

LICENSE AGREEMENT

This License Agreement (this “Agreement”) consisting of this Cover Page and the following schedules:

- Schedule 1 – Order
- Schedule 2 – Definitions
- Schedule 3 – Terms and Conditions
- Schedule 4 – Service Level Agreement
- Schedule 5 – Software and Services Definitions

is entered into between Learnosity Limited, an Irish company with its principal place of business at Ella House, 42 Merrion Square East, Dublin 2, D02 H2H2, Ireland (the “**Licensor**”) and the Licensee set forth on the Order, as of the Effective Date.

By signing below, the parties hereby accept and agree the terms and conditions of this Agreement to take effect on the Effective Date.

EXECUTED for and on behalf of the LICENSOR By its authorized signatory:	EXECUTED for and on behalf of the LICENSEE By its authorized signatory:
Signature:	Signature:
Name:	Name:
Title:	Title:
Date Signed:	Date Signed:

SCHEDULE 1 - ORDER

To be determined

SCHEDULE 2 - DEFINITIONS

In this Agreement and on the Order, the following words and expressions shall have the following meanings unless the context requires otherwise:

“Affiliate”	An entity within the Licensee’s group of companies or under the common control of the Licensee, in each case as at the date of this Agreement, or which may subsequently become an Affiliate, and be included within the scope of this Agreement on notification to, and with the consent of, the Licensors (not to be unreasonably withheld).
“Author Aide”	An optional feature of the Software that can be used to generate questions and other content using artificial intelligence and machine learning technologies. For the avoidance of doubt, Author Aide is only provided if expressly included on an Order.
“Authorized User(s)”	(a) Licensee, (b) Licensee’s Affiliates, and (c) the directors, officers, employees, partners, agents, advisers, independent contractors and subcontractors of any of the foregoing entities and (d) any Licensee Customer User(s) that has been granted access to the Software.
“Data Processing Schedule”	Licensors’ standard data processing schedule, as set out at Learnosity Data Processing Schedule (https://learnosity.com/dpa) and which forms an integral part of this Agreement as if written out in full herein.
“Effective Date”	The date on which this Agreement and the Order become effective, as set forth on the Order.
“Fees”	The fees payable by Licensee to Licensors, as set forth on the Order.
“Incident”	An incident or problem adversely affecting the performance or availability of the Software.
“Included User”	A User for which there is no Per User Fee. Included Users will recur in each year of the Term.

“Intellectual Property Rights”	Patents, copyrights (including source code), registered and unregistered design rights, trademarks, trade secrets, know-how, database rights and all other similar or corresponding proprietary rights (whether registered or unregistered) and all applications for the same, anywhere in the world.
“License”	The License granted by the Licensor to the Licensee pursuant to Clause 1 of Schedule 3 to the extent (a) indicated on the Order or (b) otherwise expressly agreed by the Parties in writing, and subject to any additional fees with respect thereto.
“Licensee Customer User”	Any individual who, pursuant to a commercial agreement between Licensee and Licensee’s customer, has been granted access and authorization to use the Software.
“Licensee Data”	The data inputted or created by the Licensee and its Authorized Users in the use of the Software.
“Licensee Learner Response Data”	The data inputted to or created in the Software by Licensee Learner Users, including assessment responses, audio, video or files uploaded using assessment APIs.
“Licensee Learner User(s)”	Any individual who, pursuant to a commercial agreement between Licensee and Licensee’s customer, has been granted access and authorization to use the Software in accordance with such commercial agreement for the purposes of participating in an assessment, exam or other learner activity. Licensee Learner Users are a subset of Licensee Customer User(s).
“Order”	Licensor’s quotation/pricing proposal, which forms part of this Agreement as Schedule 1.
“Renewal Term”	Any period during which the Agreement and Order continue in effect following the initial Term, as set out in Clause 11 of Schedule 3.

“Service Levels”	The service levels specified in the Service Level Agreement (Schedule 4).
“Service Level Agreement”	The document detailing service levels and support and maintenance obligations as set out in Schedule 4.
“Software”	The Software licensed by the Licensor under this Agreement, as specified in the Order and as defined in Schedule 5.
“SOW”	A statement of work for Services which will be subject to an agreed upon scope of work and may be subject to additional fees. Any such SOW will be documented, agreed upon between the parties and evidenced with a signed addendum to this Agreement.
“Taxes”	Sales tax, goods and services tax, value added tax and /or related taxes in connection with the provision of the Software and related services.
“Term”	The initial duration of this Agreement and Order as indicated on the Order and any additional Renewal Terms.
“Third Party Software”	That computer software used by the Licensor in developing the Software and which is owned by a third party.
“User ID”	A User id (user_id) is an anonymous string representing a unique User as per the definition of “User” below.
“User Fees”	Solely for the purposes of calculating per User fees, a “User” is defined as a unique individual that has access to use any of the Software in a single Licensee product. Each User will have a license to use Licensor Software via Licensee’s products for the longer of (a) a 12 month period from the commencement of the license to Licensee’s products or (b) the duration of the school year or calendar year (as applicable) in which Licensee’s agreement with the User commenced. A unique individual may be counted as a User multiple times if it has access to

	multiple Licensee products. Multiple individual Users will not be associated with one unique User ID for any reason.
“User Report”	The User Report will show the User counts for each Licensee product in a format determined by Licensee, so long as it reasonably permits Licensor to track User numbers and usage. The User Report should be provided by Licensee to Licensor within 30 days following the end of each 6 month period during the Term (including any Renewal Term).

SCHEDULE 3 – TERMS AND CONDITIONS

The Licensee wishes to engage the Licensor to license the Software (as defined in Schedule 5) and provide and support an online hosting environment for the Licensee, on the terms and conditions set out in this Agreement.

