

LEARNING CURVE GROUP ENHANCED LEARNING AGREEMENT

November 2024

This Enhanced Learning Agreement (“Agreement”) is a contract between the Client identified in the Client Order Form or Request or Rate Card (“you”, “yours”, “your” or “Client”) and Learning Curve Group [Company Registration 05233487](“we,” “us,” “our” “Service Provider” or “LCG”) (together, “The Parties”).

1. ORDER OF PRECEDENCE

In the event of any conflict in respect of the provisions of our Agreement and/or the documents referred to therein the following order of priority shall prevail (in descending order of priority):

- (1) Terms set out in Learning Curve Group Enhanced Learning Agreement
- (2) Order form / request as per the services outlined in Schedule 1
- (3) Learning Curve Group Privacy Policy and Privacy Notice [[Learning Curve Group | Privacy Policy](#)]
- (4) Data Protection Act 2018 ("DPA") and Electronic Communications (EC Directive) Regulations 2003 and any other data protection laws and regulations applicable in the United Kingdom (UK) (or in any relevant part thereof), including, UK General Data Protection Regulations ("UK GDPR") or similar and any codes of practice, guidelines and recommendations issued by the Information Commissioner, any replacement body or other relevant supervisory authority, all of which are current at the time of any Data processing by the Service Provider (and in the event of any conflict between the Data Protection Laws and Law, Data Protection Laws shall take precedence) and **references to "Data Subjects", "Personal Data", "Process", "Processed", "Processing", "Special Personal Data", "Sensitive Personal Data" and "Data Processor" have the meanings set out in, and will be interpreted in accordance with the DPA and UK GDPR.**
- (5) Learning Curve Group key policies: [Learning Curve Group | Key Policies](#)

You should retain a copy of this Agreement for your records.

2. LEARNING CURVE GROUP ENHANCED LEARNING AGREEMENT

- 2.1. Service Provider may make changes to this Agreement from time to time, provided, however, that such changes will not impose additional obligations on you unless you agree to such changes.
- 2.2. Service Provider will inform you via email of any material changes to the Agreement.
- 2.3. By using the Services after notifications of any such changes, you agree to accept any changes to this Agreement including any additional obligations therein.

3. TERMS

- 3.1. The Client may submit an Order or Request to Service Provider for the Services outlined in Schedule 1 – Services.
- 3.2. or any combination of the above using the appropriate Learning Curve Group paperwork

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3.3. Submission of an Order or Request shall be the Client accepting accordance with our Agreement:

- 2.3.1** purchase the Goods or Services stated in the Order; and
- 2.3.2** pay the relevant Charges or Fees on the Pricing Terms as outlined in Schedule 1 – Services.

3.4. Order or Request Acceptance shall be:

- 3.4.1.** Commencement activity (as per Schedule 1 – Services) has taken place.
- 3.4.2.** Service Provider providing any part of the Services in the Order or Request.
- 3.4.3.** Service Provider accepting the Order or Request in writing.

3.5. Upon Order or Request Acceptance there shall be a binding agreement between the parties (our Agreement), such that:

- 3.5.1.** later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.
- 3.5.2.** each Order or Request Acceptance shall form a separate Agreement.

4. Indemnity

4.1. The Client shall indemnify, keep indemnified and hold harmless Service Provider (on Learning Curve Group's own behalf on behalf of each of Learning Curve Group's Affiliates) from and against any losses, claims, damages, liability, Data Protection Losses, costs (including legal and other professional fees) and expenses incurred by it (or any of its Affiliates) because of the Client's breach of our Agreement.

4.2. This clause shall survive termination or expiry of our Agreement.

5. Support

5.1. Support Services shall be available to the Client for the Term.

5.2. The Client acknowledges that the Support Services may require Service Provider to have access to User Accounts. By agreeing to receive the Support Services the Client agrees to allow such access.

5.3. Service Provider will use reasonable endeavours to notify the Client in advance of scheduled maintenance to the Online Services which Service Providers considers will materially impact the Client, but the Client acknowledges that it may receive no advance notification for downtime caused by Force Majeure or for other emergency maintenance.

