

DATE

2026

(1) Totara Learning

(2) [CUSTOMER NAME]

**Master Services Agreement
(the 'Agreement')**

Master Services Agreement

DATE: [INSERT]

PARTIES

- (1) **Totara Learning (Europe) Limited**, a company incorporated in England and Wales with registered number 08696320, whose registered office is at Ground Floor, 19 New Road, Brighton, BN1 1UF ('**Totara Learning**'); and
 - (2) **[Customer Name]**, a company incorporated in [INSERT] with registered number [INSERT], whose registered office is at [INSERT] (the '**Customer**'),
- each a '**party**' and together the '**parties**'.

BACKGROUND

- (A) Totara Learning manages the development, support and maintenance of certain cloud-based learning technologies for the corporate sector.
- (B) The Customer wishes to use Totara Learning's platform and related services in order to access and use such cloud-based learning technologies for its internal business operations.
- (C) Totara Learning has agreed to provide and the Customer has agreed to receive and pay for Totara Learning's services, subject to the terms and conditions of this Agreement.

OPERATIVE PROVISIONS

1. Definitions and interpretation

- 1.1 In this Agreement the following words and expressions shall have the following meanings:

Definition

Acceptable Use Policy

means the acceptable use policy as set out at Schedule 2 as may be amended by Totara Learning from time to time.

Active Users

means with respect to a Customer's procurement of the Platform Services under the relevant Order Form: (a) during the first 12 months from the date of the Order Form the total number of unique user accounts through which an Authorised User may access the Platform Services that has existed since the date of such Order Form or (b) thereafter, the total number of unique user accounts through which an Authorised Users may access the Platform Services that has existed during the previous 12 months (on a rolling basis) in each case, whether or not such accounts are subsequently suspended.

Additional Services

means the additional services (including any additional features or functionality) and deliverables specified in a relevant Order Form.

Applicable Data Protection Laws

means: (1) to the extent the UK GDPR (as defined in the Data Protection Act 2018) applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and/or (2) to the extent the General Data Protection Regulation ((EU) 2016/679) applies, the law of the European Union or any member state of the European Union to

	which Totara Learning is subject, which relates to the protection of personal data.
Authorised Users	means the users authorised by the Customer to use the Platform Services in accordance with the terms of this Agreement (and ' Authorised User ' shall be construed accordingly).
Business Day	means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Business Hours	the period 9am – 5pm on any Business Day.
Change	an amendment to the scope, nature, volume or execution of the Services under this Agreement and/or any other term or schedule of this Agreement which is not otherwise permitted under this Agreement.
Change Control Note	the written record of any Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.
Change Control Procedure	the procedure for agreeing a Change, as set out in Schedule 4.
Commencement Date	means the date of this Agreement.
Confidential Information	means any and all confidential information (whether in oral, written or electronic form) including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, Intellectual Property Rights, assets, strategy, products and customers, including information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm or organisation associated with that party.
Customer Data	means all data (in any form) that is provided to Totara Learning or uploaded or hosted on any part of any Platform Services by the Customer or by any Authorised User (but excluding any Feedback).
Customer Systems	means all software and systems used by or on behalf of the Customer or any Authorised User in connection with the provision or receipt any of the Services or that the Services otherwise, link, inter-operate or interface with or utilise (in each case whether directly or indirectly).
Documentation	means description and specification of the Services, or the relevant instructions as to how to use that part of the Services made available by Totara Learning (each as Updated from time to time), which may be provided to the Customer by Totara Learning from time to time following the date of this Agreement, and which may include manuals, guides, help documentation, developer comments, training materials and other written material in print or electronic book format, videos training

		materials or online documentation in the form of wikis, forums or blogs.
Fees		means those fees which are set out as payable by the Customer in an Order Form that may comprise one-off charges or recurring charges.
Force Majeure Event		means any circumstance not within a party's reasonable control, the effects of which could not have been reasonably avoided, including: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; (f) collapse of buildings, fire, explosion or accident; and (g) interruption or failure of utility service.
Hosting Cap		means the agreed resource hosting limit for the relevant Plan, as calculated in accordance with the Hosting Tiers.
Hosting Tiers		means the resourcing hosting tiers for each Plan, from which the Hosting Cap is determined, and as set out in the relevant Order Form.
Insolvency Event		means where a party takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, or its entering a procedure in any jurisdiction with a similar effect to a procedure listed above.
Intellectual Rights	Property	means any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, domain names and all similar rights and, in each case: (a) whether registered or not; (b) including any applications to protect or register such rights; (c) including all renewals and extensions of such rights or applications; (d) whether vested, contingent or future; and (e) wherever existing.
Open Source Software		means software which is included or combined with the Platform Services and which is provided to Totara Learning under terms and conditions other than those set out in this Agreement, including any 'open source' software falling within the Open Source Definition issued by the Open Source Initiative (www.opensource.org/docs/osd) at the date of this Agreement and/or any 'free software' as defined by the Free Software Foundation (www.gnu.org/philosophy/free-sw.html) at the date of this Agreement.
Order Form		means the electric or physical form (including its schedules, annexes and appendices (if any)) ordering any Services entered

into by or on behalf of the Customer and Totara Learning, based on the template Order Form as set out at Schedule 1.

Permitted Purpose

means use solely for the Customer's internal business operations and excluding any onward commercialisation of any part of the Service with any third party.

Plan

means the relevant Platform Services subscription plan (and relevant Fees thereunder) to which a Customer has subscribed in order to receive the Platform Services, as specified in the relevant Order Form

Platform Service Period

means in respect of any applicable Platform Services, the duration during which such services are to be provided as initially set out in the relevant Order Form, as varied in accordance with, and subject to the terms of, this Agreement.

Platform Services

means the Totara Learning software platform to which the Customer has subscribed, as described in the Order Form.

Reports

means any data generated in a report by the Platform Services by the Customer through their use of the Platform Services, which may be identified in an Order Form, but expressly excluding any report, document or database architecture, formatting, schema and/or framework, which shall form part of the Totara Learning Background IP.

Services

means the services described in the relevant Order Form, which may include the Platform Services and/or any Additional Services.

SLA

means the Totara Learning service level agreement relating to the provision of the Platform Services, as set out at Schedule 5.

Taxes

means value added tax or any equivalent sales tax chargeable anywhere in the world, and any other taxes, assessments, tariffs, duties or other fees imposed, assessed or collected by or under the authority of any governmental body.

**Totara Learning
Background IP**

means any and all Intellectual Property Rights either owned or controlled by Totara Learning or licensed to Totara Learning prior to the date of this Agreement and/or developed by Totara Learning independently to this Agreement following the date of this Agreement, that Totara makes available to the Customer in connection with this Agreement.

Trial Services

means any Platform Services identified in an Order Form as being provided on a trial basis or provided without charge (for the duration of the period during which it is provided on such basis).

User Cap

means the agreed user limit for the relevant Plan, as calculated in accordance with the User Tiers.

User Subscriptions

means the user subscriptions purchased by the Customer pursuant to this Agreement which entitle Authorised Users to

access and use the Platform Services and the Documentation in accordance with this Agreement.

User Tiers

means the user tiers for each Plan, from which the User Cap is determined, and as set out in the relevant Order Form.

Vulnerability

means a weakness in the computational logic or code found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.4 A reference to a '**person**' includes a natural person, company or unincorporated body (whether or not having separate legal personality), and a reference to a '**company**' includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 References to clauses or Schedules are to clauses of, or Schedules to, this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.6 A reference to the singular includes the plural and vice versa and a reference to any gender includes the others.
- 1.7 This Agreement or any other agreement or document referred to in this Agreement is a reference to this Agreement or such other document or agreement as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
- 1.8 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time, and shall include all subordinate legislation made from time to time under that legislation.
- 1.9 A reference to writing or written includes email and excludes fax.
- 1.10 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.
- 1.11 The terms of this Agreement apply 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.
- 1.12 Headings are for convenience only and shall not affect the interpretation of this Agreement.
- 1.13 This Agreement shall be binding upon, and continue to the benefit of, the parties and their respective personal representatives, successors and permitted assignees, and references to any party shall include that party's personal representatives, successors and permitted assignees.
- 1.14 This Agreement is drafted in the English language. Any notice given under or in connection with this Agreement shall be in English. All other documents provided under or in connection with this Agreement shall be in English, or accompanied by a certified English translation. The English language version of this Agreement and any notice or other document relating to this Agreement shall prevail over any translation and any version in any other language.