TERMS: It is hereby agreed as follows:

1 LICENSE

- 1.1 In consideration of the Fees payable by the Licensee to the Licensor, the Licensor hereby grants to the Licensee a non-exclusive license for the Term to use the Software as a component of this License to the extent (a) indicated on the Order or (b) otherwise expressly agreed by the Parties in writing, and in each case subject to any additional fees with respect thereto.
- 1.2 In relation to scope of use:
 - 1.2.1 For the purposes of Clause 1.1, use of the Software shall be restricted to use of the Software for the purpose of processing the Licensee's data for the normal business purposes of the Licensee (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Licensee);
 - 1.2.2 The Licensee has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part.
- 1.3 To the extent that the Licensor is requested to provide development services ("Services") in connection with the provision of the Software, such Services shall be carried out in accordance with a statement of work ("SOW") for additional fees as set out in the SOW and the Licensee acknowledges and agrees that all Intellectual Property Rights arising as a result of the provision of such Services shall be and remain the sole property of the Licensor.
- 1.4 In the event an Order includes Author Aide, the Learnosity Author Aide Additional Terms Schedule at <http://www.learnosity.com/legal/aide> ("Author Aide Terms") applies and forms part of this Agreement. For the avoidance of doubt, Author Aide is an optional feature of the Software and in the event an Order does not include Author Aide, the Author Aide Terms are inapplicable.

2 FEES

- 2.1 The Fees determinable and agreed at the Effective Date are set out on and are payable in accordance with the payment terms set out in the Order. When a Term has multiple years and unless otherwise agreed on the Order, the Fees for each year shall be invoiced annually in advance and are payable within thirty (30) days. Notwithstanding the foregoing and unless otherwise agreed on the Order, User Fees will be billed bi-annually in arrears, with invoices payable within thirty (30) days.
- 2.2 All payments stated in this Agreement are exclusive of applicable Taxes, which shall be added to the Licensor's invoices at the rate applicable at the time of invoicing.
- 2.3 Unless specified otherwise in the Order, the Licensee shall pay in full each invoice properly due, issued and submitted by the Licensor within 30 days of receipt by it of the same.
- 2.4 Licensee shall pay all amounts due by electronic fund transfer ("EFT") to Licensor's bank account which will be stated on each invoice. Each party shall bear its own costs in connection with the EFT.
 - 2.4.1 In the event Licensee elects to pay Fees by cheque, payment will be treated as received 60 days after receipt of cheque by Licensor and will incur an additional processing payment of 1% of the cheque amount. For the avoidance of doubt, payments made by cheque will need to be sent 60 days prior to the invoice due date.
- 2.5 Without prejudice to the Licensor's ability to reclaim Fees and interest in full as above:
 - 2.5.1 In the event of non-receipt of payment within 30 days of the invoice date, Licensor reserves the right to remove access to the Software;
 - 2.5.2 In the event of non-receipt of payment within 120 days of the invoice date, Licensor reserves the right to remove Licensee-created data.
- 2.6 The Licensee shall, on reasonable advance notice, permit the Licensor to inspect and have access to, or be provided copies of, all of the Licensee's records relating to the use of the Software for the purpose of verifying the accuracy and amount of the Fees payable under this Agreement.

3 OWNERSHIP OF THE SOFTWARE AND INTELLECTUAL PROPERTY RIGHTS

- 3.1 The Licensor shall obtain on behalf of the Licensee all necessary licenses and consents for the use of any Third Party Software.
- 3.2 The Licensee acknowledges that all Intellectual Property Rights in the Software belong to and will remain owned by the Licensor. The Licensee has no rights in or to the Software other than the right to use it in accordance with the terms of this Agreement.

- 3.3 The Licensee shall own all right, title and interest in and to all of the Licensee Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Licensee Data.
- 3.4 The Licensee shall restrict and disallow the upload and display of any inappropriate, offensive, unlawful or copy-protected media, including (without limitation) images, logos, iconography, text or other works of art (“Materials”). Upon becoming aware of any breach of this provision, the Licensee shall promptly (within 24 hours) notify the Licenser and remove any such Materials in breach. The Licensee shall indemnify and keep indemnified the Licenser against all claims, actions and proceedings brought against and all costs, damages, liabilities and expenses incurred by the Licenser arising from any Materials in breach of this provision.
- 3.5 The Licenser shall indemnify and keep indemnified the Licensee and its licensees against all third party claims, actions and proceedings brought against and all costs, damages, liabilities and expenses incurred by the Licensee arising from any claim or action that the possession, use, development, modification or maintenance of the Software infringes the Intellectual Property Rights of a third party, provided that the Licensee:
- 3.5.1 On becoming aware of the same shall promptly gives notice of it to the Licenser (and remove same if in breach of Clause 3.4);
 - 3.5.2 Makes no admission of liability without the Licenser’s written consent; and
 - 3.5.3 Allows the Licenser to have sole conduct and control of the defense and any related settlement negotiations provided that the Licenser keeps the Licensee informed of the progress of such action or negotiations.
- 3.6 The Licenser shall be entitled (without prejudice to any rights or remedies the Licensee may have) at its own cost to replace or modify any infringing component of the Software so that it becomes non-infringing.

4 WARRANTIES

- 4.1 The Licenser hereby warrants and undertakes that:
- 4.1.1 The Licenser has the full power and authority to execute, deliver and perform its obligations under this Agreement and there are no existing agreements or arrangements with third parties the terms of which prevent the Licenser from entering into this Agreement or would impede the substantial performance of its obligations under it;

4.1.2 Subject to the terms of Schedule 4, the Software will operate to the standard of the Service Levels and will continue to meet these for the Term provided that the Licensor shall not be responsible for failure of the Software to meet this warranty due to Authorized User error;

4.1.3 It has used all reasonable endeavors to ensure (including without limitation by the use of all generally available and accepted anti-virus software and procedures) that the Software is free from harmful code of any description (whether called viruses, worms or otherwise) including any computer code, programming instruction, or set of instructions that is intentionally constructed to damage, interfere with or otherwise adversely affect computer programs and/or data files and/or hardware and/or computer systems and/or networks; and

4.1.4 It has all necessary rights and consents to license the Software to the Licensee in accordance with this Agreement.

