the recipient).

- 18.9 **No Bribery.** Each party warrants that it: (i) has not committed and will not commit an offence under the Bribery Act 2010 in relation to this Contract or any other Contract with the other party; and (ii) has adequate procedures (as defined in section 7(2) of that Act) in place to prevent its associated persons from committing an offence under the Bribery Act 2010.
- 18.10 **Modern Slavery.** Each party warrants that, to the extent applicable, it shall comply with the provisions of the Modern Slavery Act 2015.
- 18.11 **Entire Agreement.** This Contract supersedes any prior contracts, arrangements and undertakings between the parties in relation to its subject matter and constitutes the entire contract between the parties relating to the subject matter.

SOFTWARE AND SERVICES AGREEMENT

Schedule 1 – Service Level Agreement

Schedule 1 SLA

PART 1 - HOSTING

Titus Solution availability & site performance (Hosting)

Titus Solution availability measured at both front and back-ends (measured using uptrends & New Relic) to provide site performance metric via a new response time KPI + an overall availability KPI.

Target (subject at all times to clause 12.4 of this Contract)

Site response time within 200 ms.

Titus Learning shall provide at least a **99.5%** uptime service availability level in respect of the Titus Solution, based on the monthly average percentage availability (can scale up to 99.9% & 99.99% dependent on solution design).

Reports

Titus Learning shall on request provide the Customer with reports as to achievement of the service levels set out in this Part 1 of Schedule 1.

Maintenance

Titus Learning shall perform error corrections, updates and upgrades with respect to the Titus Solution from time to time, and shall endeavour to keep any service interruptions to a minimum.

Titus Learning shall use reasonable endeavours to notify the Customer in advance of (and where reasonably practicable shall seek to pre-agree with the Customer a suitable time for) any such maintenance which may result in an interruption of the Hosting Services ("**Maintenance Event**"), however the Customer acknowledges and agrees that this may not always be possible, in particular in respect of unscheduled Maintenance Events.

Titus Learning shall complete minor version updates of the Moodle Software periodically to fix known bugs, introduce enhancements, improve application performance and to ensure that the Customer is continually kept on a security-supported version of the Moodle Software as far as possible. Titus Learning shall also use all reasonable endeavours to undertake additional version updates throughout the Contract Year when requested by the Customer. Minor version updates, for example, an update from Moodle version X.1 to Moodle version X.2 shall be provided free of charge to the Customer. Major version upgrades, for example, an upgrade from Moodle version X to Moodle version Y may incur a nominal charge for the Customer.

Maintenance Events shall not be taken into account for the purposes measuring the service levels set out in Part 1 of this Schedule 1

PART 2 - SUPPORT

Service provision

The Customer acknowledges and accepts that:

- the Support Services are only provided to the Customer, and Titus Learning shall not be responsible for providing any support services or similar directly to End Users;
- it shall name up to three (3) administrators only (whose names and contact details shall be provided to Titus Learning upon request) who shall act as the Customer's representatives for the purposes of receiving and benefiting from the Support Services ("**Customer Administrators**"), and in the course of providing the Support Services Titus Learning shall not be obliged to engage with individuals other than the Customer Administrators. The Customer shall provide Titus Learning with reasonable prior written notice of any anticipated change to a Customer Administrator (including absence); and

SOFTWARE AND SERVICES AGREEMENT

Schedule 1 – Service Level Agreement

PART 2 - SUPPORT

- notwithstanding the provision of Support Services by Titus Learning, the Customer acknowledges and accepts that it has sole responsibility to perform general administration of the Titus Solution.

The service levels in this Part 2 shall apply during normal “Business Hours” (meaning 8am-6pm on Business Days), save in the case of severity 1 incidents, in respect of which the service levels apply 24x7x365, through provision of an ‘on-call service’ outside of Business Hours, provided via an out of hours helpline at 0113 3200 346 (or such other phone number notified to the Customer from time to time).

Titus Learning shall in its absolute discretion determine the severity level of a particular issue notified to it through the Support Services. In the event that the Customer utilises the out of hours service referred to above and Titus Learning later determines that the issue in question does not constitute a severity 1 incident, Titus Learning shall be entitled to charge an additional fee for the time it spends responding to and resolving such incident on a time and materials basis, based on Titus Learning’s standard support rates adopted from time to time.

Ticket types

Incident: An unplanned interruption to, or the reduction in quality of, the Titus Solution.

Change request: The addition, modification or removal of any function, capability or component of the Titus Solution.

Question: A formal request for information to be provided.