2. **Order Form process**

- 2.1 The Customer may procure Services (including any relevant Additional Services) under this Agreement by agreeing an Order Form with Totara Learning.
- 2.2 Once an Order Form has been agreed by the parties, both parties shall sign the draft Order Form and it shall take effect from the given date in the relevant Order Form, and such Services shall be provided for the duration of the relevant Order Form unless otherwise stated in such Order Form.
- 2.3 Each Order Form shall be part of this Agreement and shall not form a separate contract to it.
- 2.4 For changes to current arrangements where the Services are being provided under an existing Order Form, the parties shall either agree a new Order Form (which states that it supersedes and terminates the relevant existing Order Form) or make a Change in accordance with clause 17 unless otherwise agreed between the parties on a case by case basis.
- 2.5 In relation to the provision of Platform Services, unless the Order Form specifies otherwise and subject to clause 15.3, on expiry of the Platform Service Period indicated in the Order Form for the Platform Services, the Platform Service Period shall continue and automatically renew for a further period of twelve months ('**First Renewal Date**') and thereafter shall renew for a further period of twelve months on each anniversary of the First Renewal Date (each of the First Renewal Date and each such anniversary being a '**Renewal Date**'). This clause 2.5 shall not apply in respect of any Trial Services, which shall not renew unless otherwise expressly stated in the Order Form or otherwise agreed in writing by Totara Learning.
- 2.6 If either party wishes for the Platform Service Period to end on the next Renewal Date, it may provide written notice to the other party at least 60 days prior to the relevant Renewal Date. If notice is not served within the timeframes set out in this clause, the Platform Services shall renew at the next Renewal Date in accordance with clause 2.5.

3. **Platform Services¹**

- 3.1 From the commencement of the relevant Platform Service Period and subject to the terms of this Agreement, Totara Learning grants the Customer a royalty-free, non-exclusive, non-transferable, personal right to:
 - (a) use the Platform Services (and permit its Authorised Users to use the Platform Services) for the number of User Subscriptions during the Platform Service Period for the Permitted Purpose; and
 - (b) copy and use the Documentation during the Platform Service Period as strictly necessary for the use by Authorised Users of the Platform Services under clause 3.1(a).
- 3.2 Totara Learning shall use commercially reasonable efforts to perform any configuration services reasonably required by the Customer to enable their access of the Platform Services in connection to the Permitted Purpose. Such configuration services shall be agreed with the Customer in writing but will be limited to initial site configuration services. In the event that there is a breach of this clause 3.2 the Customer's sole and exclusive remedy shall be Totara Learning using its reasonable endeavours to repeat the impact element(s) of the configuration services within a reasonable time and subject to clause 13.5, Totara Learning shall have no other liability to the Customer in respect of this clause 3.2.

¹ SEE COMMENT AT TOP OF PAGE – PLEASE ADD ANY COMMENTS TO THAT RELATED TO THESE QUESTIONS TO ALLOW US TO TRACK RESPONSES AND AGREED POSITIONS. Questions for Totara relating to the Platform Services: (a) will the Production Instance mechanism be retained under the updated business model? We have prepared this section on the basis that each Customer purchases a number of subscriptions which is not Production Instance specific (i.e. can be used across their network) which is more industry standard. (b) will the Customer need to notify you of / register any Production Instances?

- 3.3 The Customer acknowledges that access to the Platform Services may take up to 7 Business Days from the commencement of the Platform Service Period to initially set up and that use of the Platform Services is at all times subject to the Customer's compliance with this Agreement and the minimum system requirements identified in the Documentation.
- 3.4 In relation to the Authorised Users' use of the Platform Services, the Customer undertakes that:
- (a) the maximum number of Active Users to access and use the Platform Services and the Documentation shall not exceed 105% of the User Cap, and the Customer acknowledges that if the maximum number of Active Users exceeds 105% of the User Cap then it is liable to pay such additional fees to Totara Learning in accordance with clause 4;
 - (b) it will not allow any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Platform Services;
 - (c) it shall permit Totara Learning (or its designated auditor) to audit the Platform Services, or use Totara Learning's requested software reporting, to verify that the Customer's use of the Platform Services does not exceed 105% of the User Cap;
 - (d) if any of the audits referred to in clause 3.4(c) reveal that the Customer has underpaid Totara Learning for its use of the Platform Services, then without prejudice to Totara Learning's other rights, the Customer shall pay to Totara Learning, in accordance with clause 7, an amount equal to such underpayment as calculated in accordance with the prices set out in the Order Form; and
 - (e) the Customer's Authorised Users may only access the Platform Services via the methods specified in the Documentation and in accordance with any applicable law.
- 3.5 The Customer acknowledges that the Platform Services do not include:
- (a) any services, systems or equipment required to access the internet (and that the Customer is solely responsible for procuring access to the internet and for all costs and expenses in connection with internet access, communications, data transmission and wireless or mobile charges incurred by it in connection with use of the Platform Services); or
 - (b) any legal, accounting or other professional or regulated services and that, except as expressly stated in this Agreement, no assurance is given that the Platform Services will comply with or satisfy any legal or regulatory obligations of the Customer and/or any third party.
- 3.6 Totara Learning may from time-to-time provide new versions or updates to the Platform Services, provided that such updates do not materially diminish the functionality of the Platform Services, at no additional cost to the Customer (excluding any relevant Additional Services which shall incur additional fees) in order to:
- (a) fix bugs or update security or any identified Vulnerability;
 - (b) improve general performance;
 - (c) enhance the features and functionality of the Platform Services;
 - (d) introduce new features and functionality;
 - (e) support new devices and operating systems; or
 - (f) comply with any applicable laws.

- 3.7 Totara Learning shall use its reasonable endeavours to notify the Customer in advance of scheduled maintenance of the Platform Services, but the Customer acknowledges that it may receive no advance notification for downtime caused by a Force Majeure Event or for other emergency maintenance.
- 3.8 Totara Learning may at its absolute discretion make, and notify the Customer of, updated versions of the Documentation from time to time provided that such updates do not materially diminish the functionality of the Platform Services (the '**Update**'), by notifying the Customer of such Update by email (together with a copy of the Update or a link to a copy of the Update), via the Platform Services or by any other reasonable means which Totara Learning elects ('**Update Notification**'). Where reasonably possible, Totara Learning shall provide the Update Notification with reasonable notice of at least 5 Business Days prior to the effective date of the Update.
- 3.9 The Customer acknowledges that Totara Learning may, notwithstanding the generality of clause 3.6, establish new limits on the use of the Platform Services (or any part), including limiting the volume of data which may be used, stored or transmitted in connection with the Platform Services, remove or restrict application programming interfaces or make alterations to data retention periods, provided such changes are introduced by an Update.
- 3.10 Totara Learning may (i) collect anonymized, de-identified information relating to use of the Platform Services (including usage data) in order to improve Totara Learning's products and services and for other reasonable internal uses and (ii) aggregate such anonymized, de-identified information with anonymous, de-identified information of its other clients for purposes of creating and distributing case studies or industry reports as part of its products and services, provided that, in each case: (x) the information does not, and could not reasonably be used to, relate back to or identify the Customer; and (y) Totara Learning does not sell, resell or make other commercial use of such information (other than on an aggregated basis under the foregoing clause 3.10(ii)).
- 3.11 The Customer agrees that Totara Learning may use analytics software or tools (together the '**Analytics Tools**'), in the provision of the Services to monitor and improve its technology and services. The Customer shall not be permitted to remove or disable any such Analytics Tools from the Services, unless required by applicable law.
- 3.12 The Customer shall provide Totara Learning with all assistance and/or information as Totara Learning may reasonably require (including, if reasonably required, access to any relevant Customer Systems or premises) in order for Totara Learning to perform its obligations under this Agreement. The Customer acknowledges that Totara Learning's ability to provide the Services may be adversely affected, interrupted and/or delayed if the Customer does not provide such information, assistance or access. Totara Learning shall not be liable for any failure to achieve or perform any obligations under this Agreement to the extent that the same arises directly or indirectly as a result of any acts or omissions of the Customer.
- 3.13 If the Customer is the U.S. government or a U.S. government agency, the Customer acknowledges that the Platform Services and the Documentation are commercial computer software and commercial computer software documentation, as applicable, and if the Customer is the U.S. government or an agency, this Agreement is the standard commercial license under which the foregoing are licensed, in accordance with Federal Acquisition Regulations (FARs) 12.211 and 12.212 or Defense FARs (DFARs) 227.7102-4 and 227.7202-4, as applicable. The rights of the U.S. government or agency to use, modify, reproduce, release, perform, display, or disclose any of the foregoing shall be solely as provided in this Agreement. If the U.S. government or an agency wishes to have different or additional rights, it must negotiate a mutually acceptable written addendum to this Agreement specifically granting those rights.
- 3.14 Totara Learning will as part of the Platform Services provide the Customer with the Totara Learning standard customer support and hosting services in accordance with the SLA during the Platform Service Period. Totara Learning may amend the SLA in its sole and absolute discretion from time

to time, provided that the level of customer support provided to the Customer shall not materially diminish.