4.2 **To the maximum extent permitted by applicable law, except as specifically set forth in this Agreement, Licensor disclaims any and all express and/or implied warranties, guarantees and conditions with respect to the Software and associated services, including but not limited to warranties of merchantability, fitness for a particular purpose, and any warranties arising from a course of dealing, usage or trade practice.**

5 SUPPORT AND MAINTENANCE

5.1 From the Effective Date and throughout the Term, the Licensor shall make available (at no additional cost to the Licensee) all necessary technical and infrastructure resources to amend the Software in the case of a dysfunction notified by the Licensee in accordance with the terms of the Service Level Agreement.

5.2 From the Effective Date, the Licensor shall provide support and maintenance for the Software in accordance with the terms of the Service Level Agreement and support levels specified on the Order.

6 INSURANCE

6.1 During the Term the Licensor shall maintain in force with a reputable insurance company professional indemnity (errors and omissions) insurance in an amount not less than US\$1,000,000 and shall on the Licensee's request produce both the relative insurance certificate giving details of cover and the receipt for the current year's premium.

7 DATA RETENTION AND FAIR USAGE POLICY

7.1 Licensee Learner Response Data may be automatically archived (read-only) no earlier than two (2) years after it is created. Licensee Learner Response Data may be automatically permanently deleted no earlier than seven (7) years after it is created.

7.2 *Fair Usage Policy:* Licensor permits Licensee to upload and store video content within the Software and to record video in simple features and via the video player feature to create video stimulus (together, “Educator Content Video”). Licensor further permits Licensee Learner Users to upload and store video responses for video recording and file upload question types (“Learner Response Video”).

7.2.1 Licensor sets reasonable limits on Educator Content Video and Learner Response Video, as described in Clause 7.2.3 below. If these included limits and any pre-paid additional limits are exceeded for storage, Licensor will inform Licensee and unless the amount of Educator Content Video and/or Learner Response Video (as applicable) is reduced by Licensee to the limit below or any pre-paid additional limit (as applicable) within 60 days, Licensor will invoice Licensee for the excess at its standard reasonable rates on the Order. If these included limits and any pre-paid additional limits are exceeded for Educator Content Video playback, Licensor will invoice Licensee for any excess at its standard reasonable rates on the Order.

7.2.2 Each Educator Content Video file and Learner Response Video file stored within the Software is subject to a default minimum size. For both Learner Response Video and Educator Content Video, each file upload video will count as 0.1GB regardless of actual video size (due to different encoding practices).

7.2.3 For Learner Response Video, Licensee included usage is limited to approximately 5TB of storage per year of the Term. The following included limits on Educator Content Video apply:

License Tier	Educator Content Video limit
Standard	100GB storage limit, 1,000 GB (1TB) playback per year of the Term.
Scale	500GB storage limit, 5000 GB (5TB) playback per year of the Term.

Enterprise	1,000GB (1TB) storage limit, 10,000 GB (10TB) playback per year of the Term.
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For the avoidance of doubt, in event actual usage of Educator Content Video or Learner Response Video in any year of the Term is less than the limits above, the unused portion of the limit does not roll forward to future years in the Term.

7.2.4 Licensee may purchase additional limits of Educator Content Video and/or Learner Response Video in advance by entering into an Order with Licensor and according to the standard reasonable rates on that Order. For excess use limits of Educator Content Video or Learner Response Video that are not pre-paid, subject to Clause 7.2.1 above Licensor shall invoice Licensee annually in arrears at the end of each year of the Term for any excess use in that year of the Term. All invoices for excess Educator Content Video or Learner Response Video are payable within thirty (30) days. Any unused portion of additional limits purchased in advance or invoiced in arrears for Educator Content Video and/or Learner Response Video in any year of the Term do not roll forward to future years of the Term.

7.2.5 Note that Educator Content Video works only by progressive download and no service level agreement applies with respect to Educator Content Video.

8 CONFIDENTIALITY AND DATA PROTECTION

- 8.1 Each party (the "Recipient") shall keep secret and not disclose to anyone, except only on a need to know basis, to its employees, individual consultants or sub-contractors bound by express written secrecy obligations without the prior written consent of the other party ("Disclosing Party") any information received from or belonging to the Disclosing Party (including without limitation any document submitted to the Recipient and marked "Commercial in Confidence", "Private and Confidential" or otherwise expressly designated as confidential).
- 8.2 The Licensor shall be permitted to list the Licensee as a Licensee, including use of the Licensee logo. The Licensor shall not provide further details of the contract in its advertising or publicity material without the prior written consent of the Licensee. This consent will not be unreasonably withheld.
- 8.3 This obligations in Clause 8.1 shall not apply:

- 8.3.1 To any information which has become or which becomes either before, on or after the date of this Agreement generally and freely available through no fault of the Recipient;
- 8.3.2 To any information which the Recipient can otherwise show came into its possession without it owing a duty of confidence to the Disclosing Party in respect of such information;
- 8.3.3 To the extent the disclosure is required to or by any court, tribunal or government authority of competent jurisdiction; or
- 8.3.4 To any information which is trivial or obvious.

8.4 The Licensee shall restrict and disallow the upload of any personal or sensitive information from which Licensee Learner Users are identified or identifiable by Learnosity. Upon becoming aware of any breach of this provision, the Licensee shall promptly (within 24 hours) notify the Licensor and remove any such information in breach. The Licensee shall indemnify and keep indemnified the Licensor against all claims, actions and proceedings brought against and all costs, damages, liabilities and expenses incurred by the Licensor arising from any information in breach of this provision.