6. Changes to services and terms

6.1. Service Provider may at its absolute discretion make, and notify the Client of, updated versions of the documents or other documents referred to in any part of our Agreement (excluding in each case the Order Form) from time to time by notifying the Client of such update by email (together with a copy of the update or a link to a copy of the update) or by any other means which Service Provider elects (Service Alerts). Service Provider will comply with its related Data Protection obligations.

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- 6.2. The document(s) subject to such Service Alerts shall replace the preceding version of the same document(s) for the purposes of our Agreement on the date given in the Service Alert (the Update).
- 6.3. In the event that the Client reasonably believes that any Update materially impacts it negatively in any manner it may by notice elect to terminate our Agreement in respect of all impacted Subscribed Services provided it exercises such right prior to such Update taking effect on not less than 10 Business Days prior written notice and notifies Service Provider at the time of exercising such right of the negative impact which has caused it to exercise this right.
- 6.4. The Client acknowledges that Service Provider shall be entitled to modify the features and functionality of the Services.

7. Charges, Fees and payment

- 7.1. The Charges and any other Fees (including expenses) expressly agreed between the parties in writing shall be paid by the Client.
- 7.2. Service Provider shall invoice the Client as agreed or set out in the Order. Absent any agreement, the default time for invoices shall be:
- 7.3. Invoices shall be paid within 30 calendar days of the date on the invoice.
- 7.4. Fees payable to Service Provider under our Agreement shall be paid into Learning Curve Group's bank account by electronic funds transfer unless otherwise notified by Service Provider to Client in writing in accordance with our Agreement.
- 7.5. Service Provider shall have the right to charge interest on overdue invoices at the rate of 4% per year above the base rate of Barclays Bank plc, calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment whether before or after judgment.
- 7.6. Service Provider shall be entitled to increase the Fees for any and all Services at any time by notice to the Client.
- 7.7. To the extent our Agreement terminates or expires (other than due to termination by the Client) the Client shall not be entitled to any refund or discount of Fees paid for any part of the Services which cease to be provided.

8. Warranties

- 8.1. Service Provider warrants that:
 - 8.1.1. the Services shall operate materially in accordance with its Description in Schedule 1 – Services when used in accordance with our Agreement under normal use and normal circumstances during the Term;
 - 8.1.2. will provide each of the Services with reasonable care and skill.
- 8.2. 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 Client acknowledges that such risks are inherent in cloud services and

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that Service Provider shall have no liability for any such delays, interruptions, errors or other problems.

- 8.3.** If there is a breach of any warranty, Service Provider shall at its option:
- 8.3.1.** use reasonable endeavours to repair or replace the impacted Services within a reasonable time or (whether or not it has first attempted to repair or replace the impacted Service); or
 - 8.3.2.** refund the Charges for the impacted Services which were otherwise payable for the period during which Service Provider was in breach of any such warranty (provided such period is at least 20 consecutive days).
- 8.4.** To the maximum extent permitted by law, sets out the Client's sole and exclusive remedy (however arising, whether in contract, negligence or otherwise) for any breach of any of the warranties.
- 8.5.** Warranties are subject to the limitations and shall not apply to the extent that any error in the Services arises as a result of:
- 8.5.1.** incorrect operation or use of the Services by the Client or any Authorised User (including any failure to follow the Documentation or failure to meet minimum specifications for the use of the Online Services);
 - 8.5.2.** use of any of the Services other than for the purposes for which it is intended;
 - 8.5.3.** use of any Services with other software or services or on equipment with which it is incompatible (unless Service Provider recommended or required the use of that other software or service in writing);
 - 8.5.4.** any act by any third party (including hacking or the introduction of any virus or malicious code);
 - 8.5.5.** any modification of Services (other than that undertaken by Learning Service Provider or at its direction); or
 - 8.5.6.** any breach of our Agreement by the Customer (or by any Authorised User).
- 8.6.** Service Provider may make Non-Learning Curve Group Materials available for the Client's use in connection with the Services. The Customer agrees that:
- 8.6.1.** Service Provider has no responsibility for the use or consequences of use of any Non-Learning Curve Group Materials;
 - 8.6.2.** the Client's use of any Non-Learning Curve Group Materials shall be governed by the applicable terms between the Client and the owner or licensor of the relevant Non-Learning Curve Group Materials;
 - 8.6.3.** the Client is solely responsible for any Non-Learning Curve Group Materials used in connection with the Services and for compliance with all applicable third-party terms which may govern the use of such Non-Learning Curve Group Materials; and
 - 8.6.4.** the continued availability, compatibility with the Services and performance of the Non-Learning Curve Group Materials is outside the control of Service Provider and Service Provider has no responsibility for any negative effect on the Services to the extent resulting from the availability, incompatibility or standard of any of the Non-Learning Curve Group Materials.
- 8.7.** The Client acknowledges that no liability or obligation is accepted by Service Provider (howsoever arising whether under contract, tort, in negligence or otherwise):