4. Changes to Plan and Plan exceeding current usage

4.1 On or around 60 days following the commencement of the Platform Service Period, and 30 days prior to the First Renewal Date in relation to the applicable Platform Service Period, the parties shall use all reasonable endeavours to review the usage of the Platform Services and whether the tier of the Plan, and the level of Fees are appropriate. In respect of each review, if the tier of the Plan (and the corresponding level of Fees) are insufficient for the Customer's usage of the Platform Services the parties may decide as an outcome to change the Plan and accordingly the level of Fees for that Plan for the remainder of the current Platform Service Period and/or for each subsequent Platform Service Period as the case may be.

4.2 Notwithstanding clause 4.1, if at any point a Plan exceeds:

(a) 105% of any User Cap during any Platform Service Period then: (i) the relevant Plan shall, with reference to the User Tiers, be automatically upgraded to the lowest-tier Plan that has a User Cap that is equal to or exceeds the current use under the Plan; and (ii) increase the Fees payable by the Customer under this Agreement in accordance with the relevant level of Fees payable under the corresponding higher tier of the Plan and Totara Learning shall issue a new invoice for such additional Fees; and/or

(b) any current Hosting Cap during any Platform Service Period then either:

(i) the relevant Plan shall, with reference to the Hosting Tiers, be automatically upgraded to the lowest-tier Plan that has a Hosting Cap that is equal to or exceeds the current use under the Plan and increase the Fees payable by the Customer under this Agreement in accordance with the relevant level of Fees payable under the corresponding higher tier of the Plan; or

(ii) a "temporary burst" will be applied to permit the excess of the Hosting Cap from the date that the excess of the Hosting Cap first occurred for the remainder of the current calendar month and subsequent 3 calendar months at the level of Fees of the lowest-tier Plan that has a Hosting Cap that is equal to or exceeds the current use under the Plan, without changing the Hosting Cap or Plan. The Customer acknowledges that if its usage of the Platform Services continues to be in excess of the current Hosting Cap upon the expiry of the "temporary burst" then clause 4.2(b)(i) shall be applied to the Customer's usage of the Platform Services; and

(iii) Totara Learning shall issue a new invoice for such additional Fees.

4.3 Provided Totara Learning has promptly notified the Customer, Totara Learning shall be entitled to use proportionate throttling of the Platform Services or suspend the Platform Services where either:

(a) the Customer has failed to pay any Fees invoiced under clause 4.2 after 30 days from the date of the relevant invoice; or

(b) the Customer has exceeded the Plan under clause 4.24.2(a) - 4.2(b) to a level that materially threatens service stability or security of the Totara Learning networks or systems.

Any such throttling or suspension measures shall continue until the reasons for the throttling or suspension have, at Totara Learning's sole discretion acting reasonably, been resolved, upon which time full access to the Platform Services shall be restored.

- 4.4 Totara Learning shall invoice any additional Fees under this clause monthly in arrears in accordance with clause 7.
- 4.5 The Customer acknowledges that Totara Learning is required to ensure that all its partners and customers are able to use its services in an appropriate manner in order to meet their needs. Excessive use of the Platform Services during peak times may impair the services provided to other partners and customers and, notwithstanding anything else in this Agreement, if Totara Learning reasonably believes such impairment is or is likely to occur, it reserves the right, without any liability to the Customer, to temporarily employ any service management procedures to limit the Customer's impact on service delivery to other partners and customers, by restricting the Customer's ability to use the Platform Services. Where Totara Learning imposes any such restrictions, it shall promptly notify the Customer and advise it on the level and duration of such service restrictions. In addition, Totara Learning reserves the right to charge additional fees to the Customer if it considers that the Customer's use of the Platform Services at any time to be unreasonably excessive.
5. **Additional Services**
- 5.1 Where applicable, Totara Learning shall from the date agreed in the Order Form provide any relevant Additional Services in accordance with the provisions of this Agreement, all applicable laws and any material descriptions, standards and specifications set out in the Order Form.
- 5.2 Totara Learning shall use reasonable endeavours to meet any timeframes or performance dates specified in the Order Form in relation to any Additional Services, but any such dates shall be estimates only and time for such performance by Totara Learning shall not be of the essence of this Agreement.
- 5.3 In providing any Additional Services, Totara Learning shall:
- (a) use reasonable care and skill in accordance with the generally recognised industry standards and practices;
 - (b) co-operate with the Customer in all matters relating to the Additional Services;
 - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that Totara Learning's obligations are fulfilled in accordance with this Agreement; and
 - (d) provide at its expense all equipment and tools as are required to provide the Additional Services.
- 5.4 The Customer acknowledges that Additional Services will incur additional charges and may be subject to any additional terms as set out in the relevant Order Form.
6. **Authorised Users**
- 6.1 The Customer shall (and shall ensure all Authorised Users shall) at all times comply with the Acceptable Use Policy, all other provisions of this Agreement, and all applicable laws relating to the use or receipt of the Services.
- 6.2 The Customer shall ensure that only Authorised Users use the Platform Services, and that such use is at all times in accordance with this Agreement. The Customer shall ensure that Authorised Users are, at all times while they have access to the Platform Services, the employees, directors, officers or contractors of the Customer (unless otherwise expressly agreed in writing with Totara Learning in an Order Form), and that no Authorised User accounts are shared or used by more than one individual at the same time.

- 6.3 The Customer shall be liable for the acts and omissions of the Authorised Users as if they were its own, and shall not provide access to the Platform Services (or permit access by) anyone other than an Authorised User.
- 6.4 The Customer shall procure that each Authorised User is aware of, and complies with, the obligations and restrictions imposed on the Customer under this Agreement, including all obligations and restrictions relating to Totara Learning's Confidential Information.
- 6.5 The Customer warrants and represents that it, and all Authorised Users and all others acting on its or their behalf (including systems administrators) shall, keep confidential and not share with any third party their password or access details for the Platform Services. If any password has been provided to an individual that is not an Authorised User, the Customer shall, without delay, disable any such passwords and notify Totara Learning immediately.
- 6.6 The Customer shall comply (and shall ensure all Authorised Users comply) with all applicable laws relating to the use or receipt of the Services, including laws relating to privacy, data protection and use of systems and communications, and any regulations governing export that apply to the Services, the Customer Data and the Documentation (or any part). The Customer shall not (and shall ensure all Authorised Users shall not) export or re-export, directly or indirectly, separately or as a part of a system, the Services, the Customer Data or the Documentation (or any part) to, or access or use the Services, the Customer Data or the Documentation (or any part) in, any country or territory for which an export licence or other approval is required under any applicable laws, without first obtaining such licence or other approval. Without prejudice to Totara Learning's obligations under clause 12, the Customer shall be solely responsible for ensuring its access, importation and use of the Services, the Customer Data and Documentation complies with all export and other laws.

7. Payment and Fees

- 7.1 The Customer shall pay the Fees set out in each Order Form, in accordance with this clause 7.
- 7.2 Unless otherwise stated in the Order Form, the Customer shall pay the Fees on the date of the Order Form (and each anniversary thereafter in respect of any annually recurring Fees), in Pounds Sterling (GBP), to the bank account nominated in writing by Totara Learning.
- 7.3 Unless stated to the contrary in the relevant Order Form, all Fees are non-cancellable, non-refundable and exclusive of any Taxes or other charges imposed by law from time to time, and the Customer shall in addition pay any Taxes and other charges at the rate and in the manner prescribed by law from time to time.
- 7.4 Where Fees are due in advance of the commencement of the relevant Services, the Customer shall make full payment of such sums in advance of the commencement of the relevant Services. Totara Learning may terminate an Order Form with immediate effect prior to the commencement of such Services in the event of non-payment by the Customer of any such Fees due in advance.
- 7.5 Totara Learning shall be entitled to increase the Fees in respect of an Order Form at any time after the first anniversary of the date of the relevant Order Form by giving written notice to the Customer, provided that Totara Learning shall not be entitled to increase the Fees on less than 90 days' prior notice or more than once every 12 months. Any increase to the Fees shall not exceed the greater of 5% or the percentage increase in the UK Consumer Prices Index (or such replacement index as may be used in the UK from time to time) in the preceding 12 month period.
- 7.6 If Totara Learning has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Totara Learning, Totara Learning may on not less than 7 days' notice to the Customer and without any liability to the Customer, disable the Customer's password,

account and access to all or part of the Services and Totara Learning shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid.

7.7 Where any Fees under an Order Form are calculated on a time and materials basis:

- (a) Totara Learning's fee rates are as set out in the relevant Order Form;
- (b) daily fee rates are calculated on the basis of an 7.5 hour day, worked during Business Hours. Totara Learning will charge on a pro rata basis for part days worked by its personnel during Business Hours;
- (c) Totara Learning may charge for work outside Business Hours at the overtime rate of 150%, provided the Customer has provided its prior written consent;
- (d) Totara Learning will ensure that all its personnel complete time sheets to record time spent on the relevant Services, and Totara Learning will indicate the time spent per individual in its invoices;
- (e) the Customer shall additionally reimburse Totara Learning for any reasonable travel or subsistence expenses and/or third party costs, incurred in relation to any Services being provided on a time and materials basis; and
- (f) unless otherwise agreed between the parties, Totara Learning shall invoice the Customer for any such Fees for Services being provided on a time and materials basis monthly in arrears.