- 8.4.1 If the Licensee is required to pass a user_id field to Licensor during use of the Software, the user_id must be an anonymous string (UUID/GUID recommended) and must not contain any personal data or personally identifiable information ("PII").

8.5 The provisions of Clauses 8.1 to 8.5 shall survive the termination of this Agreement howsoever arising.

8.6 If as a result of this Agreement the Licensor is required to process personal data supplied to it by the Licensee, then the Licensor will process such personal data in accordance with the Data Processing Schedule.

9 NON-SOLICITATION OF EMPLOYEES

- 9.1 To the extent permitted by applicable law, neither party shall solicit (except pursuant to recruitment advertising in the national, local or trade press or otherwise in the ordinary course of business) the employment of any employees of the other party at any time during the continuance of this Agreement or within twelve (12) months following its expiry or termination for any reason without the prior written consent of the other party.

10 LIABILITY

- 10.1 Each party shall accept liability for death or personal injury caused by its negligence and the negligence of its employees and agents acting within the scope of their duties.
- 10.2 Subject to Clause 10.1, the Licensor and the Licensee shall in no circumstances be liable for any consequential, indirect, punitive, exemplary, incidental or special loss or damage (including without limitation loss of business or loss of profit) howsoever arising whether in contract negligence, other tort or otherwise.
- 10.3 Except as set out in Clause 10.1, the total aggregate liability of the Licensee or the Licensor, whether in contract, tort or otherwise in connection with this Agreement, shall in no circumstances exceed twelve (12) months of Fees as calculated based on the 12 month period immediately preceding the claim giving rise to such liability, subject for either party to an upper limit equal to the amount of insurance required and referred to in Clause 6 of this Schedule 3.
- 10.4 Subject to technical limitations, Licensor makes best efforts to ensure that the Software meets common accessibility standards. Licensee is responsible for ensuring that the end product is compliant with all applicable accessibility legislation.

11 TERM, TERMINATION AND CONSEQUENCES OF TERMINATION

- 11.1 This Agreement shall continue from the Effective Date for the Term and will then automatically renew for additional twelve (12) month terms each, subject to written notice of non-renewal and termination given by either party no less than one-hundred and eighty (180) days prior to the end of the Term then in effect. In the event that the notice to terminate is not submitted by either party, the Agreement will extend on the same terms and conditions with Fees remaining as stated on the Order for the immediately preceding year of the Term plus an increase based on the higher of (i) the most recently available percentage change in the US Consumer Price Index (defined as the Consumer Price Index for All Urban Consumers "CPI-U") as calculated by the US Bureau of Labor Statistics for the prior 12 months, or (ii) 3%.
 - 11.1.1 Provided that in order to qualify for multi-year or prepaid discounts of the Fees in any Renewal Term the requisite conditions for the applicable discount must be met.
- 11.2 Either party shall have the right to terminate this Agreement forthwith on written notice to the other if such other does any of the following:
 - 11.2.1 Passes a resolution for or the Court makes an order for its winding up;
 - 11.2.2 Has a receiver, administrative receiver or administrator appointed over its undertaking or over any of its assets;

- 11.2.3 Is or becomes insolvent within the meaning of insolvency laws applicable to that party;
 - 11.2.4 Takes or suffers any analogous action on account of debt; or
 - 11.2.5 Ceases or threatens to cease to carry on business; or
 - 11.2.6 Shall be in material breach of any obligations under the Service Level Agreement which specifically give rise to a right of termination; or
 - 11.2.7 Shall have committed a material breach of any of its obligations under this Agreement and in the case of a breach capable of remedy, shall not have remedied such breach within thirty (30) days of receiving notice from the first mentioned party detailing the breach and requiring its remedy within such thirty (30) day period.
- 11.3 Either party shall notify the other in writing as soon as any event justifying termination under Clause 11.2 occurs.
- 11.4 Termination of this Agreement howsoever arising shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination. Clauses 2, 3, 8, 9 and 10 shall survive the termination of this Agreement.
- 11.5 On termination of this Agreement howsoever arising, each party shall (except as otherwise agreed) promptly deliver up all documentation and other materials in its possession or under its control and belonging to the other party.

12 GENERAL

- 12.1 *Force Majeure:* If either party is prevented from or hindered or delayed in performing any obligations under this Agreement by reason of any acts of God or other circumstances beyond its reasonable control, it shall be excused performance to the extent affected by the circumstances concerned so long as it shall both have given notice to the other party of those circumstances promptly after they first affected performance and has used all reasonable commercial endeavors to remove or avoid their cause or effect. For the avoidance of doubt, any industrial action by employees or sub-contractors of the Licensor shall not represent circumstances beyond the reasonable control of the Licensor.
- 12.2 *Further Assurance:* The Licensor shall promptly at the Licensee's request do all reasonable acts and execute all documents reasonably necessary to secure for the Licensee the full benefit of this Agreement.

