



# Moodle US

## Master Services Agreement

Version 2.2

Parties Moodle US LLC, of 8101 College Blvd, Suite 100 PMB1007, Overland Park, KS 66210  
**("Moodle", "We" or "Us")**

and

From: The party listed in item 1 of the Schedule  
[Name] [BillingStreet], [BillingCity], [BillingState], [BillingPostalCode]  
**("Client", "Customer", or "You")**

## Recitals:

- a. Moodle provides consulting, customization, software hosting, training, instructional design services and related support services (“Services” or “Moodle Services”).
- b. You wish to obtain Services from Moodle to be detailed in one or more Proposals and/or Statements of Work.
- c. The Parties have agreed that the terms of this Agreement will apply to any Proposals and/or Statement of Work formed and govern Moodle’s provision of, and Your use of, such Services.

# 1 DEFINITIONS AND INTERPRETATION

## 1.1 Definitions

In this Agreement the following terms shall bear the following meanings:

**Authorized Personnel** includes “Administrators” who are Your employees or agents responsible for technical matters that have certain administrative privileges not afforded to general users of the Supplied Software.

**Confidential Information** means all information provided by one Party to the other in connection with this Agreement where such information is identified as confidential at the time of its disclosure or ought reasonably be considered confidential based on its content, nature or the manner of its disclosure, but excluding:

- (a) information that enters the public domain or is disclosed to a Party by a third party, other than through a breach of this Agreement, and
- (b) information developed independently by a Party.

**Customer-Hosted Instance** means an instance of Moodle Workplace Software installed on a Customer Server.

**Customer Servers** are computers of any kind that are controlled by Customer, no matter who owns the hardware and software that make up that actual or virtual computer.

**Customer Terms** are the terms applicable to use of Moodle Workplace Software by Customers as part of Customer-Hosted Instances, that are annexed to this Agreement.

**Fees** means those fees applicable for the provision of the Services as set out in the Proposal and/or Statement of Work, if any, together with any GST or VAT.

**Force Majeure Event** means any event beyond the control of the relevant party.

**Hosting Interface** means the unique domain web interface or URL that will provide You with access to the Supplied Software hosted by Moodle.

**Intellectual Property or Intellectual Property Rights** means all past, present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, service marks, designs, patents, business and domain names, inventions, and any rights in any Confidential Information, trade secrets, know-how, whether created before, on or after the date of



this Agreement. For the avoidance of doubt, in relation to Moodle Pty Ltd this definition includes the Moodle Workplace Software.

**Log-In Information** means the credentials necessary to access the Supplied Software via the Hosting Interface, specifically a unique user ID and password that is created by, or issued to, administrators or end-users.

**LMS** means a learning management system, a virtual learning environment, a digital learning platform or course management system.

**Moodle LMS** means Moodle's open learning management system software freely downloadable at "[download.moodle.org](https://download.moodle.org)".

**Moodle-Hosted Services** means the supply of services by Moodle involving operating an instance of the Moodle Workplace Software on Moodle Servers for the benefit of a Customer.

**Moodle Pty Ltd** is the parent company of Moodle US LLC and means Moodle Pty Ltd (ACN 116 513 636) with its registered office at First Floor, 20 Kings Park Road, West Perth, Western Australia 6005.

**Moodle Servers** are computers of any kind that are controlled by Moodle, no matter who owns the hardware and software that make up that actual or virtual computer, and excludes any Customer Servers.

**Moodle Workplace Software** means the proprietary Moodle Workplace™ code which is the collection of software scripts (plugins and modifications, and any derivations thereof) that are separate to Moodle LMS. Such Moodle Workplace Software is exclusively owned by Moodle Pty Ltd.

**Party** means a party to this Agreement and "Parties" has a corresponding meaning, and includes the party's executors, administrators, successors and permitted assigns and substitutes.

**Personal Data** means personal data according to the General Data Protection Regulation (GDPR) (EU) 2016/679 or equivalent privacy or data protection laws of other relevant jurisdictions.

**Proposal** means the terms of a specific solution suggested to the Customer by Moodle for the delivery of Services and may include an SOW.

**Statement of Work (SOW)** means more specific terms to provide customization, integration, training or support to accompany a Proposal for the supply of Services formed between Moodle and the Customer.