8. **Warranties**

- 8.1 Subject to the remainder of this clause 8, Totara Learning warrants that the Platform Services shall operate in all material respects in accordance with the Documentation when used in accordance with this Agreement under normal use and normal circumstances during the relevant Platform Service Period.
- 8.2 The Customer acknowledges that clause 8.1 does not apply to Trial Services provided by Totara Learning. Without prejudice to Totara Learning's obligations under this Agreement in respect of any personal data, all Trial Services are provided "as is" and without warranty to the maximum extent permitted by law.
- 8.3 The Platform Services may be subject to delays, interruptions, errors or other problems resulting from use of the internet or public electronic communications networks used by the parties or third parties. The Customer acknowledges that such risks are inherent in cloud services and that Totara Learning shall have no liability for any such delays, interruptions, errors or other problems.
- 8.4 The Customer acknowledges that any decisions taken by the Customer based on the use of the Services are the Customer's sole responsibility and that Totara Learning cannot guarantee the accuracy of, and shall not be liable for any claims or losses of any nature in connection with, any information or results provided as part of the Services.
- 8.5 If there is a breach of any warranty in clause 8.1 Totara Learning shall at its sole option: use reasonable endeavours to repair or replace the impacted Platform Services within a reasonable time or (whether or not it has first attempted to repair or replace the impacted Platform Service) refund the Fees for the impacted Platform Services which were otherwise payable for the period during which Totara Learning was in breach of any such warranty (provided such period is at least 28 consecutive days). To the maximum extent permitted by law, this clause 8.5 sets out the Customer's sole and exclusive remedy (however arising, whether in contract, negligence or otherwise) for any breach of any of the warranties in clause 8.1.

- 8.6 The warranties in clause 8.1 are subject to the limitations set out in clause 13 and shall not apply to the extent that any error in the Platform Services arises as a result of:
- (a) incorrect operation or use of the Platform Services by the Customer, any Authorised User (including any failure to follow the Documentation or failure to meet minimum specifications);
 - (b) use of any of the Platform Services other than for the purposes for which it is intended;
 - (c) use of any Platform Services with other software or services or on equipment with which it is incompatible;
 - (d) any act by any third party (including hacking or the introduction of any virus or malicious code);
 - (e) any modification of Platform Services (other than that undertaken by Totara Learning or at its direction); or
 - (f) any breach of this Agreement by the Customer (or by any Authorised User).
- 8.7 The Customer acknowledges that no liability or obligation is accepted by Totara Learning (howsoever arising whether under contract, tort, in negligence or otherwise):
- (a) that the Platform Services shall meet the Customer's individual needs, whether or not such needs have been communicated to Totara Learning;
 - (b) that the operation of the Platform Services shall not be subject to minor errors or defects; or
 - (c) that the Platform Services shall be compatible with any other software or service or with any hardware or equipment except to the extent expressly referred to as compatible in the Documentation.
- 8.8 Other than as set out in this clause 8, and subject to clause 13.5, all warranties, conditions, terms, undertakings or obligations whether express or implied by statute, common law or otherwise and including any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result are excluded to the extent permitted by law.

9. **Intellectual property rights**

- 9.1 Subject to clauses 9.3, and 9.4, all Intellectual Property Rights in and to the Services (including in the Platform Services, Documentation and Additional Services) belong to and shall remain vested in Totara Learning or the relevant third party owner. To the extent that the Customer or any person acting on its or their behalf acquires any Intellectual Property Rights in the Platform Services, Documentation, Additional Services or any other part of the Services, the Customer shall assign or procure the assignment of such Intellectual Property Rights with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to Totara Learning or such third party as Totara Learning may elect. The Customer shall execute all such documents and do such things as Totara Learning may consider necessary to give effect to this clause 9.1.
- 9.2 The Customer acknowledges and agrees that certain aspects of the Platform Services provided under this Agreement are based on or powered by Open Source Software, either developed by Totara Learning (and which is not based on derived from Open Source Software licensed to Totara Learning) or derived from, or incorporated into and/or distributed with other Open Source Software licensed to Totara Learning.
- 9.3 Customer Data shall at all times remain the property of the Customer or its licensors. The Customer and Authorised Users may be able to store or transmit Customer Data using the Platform Services, and the Platform Services may interact with Customer Systems. The Customer hereby grants a royalty-free, non-transferable, non-exclusive licence for Totara Learning (and each of its direct and

indirect sub-contractors) to use, copy and otherwise utilise the Customer Data and Customer Systems to the extent necessary to perform or provide the Services and/or to exercise or perform Totara Learning's rights, remedies and obligations under this Agreement.

9.4 In relation to any Reports²:

- (a) any Intellectual Property Rights in or relating to any and all Reports will be solely and exclusively owned by the Customer;
- (b) Totara Learning assigns to the Customer, by way of present assignment of future rights, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the Reports (excluding any Intellectual Property Rights in any Totara Learning Background IP contained or embedded in such Reports) ('**Assigned Rights**');
- (c) Totara Learning shall obtain waivers of all moral rights in the Assigned Rights to which any individual is now or may be at any future time entitled under any applicable law;
- (d) Totara Learning shall, promptly upon the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time reasonably require for the purpose of securing for the Customer all rights, title and interest in and to the Assigned Rights;
- (e) Totara Learning grants the Customer a royalty-free, perpetual, transferable, sublicensable licence to use any Totara Learning Background IP contained or embedded in any Reports to the extent necessary for the Customer to use such Reports; and
- (f) Customer grants to Totara Learning a fully paid-up, non-exclusive, royalty-free, non-transferrable licence during the term of this Agreement to use and copy the Assigned Rights for the purposes of the performance of its obligations under this Agreement and the improvement of its services, operations and systems.

9.5 Totara Learning may use any feedback and suggestions for improvement relating to the Services and/or any Totara Learning software provided by the Customer or any Authorised User without charge or limitation ('**Feedback**'). The Customer hereby assigns (or shall procure the assignment of) all Intellectual Property Rights in the Feedback with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to Totara Learning at the time such Feedback is first provided to Totara Learning.

9.6 Except for the rights expressly granted in this Agreement, the Customer and/or any Authorised User shall not acquire in any way any title, rights of ownership, or Intellectual Property Rights of whatever nature in the Services (or any part including the Platform Services or Documentation) and no Intellectual Property Rights of either party are transferred or licensed as a result of this Agreement.

9.7 The Customer warrants that the receipt, use and onwards supply of the Customer Data by Totara Learning shall not infringe the rights, including the Intellectual Property Rights, of any third party.

9.8 The Customer shall indemnify Totara Learning from and against any losses, claims, damages, liability, costs (including legal and other professional fees) and expenses incurred by Totara Learning as a result of or in connection with any action, demand or claim that the transmission, receipt, copying, installation, use, possession or other utilisation of the Customer Data in accordance with this Agreement infringes the Intellectual Property Rights or any other rights of any third party.

² Note to Totara – we have included this mechanism in case the platform provides Customers with reports that they wish to own (e.g. reports on use of platform tailored to that Customer). If this is not relevant then this section can be removed.

- 9.9 Subject to clauses 9.10 and 9.13, Totara Learning shall defend at its own expense any claim brought against the Customer by any third party alleging that the Customer's use of the Platform Services infringes any copyright, database right or registered trade mark, registered design right or registered patent in the United Kingdom or European Union (an '**IP Claim**').
- 9.10 The provisions of clause 9.9 shall not apply unless the Customer:
- (a) promptly (and in any event within 14 days) notifies Totara Learning upon becoming aware of any actual or threatened IP Claim and provides full written particulars;
 - (b) makes no comment or admission and takes no action that may adversely affect Totara Learning's ability to defend or settle the IP Claim;
 - (c) provides all assistance reasonably required by Totara Learning subject to Totara Learning paying the Customer's reasonable costs; and
 - (d) gives Totara Learning sole authority to defend or settle the IP Claim as Totara Learning considers appropriate.
- 9.11 The provisions of clause 13 shall apply to any payment of costs and damages awarded or agreed in settlement or final judgment of an IP Claim under clause 9.9.
- 9.12 In the event of any IP Claim, Totara Learning may elect to terminate this Agreement immediately by written notice and promptly refund to the Customer on a pro-rata basis for any unused proportion of Fees paid in advance. This clause is without prejudice to the Customer's rights and remedies under clause 9.9.
- 9.13 Totara Learning shall have no liability or obligation under this clause 9.9 in respect of (and shall not be obliged to defend) any IP Claim which arises in whole or in part from:
- (a) any modification of the Platform Services (or any part) without Totara Learning's express written approval;
 - (b) any Customer Data;
 - (c) any Trial Services;
 - (d) any breach of this Agreement by the Customer;
 - (e) use of the Platform Services (or any part) otherwise than in accordance with this Agreement; or
 - (f) installation or use of the Platform Services (or any part) (as applicable) in combination with any software, hardware or data that has not been supplied or expressly authorised by Totara Learning.
- 9.14 Subject to clause 13.5, the provisions of clauses 9.9 – 9.13 set out the Customer's sole and exclusive remedy (howsoever arising, including in contract, tort, negligence or otherwise) for any IP Claim.