- 12.3 *Assignment:* (a) Subject to Clause 12.3(b), the Licensee shall not assign, novate, sub-license, sub-contract or otherwise dispose of this Agreement or any part thereof without the prior written consent of the Licensor, such consent shall not be unreasonably withheld; (b) In the event of a change in control, merger or analogous event of the Licensee, the Licensee shall be entitled to assign or novate this Agreement to its acquirer, merger or successor party provided that such party agrees to observe and abide by the terms of this Agreement for the duration of the Term. The Licensor shall be entitled to assign, novate, sub-let or otherwise dispose of any or all of its rights and/or obligations under this Agreement.
- 12.4 *Waiver:* No forbearance, delay or granting of time by either party in or before enforcing this Agreement shall prejudice its rights. No waiver of any right or breach under this Agreement shall be effective unless in writing and signed by the party making the waiver. Any such waiver shall not be construed as a waiver of any other right or breach, including but not limited to the same right or breach on a future occasion.
- 12.5 *Notices:* Notices under this Agreement shall be given by sending them pre-paid registered post, signed PDF letter emailed, or personal delivery to the other party at its address set out in this Agreement or to such other address notified in writing to the sender. Notices sent by registered post shall be treated as received 48 (forty-eight) hours after sending (as shown by the sender's receipt). Notices sent by personal delivery shall be treated as received at the time delivery is made.
- 12.6 *Service:* Service of any legal proceedings concerning or arising out of this Agreement shall be effected by causing the same to be delivered to the company secretary of the party to be served at its registered office or to such other address as may be notified in writing to the other party.
- 12.7 *Entire Agreement:* This Agreement (including the Schedules) supersedes all prior agreements and arrangements of whatever nature and sets out the entire agreement and understanding between the parties relating to its subject matter. Unless expressly agreed to in writing between the parties, it applies in place of and prevails over any terms or conditions contained or referred to in correspondence or elsewhere or implied by trade custom or course of dealing and any purported contrary or inconsistent provision is hereby excluded.
- 12.8 *Third Parties:* This Agreement does not create any right enforceable by any person that is not a party to it, except that a person who is the permitted successor to or assignee of the rights of a party is deemed to be a party to this Agreement.
- 12.9 *Variation:* Any variation to this Agreement shall only be effective if in writing and signed by (or by persons duly authorized by) the Licensor and the Licensee.

- 12.10 *No Partnership:* Nothing in this Agreement shall create a partnership or joint venture between the parties to this Agreement and save as expressly provided for in this Agreement neither party shall enter into or have authority to enter into any engagement or make any representation or warranty on behalf of or pledge the credit of or otherwise bind or oblige the other party hereto.
- 12.11 *Dispute Resolution:* Other than to apply for an injunction or other equitable remedy, a party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) about a dispute arising out of this Agreement (“Dispute”) unless it has complied with the following provisions of this Clause 12.11:
- 12.11.1 If a Dispute arises, the Parties undertake in good faith to use all reasonable endeavors to settle the Dispute. Either Party may give notice of a Dispute under this Agreement to the other Party. If such notice is given, each Party must arrange to meet in an effort to resolve the Dispute;
- 12.11.2 If the Dispute involves technical matters and has not been resolved by negotiations under the previous clause within a reasonable time, the Parties will refer the Dispute for determination by an independent expert agreed by the Parties in the technical field of the Dispute;
- 12.11.3 If the Parties are unable in good faith to settle the Dispute within 14 days of the notice referred to in Clause 12.5 (or a longer period agreed between the parties) then the parties must agree to appoint a mediator and refer the matter to mediation. If the Parties fail to agree on a mediator within 3 days of the expiration of the 14-day period then a person appointed by the president or CEO of the principal mediation institute in New York will be the mediator. Such mediation shall take place in New York. The costs of the mediator shall be shared equally between the parties;
- 12.11.4 If the Dispute is not resolved under clause 12.11.3 within 30 days after referral (or a longer period agreed between the parties) it shall be referred to one or more arbitrators appointed in accordance with the Rules of Arbitration of the International Chamber of Commerce and to be resolved under those Rules, except that in relation to Rule 14.1 of the Rules of Arbitration, the place of arbitration shall be New York.
- 12.12 *Governing Law:* Unless agreed otherwise in a written agreement executed by authorized representatives of each of the parties, the federal laws of the United States of America and the laws of the State of New York govern this Agreement. Subject to Clause 12.11 and unless agreed otherwise in a written agreement executed by authorized representatives of each of the parties,

the parties submit to the exclusive jurisdiction of the federal and state courts located in New York, New York for any claims or disputes arising out of or relating to this Agreement.

SCHEDULE 4 - SERVICE LEVEL AGREEMENT (“SLA”)

1. SUPPORT LEVEL DEFINITIONS

The Licensee will provide 1st and 2nd Line Support, while Licensor will provide 3rd Line Support, as defined below.

“1 st Line Support”	Licensee’s Customer Users (herein “Users”) shall direct any initial and primary inquiries, requests and support issues with respect to the Software to the Licensee’s support representative or the relevant Licensee help desk.
“2 nd Line Support”	<p>Any queries with respect to the Software that cannot be resolved by the 1st Line Support team will be assigned to the Licensee’s 2nd Line Support team.</p> <p>An Incident which cannot be resolved by the 2nd Line Support team are eligible for escalation to the Licensor as part of 3rd Line Support.</p>
“3 rd Line Support”	<p>Any Incident that cannot be resolved by the Licensee’s 1st or 2nd Line Support team may be escalated to the Licensor help desk. Only Incidents resulting from Software system or platform matters, or those that meet the escalation process defined above, shall fall under this SLA’s commitments stated in the “Response and Fix Times” section below. Licensor’s commitments are further subject to Licensee’s compliance with its obligations in the immediately below paragraph and to the provisions of Section 13 below.</p> <p>It is the Licensee’s responsibility to provide details of Incidents in the form of screenshots, logins, etc. along with any steps taken to resolve prior to escalation. Licensor will then attempt to replicate issues in order to adequately resolve the Incident. Licensee shall make available to Licensor any team members knowledgeable about the escalated Incident.</p> <p>All Incidents eligible for 3rd Line Support logged with the Licensor will be given an appropriate priority and receive a unique reference number via an online ticketing system. Ticket status and any associated updates will be accessible to the originator.</p>

2. ISSUE LEVELS

All Incidents should be logged via Licensor's online ticketing system where they will be given the appropriate priority level by Licensor according to the below priority levels. Licensor shall assign the appropriate level of priority to an Incident using its reasonable discretion.