**Services** means the products or services that Moodle will provide to You as specified and agreed by You in any Proposal and/or Statement of Work.

**Supplied Software** means:

- (a) in respect of any Moodle-Hosted Services, the software program, learning management system, application or platform that is hosted and supported by Moodle for Your use as part of the Services under this Agreement and may include Moodle Workplace Software; and
- (b) in respect of any Customer-Hosted Instance, the instance of the Moodle Workplace Software operated on the Customer Server.



The specific software and version thereof is usually set forth in the Proposal and/or SOW.

**Start Date** is the date that this Agreement commences as specified in the .

**Term** is defined in to mean auto-renewing one year terms and includes the Initial Term and any Extended Term as also defined in .

**Uptime** means the access availability to the Supplied Software via the Hosting Interface that is without substantial degradation caused by a failure of Moodle's network, network infrastructure or Moodle Servers. Uptime will not include maintenance windows, security related interruptions, and Force Majeure Events.

**Your Site** means Your website or URL, the subject of the Services, which may be a Moodle-Hosted Service or a Customer-Hosted Instance as specified in the relevant Proposal and/or SOW.

## 2 ORDERING PROCEDURE

### 2.1 Proposals & Statement of Works (SOW)

- (a) If You wish to acquire Services, You may request a Proposal or SOW from Moodle.
- (b) Moodle will, within a reasonable period, provide You with a Proposal or where appropriate, an SOW.
- (c) You may, at your discretion, accept the Proposal and/or SOW.
- (d) Each Proposal and/or SOW accepted by You constitutes a separate contract between You and Moodle.
- (e) The full binding terms between the Parties will comprise:
  - (i) the Proposal and/or SOW as issued by Moodle and accepted by You; and
  - (ii) the terms and conditions set out in this Agreement.
- (f) To the extent of any inconsistency between a Proposal, SOW and the terms of this Agreement, the conflicting provisions shall, where possible, be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the terms of this Agreement will prevail unless expressly provided otherwise.
- (g) Where:
  - (i) a Proposal and/or SOW is annexed to this Agreement on its execution; or
  - (ii) this Agreement is provided along with a Proposal or SOW that is accepted by You,the Proposal and/or SOW and this Agreement are taken to have been agreed all together by the Parties in the manner described above, and form the basis of binding terms between the Parties.

## 3 MOODLE'S SERVICES

### 3.1 Acceptance of Services



Moodle will provide the Services to You as set out in the Proposal and/or SOW and where applicable the following terms are binding upon the Parties. You acknowledge and agree to these terms by either: (i) signing this Agreement; (ii) accepting a Proposal and/or SOW; (iii) ticking 'I Agree' within the Hosting Interface; (iv) accessing or using the Services; or (v) making part or full payment for the Services. If you do not agree to these terms, you should cease accessing or using the Services immediately.

## 3.2 Customer-Hosted Instances

This clause 3.2 applies where the Services include a Customer-Hosted Instance:

- (a) Your use of the Moodle Workplace Software as part of the Customer-Hosted Instance is subject to the Customer Terms, which apply as between You and Moodle Pty Ltd. You must execute and return the Customer Terms before Moodle can supply you with the Moodle Workplace Software.
- (b) Your license to use the Moodle Workplace Software is set out in the Customer Terms. Your use of the Moodle Workplace Software is contingent on both this Agreement and the Customer Terms remaining in place. If either the Agreement or the Customer Terms are terminated or otherwise cease to be in force, you must immediately cease use of the Moodle Workplace Software, and remove all copies of the Moodle Workplace Software from the Customer Server, unless expressly permitted otherwise by Moodle Pty Ltd.
- (c) Your use of any software other than the Moodle Workplace Software will be governed by its own licensing terms. Any use of the Moodle LMS is governed by the GNU General Public License v 3.0.
- (d) Except to the extent expressly included as part of the Services, You are solely responsible, at your sole cost and expense, for the Customer Server, including procuring all necessary hardware, software, equipment and services necessary for Moodle Workplace Software to run on the Customer Server and access the Internet.
- (e) Without limiting (d), Moodle is not responsible for any interruption to a Customer-Hosted Instance arising from issues associated with the Customer Server, including any downtime or disconnection of the Customer Server and clause 3.4(b) shall not apply.
- (f) Without limiting any of Your obligations under the Customer Terms, or any obligation of confidence You owe, You must not provide access to the source code of the Moodle Workplace Software to anyone other than Your Authorized Personnel.