Definitions, examples and targets

Type and severity	Definition and examples	Standard response	Standard resolution	Enhanced response	Enhanced resolution
Incident Severity 1 (High)	A total loss of service, or sufficient reduction in functionality as to result in significant financial or reputational damage to the Customer. Non-exhaustive examples: AWS offline, security breach.	30 minutes	3 hours	5 minutes	1 hour
Incident Severity 2 (Medium)	An (non-critical) adverse impact to the Customer's activities following the loss of key functionality or multiple features, and no workaround available. Non-exhaustive examples: content unavailable, reporting functionality down.	4 Business Hours	2 Business Days	2 Business Hours	1 Business Day
Incident Severity 3 (Low)	Minor impact to one or more users, resulting from loss of some functionality or features but where workarounds are available. Non-exhaustive examples: user	1 Business Day	4 Business Days	4 Business Hours	2 Business Days

SOFTWARE AND SERVICES AGREEMENT

Schedule 1 – Service Level Agreement

PART 2 - SUPPORT

	cannot log-on, course progress not saving.				
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Out of scope incidents:

- The interruption or quality loss is a result of improper use of the service, system or product. Non-exhaustive examples: user error.
- The result of an event outside the scope of the service or events beyond Titus Learning's control. Non-exhaustive examples: customer network failure, Force Majeure Event.

Type and severity	Definition and examples	Standard response	Standard resolution	Enhanced response	Enhanced resolution
Change request (Standard)	The addition, modification or removal of any function, capability or component of the Titus Solution. Non-exhaustive examples: installation/upgrade of a plug-in, increase server capacity.	16 Business hours	10 Business Days*	8 Business Hours	5 Business Days*

*Resolutions requiring Customer engagement and changes only possible during specific customer-defined windows will have the associated ticket(s), and by extension SLA clock, placed on hold.

Type and severity	Definition and examples	Standard response	Standard resolution	Enhanced response	Enhanced resolution
Question (Standard)	A formal request for information to be provided. Non-exhaustive examples: user requests knowledge article/guidance, customer queries an invoice.	16 Business Hours	10 Business Days	8 Business Hours	5 Business Days

Tooling

The Support Services are managed using Titus Learning's ITSM tool and aligned to ITIL v4 processes, specifically Incident Management, Change Management and Request Fulfilment (Question). Users will have access to a dedicated portal to raise and update on status/progress across all ticket types.

SOFTWARE AND SERVICES AGREEMENT

Schedule 2 – Data Processing

Schedule 2 Data Processing

1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This paragraph 1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and Titus Learning is the processor. The Annex to Order Form: Data Processing Activities ("Data Processing Activities Annex") sets out the scope, nature and purpose of processing by Titus Learning, the duration of the processing and the types of Personal Data, categories of data subjects and any third party processor of Personal Data.
3. Without prejudice to the generality of paragraph 1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Titus Learning and/or lawful collection of the Personal Data by Titus Learning on behalf of the Customer for the duration and purposes of this Contract.
4. Without prejudice to the generality of paragraph 1, Titus Learning shall, in relation to any Personal Data processed in connection with the performance by Titus Learning of its obligations under this Contract:
 - 4.1. process that Personal Data only on the documented written instructions of the Customer which are set out in the Data Processing Activities Annex unless Titus Learning is required by applicable laws to otherwise process that Personal Data. Where Titus Learning is relying on applicable laws as the basis for processing Personal Data, Titus Learning shall notify the Customer of this before performing the processing required unless applicable laws prohibit Titus Learning from so notifying the Customer;
 - 4.2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - 4.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - 4.4. not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained (such consent not to be unreasonably withheld or delayed) and the following conditions are fulfilled:
 - 4.4.1. the Customer or Titus Learning has provided appropriate safeguards in relation to the transfer;
 - 4.4.2. the data subject has enforceable rights and effective legal remedies;
 - 4.4.3. Titus Learning complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - 4.4.4. Titus Learning complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - 4.5. 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;
 - 4.6. notify the Customer without undue delay on becoming aware of a Personal Data Breach;
 - 4.7. at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by applicable laws to store the Personal Data;
 - 4.8. maintain complete and accurate records and information to demonstrate its compliance with this Schedule 2; and
 - 4.9. make available to the Customer all information necessary to demonstrate compliance with the obligations laid down in the Data Protection Legislation and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer and shall immediately inform the Customer if, in its opinion, an instruction infringes the Data Protection Legislation.
5. Titus Learning may not appoint Sub-processors to process Personal Data in connection with this Contract unless the Customer is provided with an opportunity to object to the appointment of each such Sub-processor within seven (7) days after Titus Learning supplies the Customer with details regarding such Sub-processor. In the event that the Customer does not raise an objection within the said 7 day period, this shall represent the CUSTOMER'S deemed acceptance of the appointment of the Sub-processor(s). If the parties are (acting reasonably) unable to resolve the objection and Titus Learning informs the Customer that it nevertheless intends to appoint the relevant Sub-processor then the Customer may either: (i) accept the change; or (ii) terminate this Contract upon written notice within one month of raising the objection. A list of Titus Learning's Sub-processors as at the date of this Contract is set out in the Data Processing Activities Annex, and the Customer is deemed to have provided its approval to the appointment of the same.
6. Titus Learning confirms that it has entered or (as the case may be) will enter into with any Sub-processor a written agreement substantially on that Sub-processor's standard terms of business and in either case which Titus Learning confirms reflects the requirements of the data protection legislation. As between the Customer and Titus Learning, Titus Learning shall remain fully liable for all acts or omissions of any Sub-processor appointed by it.