Urgent Issues (Priority Level = P0)

An Incident will be assigned as "Urgent Severity" if the Incident is characterized by the following:

- The Customer or business unit or sub-unit using the Software is unable to operate because of the Incident; or
- Critical Licensor-provided application and/or web service has failed or is severely impaired because of the Incident; or
- Licensor-provided application and/or web services (whether Licensee Customer User or Licensee-facing) are unavailable because of the Incident.

High Severity Issue (Priority Level = P1)

An Incident will be assigned as "High Severity" if the Incident is characterized by the following:

- High impact to Customer as a User group or set of Users from business unit(s) that are using the Software are unable to operate due to Licensor-provided application and/or web services unavailability because of the Incident; or
- A critical Licensor-provided application and/or web services is affected partially because of the Incident but the other components of the application are available to Users; or
- A Customer-facing Licensor-provided application and/or web services is experiencing a significant performance issue because of the Incident.

Medium Severity Issue (Priority Level = P2)

An Incident will be assigned as "Medium Severity" if the Incident is characterized by the following:

- Medium impact to Customer as a User group or set of Users from business unit(s) that are using the Software are unable to operate due to Licensor-provided application and/or web services unavailability because of the Incident.

Low Severity Issue (Priority Level = P3)

An Incident will be assigned as “Low Severity” if the Incident is characterized by the following:

- The Software is available;
- An Incident has been identified but does not impact service delivery of the Software and can be worked on during a regular change window.

3. LOGGING SUPPORT ISSUES

Learnosity’s 3rd Line Support details are as follows:

Help & Support System: Licensor provides a full help & ticket tracking system, which is the primary mechanism for receiving support from Licensor’s global Developer & Author support team. This platform is accessible at <https://help.learnosity.com>. Licensor will provide accounts for Licensee staff as needed.

For Urgent & High Severity issues, Licensee will raise a ticket via Licensor’s Help & Support system. In cases where the Licensee’s staff do not have accounts set up on the Licensor’s Help & Support System, and a request is time dependent, please email support@learnosity.com to reach our support team and get access where required.

4. REPORTING ON ISSUES

If Licensor fails to meet the Service Levels with respect to Response and Fix times in Section 13 below or if Service Credits are due as described in Section 14 below, Licensor shall, after restoring service or otherwise resolving any immediate problem:

1. Promptly investigate and report on the causes of the Incident;
2. At Licensee’s request, provide a Root Cause Analysis of such Incident as soon as practicable for Urgent or High Severity Issues;
3. Correct the problem as soon as practicable (regardless of cause or fault) or coordinate the correction of the problem if Licensor does not have responsibility for the cause of the Incident;
4. At Licensee’s request, advise Licensee of the status of remedial efforts being undertaken with respect to such Incident; and
5. Take corrective actions to prevent any recurrence of such Incident.

Where requested by the Licensee, Licensor shall complete the Root Cause Analysis within fifteen (15) days after the occurrence of the Incident; provided that, if it is not capable of being completed within fifteen (15) days using reasonable diligence, Licensor shall complete such Root Cause Analysis as quickly as possible, but in all events within thirty (30) days, and shall notify Licensee prior to the end of the initial fifteen (15) day period as to the status of the Root Cause Analysis and the estimated completion date.

“Root Cause Analysis” means the determination by Licensor of the following elements with respect to any Urgent or High Severity Issues:

- I. The underlying cause of the Incident;
- II. The component of the Software or area within Licensor’s organization responsible for the underlying cause;
- III. The software or hardware involved in creating the Incident; and,
- IV. A solution designed to reduce the likelihood of the Incident recurring.

5. MAINTENANCE OBLIGATIONS

Licensor will provide “Long Term Support” releases multiple times a year and will provide regular bug fixes where appropriate to these versions of the Software, as well as a “developer” version of its released codebase for the Software for development and feature testing purposes.

In cases where a release will impact the Licensee’s existing APIs, Licensee’s ability to access and use the Software or otherwise alter its processes for accessing and using the Software, Licensor will make all reasonable efforts to provide at least ninety (90) days prior notice to Licensor of such releases and will cooperate with Licensee to enable Licensee to conduct testing and development as necessary to minimize any service interruptions or adverse impacts of the implementation of such releases.

Changes to the Licensor’s maintenance practices or procedures will be notified in writing (which may include email) to the Licensee at least thirty (30) days prior to implementation and shall take effect thirty (30) days from the date of notification and shall thereafter be deemed to amend the terms and conditions of this SLA.

6. ELIGIBILITY FOR SLA

Along with other best practices documented at <http://help.learnosity.com> and as advised to the Licensee by the Licensor’s Product, Engineering and Support teams from time to time, to be eligible for this SLA Licensee must:

- I. Use a recommended, supported, no older than 24 months “Long Term Support” release of the relevant API. If the Licensee elects to use the “developer” version of an API in a production environment, unless specifically advised to do so by the Licensor in writing, any production issues arising from regular development updates to this version will not be covered under this SLA.

- II. Use a Unique User Id (user_id) for each individual Licensee Learner User accessing the Software in a single Licensee product. This must be an anonymous string representing a unique User (we recommend using a UUID/GUID).
- III. Ensure that all licensed Software will be hosted by Licensor unless specifically excluded via the Order, and that all Software assets are served to Licensee Customer Users by Licensor. If any implementation by the Licensee circumvents this through partial or complete self-hosting of Licensor software assets without Licensor's express written agreement, any production issues arising will not be covered within this SLA.

7. SUPPORTED VERSIONS

Licensor's intention is to support a Long Term Support release within an appropriate life cycle.

Without limiting the foregoing, if an in-use version of the Software is scheduled to be deprecated, and support to be withdrawn, Licensor will provide the Licensee with no less than one hundred eighty (180) days prior written notice.