## 3.3 Moodle-Hosted Services

This clause 3.3 applies where the Services include Moodle-Hosted Services:

- (a) Your license to use the Moodle Workplace Software is set out in the Moodle Workplace End User License Agreement (EULA). Your use of the Moodle Workplace Software is contingent on both this Agreement and the EULA remaining in place. If either Agreement is terminated or otherwise ceases to be in force, you must immediately cease use of the Moodle Workplace Software, unless expressly permitted otherwise by Moodle Pty Ltd.



- (b) Your use of any software other than the Moodle Workplace Software will be governed by its own licensing terms. Any use of the Moodle LMS is governed by the GNU General Public License v 3.0.
- (c) Moodle will host the Supplied Software on its designated servers in accordance with commercially reasonable industry standards and procedures and will ensure that its Internet servers will be available with at least 99.9% Uptime, calculated on a monthly basis. Your remedy for interruptions will be based on a “Service Interruption Credit” pursuant to clause 3.4(b) for Services not received.
- (d) Moodle will have sole discretion with respect to all protocols, procedures and technical requirements relating to the hosting of the Supplied Software, the hosting environment, the host servers, and the design and functionality of the Hosting Interface and the URL. Except as required by applicable open-source license(s), Moodle will have no obligation to provide copies of the Supplied Software to You.
- (e) You are solely responsible, at your sole cost and expense, for procuring all necessary hardware, software, equipment and services necessary for Authorized Personnel to access the Internet and to access and use the Supplied Software via the Hosting Interface at the URL.
- (f) Moodle may suspend your access to the Moodle-Hosted Services, in whole or in part, where You are in breach of Your obligations under this Agreement or the applicable Proposal and/or SOW, or otherwise using or allowing the use of the Moodle-Hosted Services which is unacceptable, including where it:
  - I. involves anything which is false, defamatory, harassing or obscene;
  - II. involves unsolicited electronic messages;
  - III. would involve the contravention of any person’s rights (including Intellectual Property Rights);
  - IV. may offend any laws; or
  - V. may otherwise be regarded by Moodle, on reasonable grounds, to be unacceptable.

### 3.4 Support Services & Uptime

- (a) Moodle will provide any support services specified in the Proposal and/or SOW in accordance with Moodle’s service level agreement (if any) published on its website in a timely and workmanlike manner, using knowledge and recommendations for performing the Services which meet generally acceptable industry standards.
- (b) Where Moodle has failed to meet the monthly Uptime of 99.9%, Moodle will issue You with a Service Interruption Credit calculated on the percentage of the Fees designated in the Proposal and/or SOW for the Moodle-Hosted Services according to the following table based on the total interruption to the Uptime in a calendar month period as follows:

Monthly Uptime	Service Interruption Credit (% of Monthly Hosting Fees)
100 - 99.9%	0%



99.8 - 98%	10%
97.9 - 97%	25%
96.9 - 0%	100%

(c) The Service Interruption Credit issued for any calendar month shall not exceed the total Monthly Hosting Fees paid or payable for such month and will be applied against the next month's Hosting Fees due, or if no future Hosting Fees are payable, the Service Interruption Credit shall be applied against other future Fees payable by You. Where no other Fees are payable by You the Service Interruption Credit shall be void and Moodle shall have no further obligation in respect of such Service Interruption Credit. All reasonable determinations and calculations made by Moodle relating to the Uptime of the Moodle-Hosted Services shall be final and binding.

### 3.5 Fees for Services

You must pay Moodle the Fees for the Services in accordance with any Proposal and/or SOW by the date specified, failing which Moodle may, in its absolute discretion, without prejudice to any other remedies Moodle may have, suspend some or all of the Services until such time as all outstanding amounts have been paid to Moodle. All Fees due shall be paid by You in full without any set-off, counterclaim or deduction. Where a Proposal and/or SOW does not specify the Fees associated with particular services, these will be charged by Moodle on a time-and-materials basis at its then current rates.