10. **Customer Systems and Customer Data**

- 10.1 Except to the extent Totara Learning has direct obligations under data protection laws, the Customer acknowledges that Totara Learning has no control over any Customer Data hosted as part of the provision of the Platform Services and unless otherwise authorised under this Agreement, it may not actively monitor or have access to the content of the Customer Data. The Customer shall ensure (and is exclusively responsible for) the accuracy, quality, integrity and legality of the Customer Data

and that its use (including use in connection with the Platform Services) complies with all applicable laws and Intellectual Property Rights.

- 10.2 If Totara Learning becomes aware of any allegation that any Customer Data may not comply with the Acceptable Use Policy or any other part of this Agreement, Totara Learning shall have the right to permanently delete or otherwise remove or suspend access to any Customer Data which is suspected of being in breach of any of the foregoing from the Platform Services and/or disclose Customer Data to law enforcement authorities (in each case without the need to consult the Customer). Where reasonably practicable and lawful Totara Learning shall notify the Customer before taking such action.
- 10.3 Except as otherwise expressly agreed in this Agreement, Totara Learning shall not be obliged to provide the Customer with any assistance extracting, transferring or recovering any Customer Data. The Customer acknowledges and agrees that it is responsible for maintaining safe backups and copies of any Customer Data, including as necessary to ensure the continuation of the Customer's business in accordance with its and its Authorised User's needs, and that it extracts any such Customer Data as it requires from the Services prior to the termination or expiry of this Agreement or the cessation or suspension of any of the Services.
- 10.4 Totara Learning may perform backups of the Platform Services (which may include Customer Data) for its own business continuity purposes. The Customer acknowledges that such steps do not in any way make Totara Learning responsible for ensuring the Customer Data does not become inaccessible, damaged or corrupted. To the maximum extent permitted by applicable law, Totara Learning shall not be responsible for any loss of availability of, or corruption or damage to, any Customer Data.
- 10.5 Unless otherwise set out in the Order Form, the Customer hereby instructs that Totara Learning shall within 60 days of the end of the provision of the Services (or any part) relating to the processing of the Customer Data securely dispose of such Customer Data processed in relation to the Platform Services (or any part) which have ended (and all existing copies of it) except to the extent that any applicable laws requires Totara Learning to store such Customer Data. Totara Learning shall have no liability (howsoever arising, including in negligence) for any deletion or destruction of any such Customer Data undertaken in accordance with this Agreement.

11. Confidentiality

- 11.1 Each party agrees that it may use the other party's Confidential Information only in the exercise of its rights and performance of its obligations under this Agreement and that it shall not disclose the other party's Confidential Information including all know-how, trade secrets, financial, commercial, technical, tactical or strategic information of any kind except in accordance with this clause 11.
- 11.2 Each party may disclose the other party's Confidential Information to those of its employees, officers, advisers, agents or representatives who need to know the other party's Confidential Information in order to exercise the disclosing party's rights or perform its obligations under this Agreement provided that the disclosing party shall ensure that each of its employees, officers, advisers, agents or representatives to whom Confidential Information is disclosed is aware of its confidential nature and complies with this clause 11 as if it were a party.
- 11.3 Each party may disclose any Confidential Information required by law, any court, any governmental, regulatory or supervisory authority (including any regulated investment exchange) or any other authority of competent jurisdiction.
- 11.4 The Customer shall not process any Totara Learning Confidential Information and/or the Documentation (or any part) in any way using any machine learning or artificial intelligence models ('AI') and shall not input any Totara Learning Confidential Information and/or the Documentation (or

any part) in any public AI models and/or AI models proprietary to, or otherwise licensed to, the Customer.

- 11.5 Notwithstanding the foregoing, Totara Learning may promote the arrangements under this Agreement and/or the Customer as one of its customers in its marketing communications and shall be entitled to use the Customer's name and/or logo in connection to such promotions.

12. **Data protection**

- 12.1 For the purposes of this clause 12, the terms 'controller', 'processor', 'data subject', 'personal data', 'personal data breach' and 'processing' shall have the meaning given to them in the Applicable Data Protection Laws.
- 12.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 12.3 In relation to their respective data privacy obligations under and in connection to this Agreement, the parties will comply with the Data Protection Addendum as set out at Schedule 3.

13. **Limitation of liability**

- 13.1 The extent of a party's liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation or under any indemnity) shall be as set out in this clause 13 and subject to each party's reasonable endeavours to mitigate any loss suffered under or in connection with this Agreement.
- 13.2 Subject to clauses 13.3 – 13.5, Totara Learning's aggregate liability to the Customer under this Agreement (including all Order Forms) shall not exceed a sum equal to the Fees paid and/or payable by the Customer to Totara Learning under this Agreement during the 12 months prior to date on which the breach first occurred that gave rise to the claim or series of connected claims.
- 13.3 Subject to clause 13.5, Totara Learning's aggregate liability to the Customer under this Agreement in respect of each Trial Service, howsoever arising under or in connection with this Agreement, shall not exceed **£500**.
- 13.4 Subject to clause 13.5, Totara Learning shall not be liable for any consequential, indirect or special losses, any loss of profit or revenue; destruction, loss of use or corruption of data; loss or corruption of software or systems; loss or damage to equipment; loss of opportunity; and/or harm to reputation or loss of goodwill.
- 13.5 Notwithstanding any other provision of this Agreement, each party's liability shall not be limited in any way in respect of the following:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) any indemnity given under this Agreement; or
 - (d) any other losses which cannot be excluded or limited by applicable law.
- 13.6 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

14. **Suspension**

- 14.1 Totara Learning may suspend access to the Platform Services (or any part) to all or some of the Authorised Users if Totara Learning reasonably suspects that there has been any misuse of the Platform Services or material breach of this Agreement, or if otherwise required by any applicable law.
- 14.2 Where the reason for the suspension is suspected misuse of the Platform Services or material breach of this Agreement, without prejudice to its rights contained elsewhere under this Agreement, Totara Learning will take steps to investigate the issue and may restore or continue to suspend access at its sole discretion.
- 14.3 Fees shall remain payable during any period of suspension of access to the Platform Services or under this Agreement notwithstanding that the Customer, or some or all of the Authorised Users may not have full access to the Platform Services.

15. **Term and termination**

- 15.1 This Agreement commences on the Commencement Date. Unless terminated earlier in accordance with the remainder of this clause 15 this Agreement continues for [PERIOD] ('Initial Term') and automatically extends for [PERIOD] ('Extended Term') at the end of the Initial Term and at the end of each Extended Term. Either party may give written notice to the other party, not later than 60 days before the end of the Initial Term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or the relevant Extended Term, as the case may be.
- 15.2 The parties shall not renew any Services pursuant to an existing Order Form or enter into any further Order Forms after the date on which notice to terminate is served under clause 15.1.
- 15.3 Either party may terminate this Agreement immediately at any time by giving notice in writing to the other party if:
- (a) the other party commits a material breach of this Agreement and such breach is not remediable;
 - (b) the other party commits a material breach of this Agreement which is not remedied within 30 days of receiving written notice of such breach;
 - (c) the other party has failed to pay any amount due under this Agreement on the due date and such amount remains unpaid within 30 days after the other party has received notification that the payment is overdue; or
 - (d) the other party suffers an Insolvency Event.
- 15.4 Totara Learning may terminate or suspend the provision of any Trial Services at any time by providing written notice to the Customer.
- 15.5 If Totara Learning has the right to terminate this Agreement under clause 15.3 due to a material breach by the Customer that only affects certain Order Forms, Totara Learning may at its sole discretion choose to only terminate those Order Forms so affected, in which case clause 15.3 shall be construed as only applying to those affected Order Forms, and this Agreement and any remaining Order Forms shall otherwise remain in force.
- 15.6 Immediately on termination or expiry of this Agreement (for any reason), the rights granted by Totara Learning under this Agreement shall terminate and:
- (a) all existing Order Forms shall terminate automatically;