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- 8.7.1. that the Services shall meet the Client's individual needs, whether or not such needs have been communicated to Service Provider;
- 8.7.2. that the operation of the Services shall not be subject to minor errors or defects;
- 8.7.3. that the 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 writing by Service Provider.

8.8. Other than as set out in this clause, all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.

9. Client's responsibilities

9.1. The Client shall (and shall ensure all Authorised Users shall) always comply with all applicable laws relating to the use or receipt of the Services as per Schedule 1, including laws relating to privacy, data protection and use of systems and communications.

10. Intellectual property

10.1. All Intellectual Property Rights in and to the Services (including in all Learning and Assessment Resource Packs) belong to and shall remain vested to Service Provider or the relevant third-party owner. To the extent that the Client or any person acting on its or their behalf acquires any Intellectual Property Rights in a Learning and Assessment Resource Pack or any other part of the Services, the Client 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 Service Provider or such third party as Service Provider may elect. The Client shall execute all such documents and do such things as Service Provider may consider necessary to give effect to this clause.

10.2. Any material, graphics, text or similar provided to Service Provider by the Client for the purposes of Customisation remain the property of the Client or their licensors and Service Provider does not acquire any interest in any Intellectual Property Rights.

10.3. Except as expressly stated in the Order, Service Provider has no obligation to deliver any copies of any Learning and Assessment Resource Pack to the Client in connection with our Agreement or the Services.

10.4. The Client and Authorised Users may be able to store or transmit Client Data using the Services and the Services may interact with Client Systems. The Client hereby grants a royalty-free, non-transferable, non-exclusive licence for Service Provider (and each of its direct and indirect sub-contractors) to use, copy and otherwise use the Client Data and Client Systems to the extent necessary to perform or provide the Services or to exercise or perform Service Provider's rights, remedies and obligations under our Agreement.

10.5. To the extent Non-Learning Curve Group Materials are made available to or used by or on behalf of the Client or any Authorised User in connection with the use or provision of the Services, such use of Non-Learning Curve Group Materials (including all licence terms) shall be exclusively governed by applicable third-party terms notified or made available by Service Provider or the third party and not by our Agreement. Service Provider grants

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no Intellectual Property Rights or other rights in connection with any Non-Learning Curve Group Materials.

- 10.6.** Service Provider may use any feedback and suggestions for improvement relating to the Services provided by the Client or the Authorised Users without charge or limitation (Feedback). The Client 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 Service Provider at the time such Feedback is first provided to Service Provider.
- 10.7.** The Client hereby waives (and shall ensure all relevant third parties have waived) all rights to be identified as the author of any work, to object to derogatory treatment of that work and all other moral rights in the Intellectual Property Rights assigned to Service Provider under our Agreement.
- 10.8.** Except for the rights expressly granted in our Agreement, the Client, any Authorised User, and their direct and indirect sub-contractors, 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 Learning and Assessment Resource Pack) and no Intellectual Property Rights of either party are transferred or licensed as a result of our Agreement.
- 10.9.** This clause shall survive the termination or expiry of our Agreement.