## 4 YOUR SITE

### 4.1 Your Responsibilities

You are entirely responsible for:

- (i) the content on Your Site (including all data that we host on Your behalf as part of the Services);
- (ii) ensuring that the data that we host on Your behalf does not contain any virus or otherwise disrupt or corrupt the data or systems of any person; and
- (iii) all dealings You have with users of Your Site.

### 4.2 Security

You and Your users shall implement industry standard best practice security measures and procedures to ensure that end-users protect Log-In Information and do not permit any unauthorized person to access or use the Supplied Software. You and your users will be responsible and liable to Moodle for all acts and omissions of any of your users and end-users which violate any of the terms of this Agreement. You will not be responsible for any such unauthorized use if it is proven that all standard industry practices and procedures relating to



security have been undertaken, as guided by Moodle's own recommendations including at [https://docs.moodle.org/311/en/Site\\_security\\_settings#Password\\_policy](https://docs.moodle.org/311/en/Site_security_settings#Password_policy).

## 4.3 Restrictions

You must not:

- (i) resupply the Supplied Software, whether the Supplied Software itself or the Supplied Software as a service, to a third party;
- (ii) authorize, permit or allow the Supplied Software to be accessed or used by any person or entity for any means other than by utilizing the Hosting Interface at the URL or APIs designated by Moodle.

Notwithstanding the foregoing, You may use the Supplied Software to provide value-added services to third parties, and provide those third parties with access to Your Site to the extent necessary for the provision of those services.

## 4.4 Indemnity

You will indemnify Moodle against all costs (including legal costs), expenses, damages, accounts or other losses or liability, including those from any actions, suits, proceedings, claims or demands, made against or suffered by Moodle in connection with:

- (i) Your Site;
- (ii) Your use of any Services or Supplied Software;
- (iii) any data that Moodle hosts for You as part of the Services;
- (iv) any failure by You to meet the responsibilities described in clause 4.1; or
- (v) any and all claims made against Moodle:
  - (A) by users of Your Site; or
  - (B) by any third party alleging that the content on Your Site, or any data hosted by us on Your behalf, infringes any Intellectual Property Rights or otherwise breaches any law, including privacy laws.

# 5 MAINTENANCE & DATA BACK-UP

- (a) Moodle reserves the right to perform maintenance and upgrades of Supplied Software and other infrastructure used to provide the Moodle-Hosted Services at any time and from time to time. We will endeavor to provide You with reasonable notice of maintenance and upgrades.
- (b) If You operate a Customer-Hosted Instance, or receive Moodle-Hosted Services but the Services do not include any back-up services, You must have Your own safeguards and back-up processes in place to recover from any failures or loss of data which might occur while using the Services and protecting the confidentiality of Your data with suitable management procedures, as You may see fit. Moodle will only be responsible where you have elected for Moodle to manage all backup and security of Your data.





(c) Moodle will implement commercially reasonable security measures to prevent unauthorized access to Your data on Moodle's networks. If Moodle needs to permanently delete or purge back-ups of data for operational reasons, Moodle will provide reasonable prior notice of such data deletion or purging to You and will provide assistance where applicable to ensure retention of critical data.

(d) Subject to clause 9.1(b) and to the full extent permitted by law Moodle hereby excludes all liability to You arising from any loss of, or corruption of data, other than direct damages arising from the negligence (including mistakes, omissions or incompetence) of Moodle.