- (b) the Customer shall (and shall procure that each Authorised User shall) stop using the Services and any other activities authorised under this Agreement;
 - (c) the Customer shall (and shall procure that each Authorised User shall) destroy and delete or, if requested by Totara Learning, return any copies of the Documentation in its possession or control (or in the possession or control of any person acting on behalf of any of them);
 - (d) the Customer shall immediately pay all sums outstanding to Totara Learning; and
 - (e) each party shall return to the other party and make no further use of any materials, software or other items whatsoever (or of any copies of them) belonging to the other party and/or provided by it pursuant to this Agreement.
- 15.7 Termination or expiry of this Agreement shall not affect any accrued rights and liabilities of either party at any time up to the date of termination or expiry and shall not affect any provision of this Agreement that is expressly or by implication intended to continue beyond termination.
- 15.8 Termination or expiry of this Agreement shall not affect those provisions which expressly or by necessary implication are intended to survive termination of this Agreement.
16. **Force majeure**
- 16.1 Provided it has complied with clause 16.2, if Totara Learning is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event, Totara Learning shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 16.2 Totara Learning shall: (a) as soon as reasonably practicable after the start of the Force Majeure Event but not later than seven (7) days from its start, notify the Customer in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
17. **Change Control**
- Any Change will be subject to the Change Control Procedure.
18. **Project Management**
- 18.1 Totara Learning shall have overall responsibility for the coordination and governance of the provision of the Services.
- 18.2 Totara Learning and the Customer shall each appoint a designated representative, who shall be the internal project manager in relation to the parties' obligations under this Agreement (each a '**Project Manager**'), and shall notify the other party of the appointed Project Manager's name and contact details. Each party shall comply with their project management requirements under this Agreement.
- 18.3 The Customer shall use reasonable endeavours to ensure that the Customer Project Manager shall attend meetings scheduled by Totara Learning Project Manager at reasonable notice from time to time, to advise on all matters relating to this Agreement. Such meetings shall be on-site, off-site or via video call, as appropriate.
- 18.4 The Totara Learning Project Manager may communicate with the Customer Project Manager from time to time regarding upgrades or new versions of the Platform Services or on other matters regarding the Customer's usage of the Platform Services.

- 18.5 Each party shall to the extent possible, give the other party reasonable written notice of any proposed holiday or leave of absence to be taken by their respective Project Manager.
- 18.6 Each party agrees that the Project Manager shall not be replaced during the term of this Agreement without notice to the other party, unless:
- (a) the appointed individual resigns from employment;
 - (b) the contract of employment of the appointed individual is terminated; or
 - (c) a written request to the other party is submitted by either party as the case may be, to replace the appointed individual because they are performing unsatisfactorily or for any other reason.
- 18.7 If the individual appointed as the Project Manager is replaced, the parties shall consult with each other regarding the identity of a suitable replacement.

19. **Dispute Resolution**

- 19.1 If a dispute arises out of or in connection with this Agreement or its performance, validity or enforceability (**Dispute**), then[, except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:
- (a) the Project Manager of either party shall give to the other Project Manager written notice of the Dispute, setting out its nature and full particulars (**'Dispute notice'**), together with relevant supporting documents. On service of the Dispute notice, the Project Managers shall attempt in good faith to resolve the Dispute;
 - (b) if the Project Managers are for any reason unable to resolve the Dispute within 30 days of service of the Dispute notice, the Dispute shall be referred to the Chief Executive Officer (or equivalent position) of each party who shall attempt in good faith to resolve it;
 - (c) if the parties are for any reason unable to resolve the Dispute under clause 19.1(b) within 30 days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute and will do so in accordance with the CEDR Model Mediation Procedure . Unless otherwise agreed between the parties within 7 days of service of the Dispute notice, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (**'ADR notice'**) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR;
 - (d) if there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, on which the parties cannot agree within 14 days from the date of the ADR notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them; and
 - (e) unless otherwise agreed between the parties, the mediation will start not later than 20 days after the date of the ADR notice.
- 19.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings.
- 19.3 If for any reason the Dispute is not resolved within 60 days of commencement of the mediation, the Dispute shall be referred to and finally resolved by the courts of England and Wales in accordance with clause 20.13 - 20.14.

20. **General**

- 20.1 **Notices.** Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be (a) delivered by hand or by pre-paid first-class post or

other next day delivery service at its registered office; or (b) sent by email to the address stated in the relevant Order Form. Any notice or communication shall be deemed to have been received: (i) if delivered by hand, at the time the notice is left at the proper address; (ii) if sent by pre-paid first-class post or other next day delivery services, at 9.00 am on the second day after posting; or (iii) if sent if sent by email, at the time of transmission. This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any other method of dispute resolution.

- 20.2 **Assignment.** The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of Totara Learning. Totara Learning may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Agreement.
- 20.3 **Subcontractors.** Totara Learning may at any time subcontract any of its obligations under this Agreement, provided that Totara Learning remains responsible for the acts and omissions of its subcontractors.
- 20.4 **Variation.** Unless otherwise expressly permitted under this Agreement, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 20.5 **Entire Agreement.** This Agreement (including its Schedules and any Order Forms entered into under this Agreement) constitutes the entire agreement between the parties. Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 20.6 **No partnership or agency.** The parties are independent and are not partners or principal and agent and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. Neither party shall have, nor shall represent that it has, any authority to make any commitments on the other party's behalf.
- 20.7 **Severance.** If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected. If any provision or part-provision of this agreement is deemed deleted under this clause the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 20.8 **Waiver.** A waiver of any right or remedy under this Agreement or by any applicable law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by any applicable law shall prevent or restrict the further exercise of that or any other right or remedy.
- 20.9 **Third party rights.** No term of this Agreement shall be enforceable by a third party (being any person other than the parties and their permitted successors and assignees).
- 20.10 **Costs.** Each party shall (save as expressly stated otherwise in this Agreement), pay its own costs relating to the negotiation, preparation, execution, performance and implementation by it of this Agreement.

- 20.11 **Further assurance.** Each party (at its own cost) shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.
- 20.12 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 20.13 **Governing law.** This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 20.14 **Jurisdiction.** The parties irrevocably agree that this Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall:
- (a) where the Customer is based in the UK, be subject to the exclusive jurisdiction of the courts of England and Wales; or
 - (b) where Customer is based outside of the UK, be referred to and finally resolved by arbitration under the LCIA Rules (the '**Rules**'), which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English.

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

EXECUTION PAGE

Signed by [NAME OF DIRECTOR]
for and on behalf of **TOTARA LEARNING**

.....

Director

Date:

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF CUSTOMER]

.....

Director

Date:

Schedule 1 – Template Order Form

Totara Learning Order Form	
Part 1 – Key Details	
Interpretation	This Order Form forms part of the Master Services Agreement dated [DATE] between Totara Learning and the Customer.
Order Form number	[Insert]
Date of Order Form	[Insert]
Customer	[Insert legal details of the Customer]
Totara Learning contact for notices	Name: [name] Email: [email]
Customer contact for notices	Name: [name] Email: [email]

Part 2 – Platform Services Details	
Platform Services	[Insert details of subscription services] [Insert details of any Trial Services where applicable]
Bespoke Customer requirements	[Insert details where applicable]
Platform Service Period	[Insert details on commencement date and term of subscription]

Part 3 – Fees Details	
User Tier	[Insert details]
Hosting Tier	[Insert details]
Fees for Platform Services	[Insert details] [Insert Plan]

Part 4 – Additional Services	
Additional Services	[Insert details where applicable]
Commencement date and term of provision of Additional Services	[Insert details where applicable]
Fees for Additional Services	[Insert details where applicable]
Additional Terms	[Insert details where applicable]

Part 5 – Data privacy particulars and other terms	
Data processing particulars	Permitted purpose: [The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.] Shared personal data: [Describe personal data to be shared] Types of personal data: [Describe types of personal data to be shared] Categories of data subject: [Customer staff, contractors]
Special Terms	[Insert if applicable]
Totara Learning	
Signature:	Signature:
Name:	Name:
Date:	Date:

Schedule 2 – Acceptable Use Policy

1. Introduction

- 1.1 This Acceptable Use Policy (as updated from time to time) governs how the relevant Customer (and its Authorised Users) may access and use the Platform Services (the '**Platform**').
- 1.2 Defined terms in this Acceptable Use Policy shall have the meaning given in the relevant Master Services Agreement between Totara Learning and the Customer (the '**Totara Agreement**') and the same rules of interpretation apply.
- 1.3 The Customer as applicable (the '**User**'), is only permitted to use the Platform in accordance with the Totara Agreement. Use of the Platform (or any part) in any other way, including in contravention of any restriction on use set out in this Acceptable Use Policy, is not permitted.