Further, if the Licensee accepts a new version of the Software and subsequently experiences unforeseen issues that were not identified during the testing process, Licensor shall permit the Licensee to roll back to the previous version of the Software used by the Licensee until such time as the issues are resolved, so long as Licensee requests same from Licensor within one hundred and eighty (180) days of Licensee accepting the new version of the Software.

8. AVAILABILITY

Licensor shall use commercially reasonable efforts to maintain operation of the Software 24 hours per day, 365 days per year. From time to time, however, and as may be necessary to maintain the proper operation of the Software, Licensor may take the Software down/offline for repairs, updates, upgrades or routine or emergency maintenance ("Planned Downtime").

9. SUPPORT HOURS

Licensor will provide support that is intended to meet the Response Acknowledgement times in Section 13 below, 24 hours a day, 364 days per year (excluding 25th December).

10. SYSTEM MONITORING

Licensor is responsible for installing appropriate monitoring tools. The monitoring tool will constantly monitor the system and send alerts to Licensor if any components of the Software go down. Warning alerts will also be sent to Licensor if any components of the Software are approaching a critical level.

Licensee will have access to <https://status.learnosity.com/> as a real time portal of the Software's live status.

11. PLANNED DOWNTIME

Planned Downtime will be kept to an absolute minimum and it is expected that this should total no longer than seven (7) hours in any given quarter. Exceptions to this will be mutually agreed in advance.

Licensor must give at least five (5) business days' notice of when Planned Downtime is going to occur. All Planned Downtime needs to be approved by Licensee, such approval not to be unreasonably withheld.

12. UPTIME

Percentage Uptime "u" will be calculated per calendar month, as follows.

"t" (Total) is the total number of minutes in the applicable calendar month.

"p" (Planned Downtime) is the agreed number of Planned Downtime minutes in the applicable calendar month, as described above.

"d" (Downtime) is the number of minutes the Software is unavailable (defined above as Urgent or High Severity Issues) outside Planned Downtime.

$$\frac{t - p - d}{t - p} \times 100 = u \%$$

Downtime is tracked by Licensor through a combination of an automated monitoring service and help desk consultations on customer impact. Data from Licensor's monitoring service shall be used to resolve any disputes between Licensor and Licensee regarding calculation of the Percentage Uptime and as to whether Licensor has met or failed to meet the required Uptime Target (as defined below) applicable to Customer.

13. RESPONSE AND FIX TIMES

Notwithstanding any other provision of this Agreement, this Section 13 only applies to Incidents relating to the functionality of all live Software APIs or live Licensor systems covered in this Agreement. The resolution priority Item Descriptions below are defined in accordance with the definitions in Section 2 above.

Item Description	Response Acknowledgement Target	Resolution Target
Urgent Issue	3 hours	8 hours
High Severity Issue	6 hours	1.5 business days*
Medium Severity Issue	1 business day*	2 business days*
Low Severity Issue	1 business day*	3 business days*

Note: * business day refers to a full business day (24 hours), starting from the time the Incident was reported.

14. SERVICE CREDITS

“Uptime Target” means the Percentage Uptime for the Software that Licensor has committed to target for the Customer, as defined in Schedule 5 and according to the support package purchased by Customer. Each full 0.1% of Percentage Uptime below the Uptime Target in a calendar month shall equal a service credit of 1% of the Monthly License Fee, as defined below, for that calendar month, subject to a maximum service credit of 20% of the Monthly License Fee for that calendar month. As used in this Section, “Monthly License Fee” means the then annual License Fee on the Order, divided equally by twelve (12). In the event that no License Fee is payable or paid by Customer, no service credits shall apply.

Terms of Use for Service Credits

The occurrence of the following events is hereby excluded from Downtime under this SLA:

- Force Majeure events. These are events arising from or related to causes beyond Licensor's reasonable control, including acts of God, fires, strikes, acts of war, or intervention of any government authority or other matters reasonably beyond the control of the Licensor;
- The inability of the Licensee to access the Software due to Internet, telecommunications, hardware, software, user error, or other issues outside the control of Licensor;
- Licensee caused outages or disruptions;
- Problems due to the performance of networks or systems controlled by companies or entities other than Licensor.

In order to qualify for a service credit, Licensee must notify Licensor in writing within fifteen (15) business days of the Incident occurring which results in the service credit becoming payable. Failure by Licensee to notify Licensor as described in this paragraph will forfeit the Licensee's right to receive that service credit.

Any obligations of Licensor as described in this SLA will be null and void upon any material breach by the Licensee of the Agreement, including any failure by the Licensee to meet payment obligations to Licensor.

Subject to the following paragraph, the Licensee's sole (and expected) remedy if Licensor fails to maintain the Uptime Target in a given calendar month shall be to receive service credits from Licensor. All service credits shall be reflected on the next invoice delivered to Licensee by Licensor.

If maximum service credits are due in more than three (3) months in any calendar year during the Term (or any Renewal Term), Licensee shall have the right to terminate the remainder of the Agreement without delay and attempted further remedy by Licensor. Termination shall be considered a final remedy and no further obligations shall be incumbent on the Licensor beyond the termination date, including but not limited to, any financial, physical, or in-kind rebate other than a pro-rated refund of any unused and pre-paid annual License Fee and unused and pre-paid Per User Fees.

SCHEDULE 5 – SOFTWARE & SERVICE DEFINITIONS

For the avoidance of doubt, the Order shall determine which of the following Products and Services are applicable for Customer.

1. PRODUCTS

Learnosity Author: A toolkit that lets you create, customize, manage, and store assessment content. Includes the Author API (embedded into Licensee CMS or LMS) and the Author Site (fully hosted authoring platform).