11. Client Systems and Customer Data

- 11.1.** Client Data shall always remain the property of the Client.
- 11.2.** Except to the extent Service Provider has direct obligations under data protection laws, the Client acknowledges that Service Provider has no control over any Client Data hosted as part of the provision of the Services and may not actively monitor or access the content of the Client Data. The Client shall ensure (and is exclusively responsible for) the accuracy, quality, integrity and legality of the Client Data and that its use (including use in connection with the Services) complies with all applicable laws and Intellectual Property Rights.
- 11.3.** If Service Provider becomes aware of any allegation that any Client Data may not comply with our Agreement Service Provider shall have the right to permanently delete or otherwise remove or suspend access to any Client Data which is suspected of being in breach of any of the foregoing from the Services and/or disclose Client Data to law enforcement authorities (in each case without the need to consult the Client). Where reasonably practicable and lawful Learning Service Provider shall notify the Client before taking such action.
- 11.4.** Unless otherwise set out in the Order Form, the Client hereby instructs that Service Provider shall within 60 days of the earlier of the end of the provision of the Services (or any part) relating to the processing of the Client Data securely dispose of such Client Data processed in relation to the Services (or any part) which have ended (and all existing copies of it) except to the extent that any Applicable Laws (as defined in Data Protection) requires Service Provider to store such Client Data. Service Provider shall have no liability (howsoever arising, including in negligence) for any deletion or destruction of any such Client Data undertaken in accordance with our Agreement.

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- 11.5.** The Service Provider may share aggregated, anonymized, and high-level data, including but not limited to course numbers and course titles, with third parties such as awarding bodies, learner funding agencies, and other relevant stakeholders for reporting, compliance, and operational purposes. Such data will not include any personally identifiable information or specific learner metrics.

12. Confidentiality

- 12.1.** Without prejudice to the generality of the foregoing, each party shall safeguard and keep confidential the terms of this Agreement and all Confidential Information that it may acquire in relation to the business or affairs of the other party. Neither party shall use or disclose the other party's Confidential Information except to the extent that such use or disclosure is necessary for the purposes of performing its obligations or exercising its rights under this Agreement. Each party shall ensure that its officers and employees and any other persons to whom the Confidential Information is disclosed comply with these requirements.
- 12.2.** The obligations on a party shall not apply to any information to the extent that such information:
- 12.2.1.** is publicly available or becomes publicly available through no act or omission of that party;
 - 12.2.2.** is required to be disclosed by law or by order of a court of competent jurisdiction or other competent authority.

13. Relief

- 13.1.** To the maximum extent permitted by law, Service Provider shall not be liable (under any legal theory, including negligence) for any breach, delay or default in the performance of our Agreement to the extent the same (or the circumstances giving rise to the same) arises or was contributed to by any Relief Event.

14. Limitation of liability

- 14.1.** The extent of Service Provider's liability under or in connection with our 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.
- 14.2.** Service Provider aggregate liability in respect of each individual claim shall not exceed the amount equal to the Charges for the relevant Authorised User paid to Service Provider by the Client in respect of the Service or part of the Services giving rise to the claim; or
- 14.3.** Service Provider's total aggregate liability howsoever arising under or in connection with our Agreement shall not exceed the amount equal to the Charges for all Services paid to Service Provider in the 12-month period immediately preceding the first incident giving rise to any claim under our Agreement.
- 14.4.** Service Provider shall not be liable for consequential, indirect or special losses.

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- 14.5. Service Provider shall not be liable for any of the following (whether direct or indirect), loss of profit, destruction, loss of use or corruption of data, loss or corruption of software systems, loss or damage to equipment, loss of use, loss of production, loss of contract, loss of opportunity, loss of savings, discount or rebate (whether actual or anticipated); and/or harm to reputation or loss of goodwill.
- 14.6. Notwithstanding any other provision of our Agreement, Service Provider's liability shall not be limited in any way in respect of the following: death or personal injury caused by negligence, fraud or fraudulent misrepresentation or any other losses which cannot be excluded or limited by applicable law.

This clause shall survive the termination or expiry of our Agreement.