2. Restrictions on use

- 2.1 As a condition of use, User agrees not to use the Platform, nor permit them to be used:
- (a) for any purpose that is unlawful under any applicable law or prohibited by this Acceptable Use Policy or the Totara Agreement;
 - (b) to commit any act of fraud or money laundering or otherwise be used in any activities that are deceptive or harmful to others, or that would harm Totara Learning's operations or reputation;
 - (c) to create, store, access, transfer to any third party or otherwise distribute any code or device intended to interfere with, or having the effect of interfering adversely with, the operation of any hardware or software, including any virus, disabling code (including code intended to limit or prevent any use any software or system) or other malicious software (including bugs, worms, logic bombs, malware, trojan horses, ransomware and spyware), or any other material which is unlawful;
 - (d) for purposes of promoting unsolicited advertising or sending spam;
 - (e) to simulate communications from Totara Learning or another service or entity (i.e. phishing communications) in order to collect identity information, authentication credentials, or other information;
 - (f) in any manner that disrupts the operations, business, equipment, websites or systems of Totara Learning or any other person or entity (including any denial of service and similar attacks);
 - (g) in any manner that harms or may endanger minors or any other person, or may cause damage or loss to any tangible property or the environment;
 - (h) to represent or suggest that Totara Learning endorses any other business, product or service unless Totara Learning has separately agreed to do so in writing;
 - (i) to gain unauthorised access to the Platform;
 - (j) to gain unauthorised access to or use of any computers, data, systems, accounts or networks of any person;
 - (k) in any manner which may impair any other person's use of the Platform or any other services provided by Totara Learning;
 - (l) to perform any security testing of the Platform or of any infrastructure or facilities whatsoever used to provide the Platform, including network discovery, port/service identification,

vulnerability scanning, password cracking, remote access testing or penetration testing without prior approval by Totara Learning;

- (m) to attempt to circumvent any security controls or mechanisms;
- (n) to attempt to circumvent any password or authentication methods for any Authorised User or other person;
- (o) in an irresponsible manner including by overloading any part of the Platform;
- (p) in any manner inconsistent with any written instructions provided by Totara Learning from time to time; or
- (q) in any manner that violates, infringes upon, or misappropriates the intellectual property or proprietary rights of Totara Learning and/or any third party.

2.2 User shall not (directly or indirectly):

- (a) decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Platform (including without limitation any application), except to the limited extent applicable laws specifically prohibit such restriction; or
- (b) modify, translate, or otherwise create derivative works of any part of the Platform.

2.3 User shall abide by all applicable local, state, national and international laws and regulations.

3. **User data and communication standards**

3.1 Any User data hosted on the Platform must conform to appropriate and lawful standards of accuracy, decency and lawfulness, which shall be applied in Totara Learning's sole discretion.

3.2 User warrants that User data and its use thereof does not and will not:

- (a) violate this Acceptable Use Policy or any applicable law, regulation or rule;
- (b) infringe, violate, or misappropriate any third party rights, including any copyright, trade mark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right;
- (c) slander, defame, libel, or invade a right of privacy, publicity or other property rights of any other person; or
- (d) cause Totara Learning to violate any law, regulation, rule, or rights of third parties.

Schedule 3 – Data Protection Addendum

This Schedule is superseded by Crown Commercial Services general provisions for Data Protection.

Schedule 4 – Change Control Procedure

Part 1

1. Purpose

- 1.1 This Schedule sets out the procedure for dealing with Changes, including:
- (a) the rights of the parties to request a Change;
 - (b) the rights of the parties to approve or reject a proposed Change; and
 - (c) the form of any authorised Change.
- 1.2 A Change will not be effective until a relevant Change Control Note has been signed by the authorised representatives of both parties.
- 1.3 A Change Control Note will be in substantially the form set out in Part 2 of this Schedule.

2. Requesting a change

- 2.1 Either party may submit a written request for Change to the other party.
- 2.2 Totara Learning initiated request for Change:
- (a) where Totara Learning initiates a request for a Change, it will at the same time send to the Customer a draft Change Control Note signed by an authorised representative of Totara Learning;
 - (b) if the Customer reasonably considers that it requires further information in order to consider the proposed Change, it will notify Totara Learning within 5 Business Days of receipt of the request. Such notification must detail the further information required; and
 - (c) if paragraph 2.2(b) applies, Totara Learning will provide the required information and, if required, re-issue the draft completed Change Control Note signed by an authorised representative of Totara Learning within 5 Business Days of receiving such notification from the Customer.
- 2.3 Customer-initiated request for Change:
- (a) where the Customer initiates a request for Change, it will at the same time provide Totara Learning with as much detail as is necessary to enable Totara Learning to prepare a draft Change Control Note;
 - (b) if the Supplier reasonably considers that it requires further information in order to consider the proposed Change, it will notify the Customer within 5 Business Days of receipt of the request. Such notification must detail the further information required. The Customer will provide the further information within 5 Business Days of receipt of the notification from Totara Learning. Totara Learning may repeat this process until Totara Learning is satisfied that it has sufficient information to approve or reject the request for Change;
 - (c) Totara Learning will, within 20 Business Days of the date of receipt of the request for Change pursuant to paragraph 2.3(a), or the date of receipt of further information pursuant to paragraph 2.3(b), submit an estimate of the costs of assessing the request for Change and preparing and negotiating a draft Change Control Note. The Customer must reject or accept any estimate in writing within 5 Business Days of receipt. Any dispute in relation to the estimate of costs will be dealt with in accordance with the Dispute Resolution procedure under clause 19 of this Agreement.

- (d) promptly following the date of the Customer's acceptance of the estimate given pursuant to the request for Change pursuant to paragraph 2.3(a), or further information pursuant to paragraph 2.3(b), Totara Learning will send to the Customer a draft Change Control Note signed by an authorised representative of Totara Learning.

3. Customer approving or rejecting a change

3.1 Within 10 Business Days of receiving the Change Control Note, the Customer will evaluate the draft Change Control Note and must do one of the following:

- (a) approve the Change Control Note. On the Customer's signature, the Change Control Note will constitute a binding Change to this Agreement;
- (b) reject the Change Control Note and notify Totara Learning in writing of the rejection. The Customer will not reject any Change Control Note to the extent that the Change is necessary for Totara Learning to comply with applicable law. If the Customer does reject a Change, it must explain its reasons in writing to Totara Learning as soon as reasonably practicable; or
- (c) if the Customer believes the Change Control Note has errors or omissions, require Totara Learning to modify the document accordingly in which case Totara Learning will make such modifications and promptly re-submit the draft signed Change Control Note. The Customer will then approve or reject the proposed Change Control Note within 10 Business Days.

4. Costs of preparing Change requests

4.1 Unless otherwise agreed in writing between the parties, each party will bear its own costs in relation to compliance with this Change Control Procedure.

Part 2 Change Control Note template

Totara Services MSA Change Control Note	
Change Control Note number:	
Agreement details	
Effective Date of Change	
Change requested by	Change requested by [Totara Learning OR Customer].
Period of validity	This Change Control note is valid for acceptance until [DATE].
Reason for Change	
Detailed description and impact of Change (including to delivery and performance)	
Required amendments to wording of agreements or schedules	
Adjustment to fees resulting from Change	
Additional one-off charges and means of determine these (for example, fixed price basis)	
Supporting or additional information	
Totara Learning	Customer
Signature:	Signature:
Name:	Name:
Date:	Date:

Schedule 5: Totara Learning Service Level Agreement ('SLA')

1. Definitions and interpretation

1.1 This SLA is incorporated into Totara Learning's Master Services Agreement between Totara Learning and each Customer (each the '**MSA Agreement**'). It outlines for the Platform Services, the Support and Maintenance Services, and Hosting Services, including how the Customer can access helpdesk support services, which are provided by Totara Learning in connection with each Customer's use of the Platform Services.

1.2 Unless otherwise given in this SLA, defined terms in this SLA shall have the meaning given in the relevant MSA Agreement and the same rules of interpretation apply.

1.3 Additional definitions:

(a) **Commercially Reasonable Efforts:** the same degree of priority and diligence with which the Totara Learning meets the support needs of its other partners and customers.

(b) **Customer Cause:** any of the following causes: (i) any improper use, misuse or unauthorised alteration of the Platform Services by the Customer; (ii) any use of the Platform Services by the Customer in a manner inconsistent with the then-current Documentation and/or the Acceptable Use Policy; (iii) the use by the Customer of any hardware or software not provided by Totara Learning; or (iv) the use of a non-current version or release of the Platform Services.

(c) **Downtime:** means the occurrence of a disruption involving the loss of external connectivity to the Platform Services, but excluding disruption resulting in whole or in part from any of the following: (i) Downtime caused by acts or omissions of Customer; (ii) Downtime caused by software not provided by Totara Learning running on the Customer's systems and/or hardware; (iii) Downtime experienced in the context of scheduled maintenance which Totara Learning has announced in accordance with the relevant MSA Agreement; (iv) Downtime due to unscheduled maintenance when such maintenance was performed to rectify an incident or problem that Totara Learning believes would likely have resulted in a prolonged downtime; (v) Downtime caused by events outside of Totara Learning's reasonable control, including acts or omissions of its network providers and/or internet failures; (vi) Downtime caused by actions of third parties, including but not limited to security compromises, denial of service attacks and viruses provided Totara Learning makes reasonable efforts to keep its software and systems up to date; (vii) Downtime experienced in connection with a violation of the Acceptable Use Policy by the Customer or any Authorised User; (viii) Downtime experienced in connection with law enforcement activity without regard as to whether Customer or a third party is accountable for such law enforcement activity; (ix) Downtime experienced in connection to power-cuts; internet breakdowns; malfunction of the equipment used for the provision of the Platform Services that are not the fault of Totara Learning; or (x) Downtime resulting from the Customer's failure to approve or implement any modifications or updates to the Platform Services that have been recommended by Totara Learning.