Essentials

- Learnosity Author API access
 - Access to licensed Partner Item Banks (<https://learnosity.com/company/partners/>) (separate license required)
 - List and browse all Items & Activities in Partner Item Banks
 - Ability to create and store fixed-form Activities from Items in Partner Item Banks Elevate Standards Alignment learning standards integration (separate Partner license required)
 - Ability to search Items by Elevate Standards Alignment learning standards
 - Learnosity Author Site access
 - Learnosity Data API Read/Write access to Licensee's Item Bank
 - List and browse all Items, Activities, Tags in Licensee's Item Bank
 - Ability to create and store Questions, Items, fixed-form Activities and Tags in Licensee's Item Bank

Learnosity Questions: Interactive, embeddable widgets; widgets that accept a learner response are classified as Questions. Features are interactive widgets that do not store a learner response.

- Ability to author and deliver all licensed, non-deprecated Learnosity Questions & Features in the following categories:
 - Highlight & Drawing
 - Charts
 - Classify, Match, Order
 - Fill in the Blanks (Cloze)
 - Graphing
 - Multiple Choice
 - Written & Recorded

- Other
 - File Upload*, Video Upload*, Rating, Gridded, Image Upload
- Features
 - Audio Player, Calculator, Scientific Calculator, Image Tool, Protractor, Ruler, Line Reader, Video Player, Shared Passage
- Ability to create and deliver bespoke Question types. The Licensee may define the rendering of the response area, user interactions with the Question and the scoring parameters (Custom Questions)
- Ability to automatically create multiple variations of the same Questions via a data table (dynamic content).

*Fair usage policy applies to storage for learners' responses for Video & File Upload. (See Clause 7.2 of Schedule 3)

Learnosity Math: A scoring engine which enables the automatic scoring of open-ended Math Questions by using predefined rules to evaluate the correctness of a mathematical expression.

- Ability to author and deliver Learnosity Math & Chemistry Questions
 - Single Math/Chemistry Formula
 - Cloze Math/Chemistry Formula
 - Image Cloze Math/Chemistry Formula
 - Math/Chemistry Formula Essay
- Ability to add static math into all Learnosity Questions and Features
- Ability to automatically create multiple variations of algorithmic Math Questions via Learnosity Math Question Generator

Learnosity Assessments: Flexible tools to create powerful assessments and more efficient scoring.

Essentials

- Access to content provided by licensed Partner Item Banks
(<https://learnosity.com/company/partners/>) (separate license required)
 - Ability to deliver, and store learner responses, for fixed-form tests
 - Ability to deliver “on-the-fly” generated tests from Items
 - Ability to deliver inline, embedded Items into mixed content
 - Ability to deliver, and store learner responses, for fixed-form tests created by Licensee Author Users

- Ability to deliver, and store learner responses, for Partner-created adaptive tests
- Ability to deliver, and store learner responses, for fixed-form tests
- Ability to deliver “on-the-fly” generated tests from Items
- Ability to deliver inline, embedded Items into mixed content
- Ability to allow learner annotation during test taking experience

Branching Tests

- Ability to store (via Data API, or Author Site “Advanced” mode) and deliver item branching tests

Computer & Custom Adaptive Testing

- Ability to store (via Data API, or Author Site “Advanced” mode) and deliver Rasch Model (1 Parameter IRT) item and testlet adaptive tests
- Ability to integrate a proprietary, self-hosted adaptive algorithm into Learnosity’s adaptive test delivery system

Local Device App (Offline) SDK

- Software Development Kit (SDK) to allow delivery and later syncing to cloud of a Learnosity Activity in an offline capacity, within an iOS or Android application

Learnosity Analytics: Generate detailed reports at individual, class or large group level

Essentials

- Ability to fetch Session response & status information via Learnosity’s Data API
- Ability to deliver visual reports on a learner or classroom level (excluding summary by group, scores by tag by user and response analysis by item reports)
- Ability to deliver visual reports based off learner progress through content
- Ability to deliver visual reports showing learner response analysis

Learning Outcomes

- Ability to deliver visual reports display learner and classroom mastery drilldowns

Large Cohort Reporting

- Ability to asynchronously generate and deliver visual reports of large scale (e.g., district level) data

Data Push (Firehose)

- Integration with Learnosity's backend services to automatically push completed learner test status and scores via AWS Kinesis Streams

Events API & Live Progress Reporting

- Ability to provide reports of learner's progress through an assessment, and the infrastructure necessary to deliver such events at a large scale

2. SERVICES

Learnosity Support

Silver

- Access to high quality documentation, code samples, product & training webinars
- Access to Learnosity's online ticketing & support platform
- Status Alerts from Learnosity's System Status site
- 24/7/365 Product, Developer & Author Support from high-quality engineering staff and authoring experts
- Customer Success Manager & Onboarding plan
- 6 Hours Developer & Author Training per year
- 6 Hours Solution Consultancy & Go-Live readiness per year
- Response & Resolution target SLA (see Schedule 4)
- 99.8% Uptime Target

Gold

- **Silver** Support package and;
- 12 Hours Developer & Author Training per year
- 12 Hours Solution Consultancy & Go-Live readiness per year
- Response & Resolution target SLA (see Schedule 4)
- 99.9% Uptime Target

Platinum

- **Gold** Support package and;
- Custom Developer & Author Training
- Custom Solution Consultancy & Go-Live readiness per year
- Response & Resolution target SLA (see Schedule 4)
- Assigned Customer Success Engineer for solution workshops

- Support for multiple or large development teams and multiple products / code bases

Learnosity Platform

Essentials

- Access to Learnosity Console for the purposes of user & author administration, credential management, and item analysis reporting
- Multi-Factor Authentication for Licensee Author Users
- Disaster Recovery & Backups
- Single Region - US, EU or Australia, for API access and Data residency for Licensee Learner Response Data

Multi Region

- Ability to utilize multiple different data centers and specify their respective locations (US, EU or Australia) for Licensee Learner Response Data