15. Suspension

- 15.1. Service Provider may suspend access to the Services to all or some of the Authorised Users if:
 - 15.1.1. Service Provider suspects that there has been any misuse of the Services or breach of our Agreement; or
 - 15.1.2. the Client fails to pay any sums due to Service Provider by the due date for payment.
- 15.2. Where the reason for the suspension is suspected misuse of the Services or breach of our Agreement, without prejudice to its rights, Service Provider will take steps to investigate the issue and may restore or continue to suspend access at its discretion.
- 15.3. In relation to suspensions, access to the Services will be restored promptly after Service Provider receives payment in full and cleared funds.
- 15.4. Charges and Fees shall remain payable during any period of suspension notwithstanding that the Client or some or all the Authorised Users may not have access to the Services.

16. Term and termination

- 16.1. Our Agreement shall come into force on Order Acceptance and shall continue until terminated earlier in accordance with its terms (Term).
- 16.2. Either party may terminate our Agreement or the provision of any of the Services for convenience on not less than 30 days' prior written notice to the other.
- 16.3. Either party may terminate our Agreement immediately at any time by giving notice in writing to the other party if:
 - 16.3.1. the other party commits a material breach of our Agreement, and such breach is not remediable;
 - 16.3.2. the other party commits a material breach of our Agreement which is not remedied within 20 Business Days of receiving written notice of such breach; or
 - 16.3.3. the other party has failed to pay any amount due under our Agreement on the due date and such amount remains unpaid within 20 Business Days after the other party has received notification that the payment is overdue.

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17. Consequences of termination

17.1. Immediately on termination or expiry of our Agreement (for any reason), the rights granted by Service Provider under our Agreement shall terminate and the Client shall (and shall procure that each Authorised User shall):

17.1.1. stop using the Services; and

17.1.2. destroy and delete or, if requested by Service Provider, return any copies of any Learning and Assessment Resource Pack in its possession or control (or in the possession or control of any person acting on behalf of any of them).

17.2. Termination or expiry of our 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 our Agreement that is expressly or by implication intended to continue beyond termination.

18. Entire agreement

18.1. Our Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, understandings and arrangements between them in respect of its subject matter, whether in writing or oral.

18.2. Each party acknowledges that it has not entered into our Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in our Agreement.

18.3. Nothing in our Agreement shall limit or exclude any liability for fraud.

19. Notices

19.1. All notices to be given to a party under or in connection with this agreement must be in writing addressed to that party at its registered office or its principal place of business and shall be delivered personally, sent by pre-paid first-class post or other next day delivery service, commercial courier or email.

20. Variation

20.1. No variation of our Agreement shall be valid or effective unless it is:

20.1.1. an update made in accordance with our Agreement; or

20.1.2. made in writing, refers to our Agreement and is duly signed or executed by, or on behalf of, each party.

21. Assignment and subcontracting

21.1. Except as expressly provided in our Agreement, Service Provider may at any time assign, sub-contract, sub-licence (including by multi-tier), transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all its rights or obligations under our Agreement.

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- 21.2.** Except as expressly permitted by our Agreement, the Client shall not assign, transfer, sub-contract, sub-licence, mortgage, charge, declare a trust of or deal in any other manner with any or all its rights or obligations under our Agreement (including the licence rights granted), in whole or in part, without Service Provider's prior written consent.

22. Set off

- 22.1.** Each party shall pay all sums that it owes to the other party under our Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

23. No partnership or agency

- 23.1.** The parties are independent and are not partners or principal and agent and our 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.

24. Severance

- 24.1.** If any provision of our Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of our Agreement shall not be affected.
- 24.2.** If any provision of our Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith to agree the terms of a mutually acceptable alternative provision.

25. Waiver

- 25.1.** No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under our Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 25.2.** No single or partial exercise of any right, power or remedy provided by law or under our Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.
- 25.3.** A waiver of any term, provision, condition or breach of our Agreement shall only be effective if given in writing and signed by the waiving party, and then only in the instance and for the purpose for which it is given.

26. Third party rights

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26.1. A person who is not a party to our Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions.

27. Authority

27.1. Each party represents and warrants to the other that it has the right, power and authority to enter into our Agreement and grant to the other the rights (if any) contemplated in our Agreement and to perform its obligations under our Agreement.

28. Governing law

28.1. Our 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 be governed by, and construed in accordance with, the laws of England and Wales.

28.2. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, our Agreement, its subject matter or formation (including non-contractual disputes or claims).