(d) **Fault:** any Operational Fault or Vulnerability.

(e) **Good Industry Practice:** the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a prudent company within the relevant industry or business sector.

(f) **Help Desk Support:** off-site support provided by help desk technicians sufficiently qualified and experienced to identify and resolve most support issues relating to the Platform Services.

(g) **Known Vulnerabilities:** any Vulnerability that has either: (i) been assigned a Common Vulnerabilities and Exposures (CVE) number; (ii) been disclosed on the National Vulnerability

Database available at the website operated by the US National Institute of Standards and Technology (NIST) from time to time; or (iii) been disclosed on the internet, or any public database, such that it would be revealed by reasonable searches conducted in accordance with Good Industry Practice.

- (h) **Mitigate:** the taking of such reasonable steps that would be taken by a prudent supplier in accordance with Good Industry Practice to mitigate against the Vulnerability in question, which may include patching or coding changes, and the terms "**Mitigated**" and "**Mitigation**" shall be construed accordingly.
- (i) **Operational Fault:** failure of the Platform Services to operate in all material respects in accordance with the Documentation or any specification as set out in the MSA Agreement.
- (j) **Out-of-scope Services:** any services provided by Totara Learning in connection with any apparent problem regarding the Platform Services reasonably determined by Totara Learning not to have been caused by a Fault, but rather by a Customer Cause or a cause outside Totara Learning's control (including any investigational work resulting in such a determination), or any request for changes, new features or software development in relation to the Platform Services by the Customer.
- (k) **Service Levels:** the service level responses and response times referred to in the Service Level Table.
- (l) **Service Level Table:** the table set out in paragraph 4.
- (m) **Solution:** either of the following outcomes: (i) correction of an Operational Fault; (ii) a workaround in relation to an Operational Fault (including a reversal of any changes to the Platform Services if deemed appropriate by Totara Learning) that is reasonably acceptable to both parties; (iii) a mutual agreement by both parties that the Fault will not be fixed, or (iv) Mitigation of a Vulnerability to a level that is reasonably acceptable to both parties.
- (n) **Support Hours:** 9am – 5pm each Business Day.
- (o) **Support Request:** request made by the Customer in accordance with the Help Desk Support for support in relation to the Platform Services, including correction of an Operational Fault.
- (p) **Vulnerability:** a weakness in the code found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term "**Vulnerabilities**" shall be construed accordingly.

2. **Support and Maintenance Services**

2.1 During the term of the relevant MSA Agreement, Totara Learning shall provide with all reasonable care and skill the following services in connection with the provision of the Platform Services (collectively the '**Support and Maintenance Services**')

- (a) installation and management of 256-bit encrypted SSL (TLS) certificates for Customer domains, to secure data in transit between Totara Learning servers and Customer users' browsers;
- (b) up to date server operating system and virus protection, with patches applied on a regular basis;
- (c) Monitoring of, and improvement to hosting environment in order to maintain performance of the Platform Services;
- (d) monthly reviews of the security and performance of relevant Platform Services software, and application of relevant software updates at the discretion of Totara Learning;

- (e) performance and security upgrades to Platform Services software applications;
 - (f) at Totara Learning's sole discretion, the opportunity for the Customer to take part in pilot testing new features or functionality in connection with the Platform Services; and
 - (g) monitoring of servers for hardware and/or connectivity problems.
- 2.2 Totara Learning provides Support services to named individuals at the Customer, who are expected to be familiar with the functionality of the Totara platform and with any configurations made by us or the Customer. Customer's support contacts are expected to handle 1st line support queries from users of the platform.
3. **Help Desk Support**
- 3.1 During the term of the relevant MSA Agreement, Totara Learning shall provide Help Desk Support during the Support Hours in accordance with the Service Levels.
- 3.2 As part of the Help Desk Support, Totara Learning shall:
- (a) provide Help Desk Support by means of an online ticketing system to track and log issues in relation to the Platform Services; and
 - (b) use Commercially Reasonable Efforts to correct all Operational Faults notified under paragraph 3.3 - 3.4.
- 3.3 The Customer may request Help Desk Support by way of a Support Request. Each Support Request shall include a description of the Operational Fault, Vulnerability or other query or request, and, where relevant, the start time of the incident or problem in question.
- 3.4 The Customer shall provide Totara Learning with prompt notice of any Faults which it becomes aware of and any output and other data, documents, information, assistance as are reasonably necessary to assist Totara Learning to reproduce operating conditions similar to those present when the Customer detected the relevant Operational Fault and to respond to the relevant Support Request.
- 3.5 If the Customer requires support in addition to the Help Desk Support (including any Out-of-scope Services), such support shall be provided by Totara Learning on a consultancy services basis subject to the parties agreeing the relevant project scope and fees.
- 3.6 Totara Learning may reasonably determine that any services are Out-of-scope Services. If Totara Learning makes any such determination, it shall promptly notify the Customer of that determination, and the Customer acknowledges that Totara Learning is not obliged to provide any Out-of-scope Services.
- 3.7 The Customer acknowledges that all requests for changes, new features or software development in relation to the Platform Services constitute Out-of-scope Services and such support shall be provided by Totara Learning on a consultancy services basis subject to the parties agreeing the relevant project scope and fees.
- 3.8 Support Requests may only be raised by the Customer's authorised support contacts.
4. **Service Levels**
- 4.1 Totara Learning shall prioritise all Support Requests relating to Faults based on its reasonable assessment of the severity level of the Fault reported and shall respond to all Support Requests relating to Faults in accordance with the responses and response times specified in the table set out below.

Severity of Fault	Definition	Target Response Time	Target Solution Time*
S1	Business Critical: Platform Services unavailable for all users.	1 hour	1 Business Day
S2	High: Functionality issues affecting the ability of multiple users to complete significant online tasks and where no workaround exists.	4 hours	2 Business Days
S3	Medium: Issues affecting a subset of users' ability to complete significant online tasks.	8 hours	3 Business Days
S4	Low: Issues affecting a low number of users, or issues requiring technical investigation, bug diagnosis, or suggestions/ideas.	16 hours	N/A
* Target Solution time refers to the time taken to diagnose and report mitigation steps. This may involve us recommending/undertaking a product configuration change to resolve an issue, but bugs, change requests and client configuration errors are not subject to SLA Target Solution Times.			

4.2 Totara Learning shall give the Customer regular updates of the nature and status of its efforts to correct (or, where, relevant, Mitigate) any Fault as applicable from time to time.

4.3 Totara Learning will make every reasonable effort to resolve Faults as quickly as possible, however the Customer acknowledges that it is not always possible for Totara Learning to predict a Solution time until the diagnosis of the relevant issue or problem. For the avoidance of doubt the Target Solution Time refers to the time in which Totara Learning aims to diagnose a fault and identify a Solution.

5. Hosting Services

5.1 In connection to the provision of the Platform Services, Totara Learning shall provide the following hosting services (together the '**Hosting Services**')

- (a) 99.5% uptime in any given calendar month (with the Platform Services to be deemed available if it is responding to Totara Learning's monitoring tools and is not experiencing Downtime as reasonably determined by Totara Learning, with such availability to be counted towards the relevant uptime percentage);
- (b) hosting partners each having ISO27001, ISO9001 and ISO27017 certification;
- (c) hosting of all Customer Data in the UK, unless another location is agreed between the parties;
- (d) high levels of physical security in relevant hosting premises, such as at the perimeter, server room and server level;
- (e) network monitoring for suspicious activity; and
- (f) recovery time objective (RTO) within 24 hours of a business continuity incident.

5.2 Totara Learning is responsible for its performance of the hardware, operating system, the connectivity of its hardware to the internet, and any software that allows Authorised Users to log in to the Platform Services. The Customer acknowledges that it is responsible for ensuring that it and its Authorised Users have suitable devices, internet access and secure authentication (including single sign-on processes).

- 5.3 Totara Learning does not warrant that the Platform Services will be free from all Vulnerabilities or security incidents, but shall use Commercially Reasonable Efforts to Mitigate Known Vulnerabilities.
- 5.4 On the termination or expiry of a MSA Agreement, unless Totara Learning is otherwise permitted to retain such data under the MSA Agreement or under any applicable laws, all copies of any Customer Data will be deleted by Totara Learning 1 month after copies of such data has been transferred to the Customer, unless otherwise required by law or agreed in writing. Each relevant data transfer shall be arranged between the parties in an appropriate file format determined by Totara. Following the completion of this process, Totara Learning can provide the Customer with any required certificates of destruction of Customer Data on request.