## 6 INTELLECTUAL PROPERTY

1. You acknowledge and agree that:
  - I. You have no rights, title, license or interest in any Intellectual Property of Moodle including Moodle Workplace™ except as expressly provided for in this Agreement;
  - II. nothing in this Agreement constitutes a transfer of any Intellectual Property Rights including any rights You have to Your data;
  - III. You must not directly or indirectly do anything that would or might invalidate or put in dispute Moodle's title to its Intellectual Property including the Hosting Interface.
  - IV. You will not allege that any GNU General Public License rights of any kind exist in relation to the Moodle Workplace Software or its source code.
2. You grant to Moodle a non-exclusive royalty-free license to use and reproduce any Intellectual Property Rights associated with the content of Your Site, or any data hosted by us on Your behalf, solely for the purpose of Moodle providing the Services.
3. Moodle owns all Intellectual Property Rights arising from its performance of the Services, and grants you a non-exclusive royalty-free license to use and reproduce those Intellectual Property Rights solely for the purpose of enjoying the Services.
4. Except to the extent that such customization or modification forms part of the Services defined in a Proposal and/or SOW, Moodle is not obliged to make any changes to the Moodle Workplace Software at Your request or suggestion. However, where You provide any feedback, comments, suggestions or requests in relation to the Moodle Workplace Software, You agree that Moodle and Moodle Pty Ltd will have no restrictions on any uses they may make in respect of it. Without limiting the foregoing, where Moodle or Moodle Pty Ltd modifies the Moodle Workplace Software at Your suggestion, they may offer such modifications to their other partners and customers without limitation.

## 7 DATA PROTECTION AND AUDITING

### 7.1 Protection of Personal Data

- (a) Moodle will not use or disclose any Personal Data for a purpose other than discharging its obligations under this Agreement and will take all reasonable steps to protect Personal Data in Moodle's possession against misuse or loss. This clause will survive the termination or expiry of this Agreement.
- (b) You acknowledge that You remain the Data Controller at all times in respect of all Personal Data supplied to Moodle for the purposes of processing.



(c) You hereby represent, warrant, and covenant to Moodle that You are in, and will maintain, strict compliance with all data privacy and data protection laws that may be applicable to the performance of Your obligations under this Agreement, as such laws may be amended.

(d) By signing this Agreement, You acknowledge that Moodle has the right to process any Personal Data in order to perform its obligations and that such processing shall be covered by a Privacy Notice or Data Processing Agreement directly provided or made available on Moodle's website and will be in compliance with Article 6.1(b) of GDPR or any local law equivalent.

## 7.2 Confidentiality

(a) A Party must not, without the prior written consent of the other, use or disclose the other Party's Confidential Information unless expressly permitted by this Agreement or required to do so by law or any regulatory authority.

(b) Without limiting (a) or any obligation that you may have under the Customer Terms, You acknowledge and agree that the source code of the Moodle Workplace Software is the Confidential Information of Moodle and Moodle Pty Ltd, and must be kept strictly confidential at all times.

# 8 TERM AND TERMINATION

## 8.1 Term

1. This Agreement begins on the Start Date as stated in the (or relevant Proposal and/or SOW) and will automatically renew for additional one (1) year periods (the "Term"), unless either Party gives notice to the other of its intent not to renew at least **sixty (60) days** before the expiration of the then current term.
2. Each Proposal and/or SOW extends for (i) the period specified in the Proposal and/or SOW, if so specified, or (ii) the Term, for ongoing Services, or until the Services listed in the Proposal and/or SOW have been completed, otherwise.
3. You may terminate this Agreement, or any Proposal and/or SOW thereunder, with or without cause, upon **sixty (60) days** prior written notice to Moodle. If you cancel ongoing Services, Your access and use will be terminated at the end of the billing cycle, and automatic payments will cease at the end of the month or year that we are notified of your intention to terminate. Upon mutual agreement, You may be entitled to a pro-rated refund for Fees paid for Services not performed.

## 8.2 Grounds for termination

Either Party may immediately terminate this Agreement, or any Proposal and/or SOW thereunder, by notice in writing to the other Party if that other Party:

1. commits a breach of this Agreement or the relevant Proposal and/or SOW which is incapable of remedy or is capable of remedy but has not been remedied by the breaching Party within 15 days of notice to do so;
2. becomes insolvent, bankrupt or unable to pay its debts when they are due or is unable to pay its debts within the meaning of the relevant legislation in the place of the Party's incorporation; or
3. ceases to carry on business.



## 8.3 Consequences of termination

On termination or expiry of a Proposal and/or SOW:

1. all licenses and permissions granted under the Proposal and/or SOW will cease;
2. You must immediately pay Moodle all outstanding Fees due under that Proposal and/or SOW; and
3. You must immediately cease use of the Services the subject of that Proposal and/or SOW.

On termination or expiry of this Agreement:

1. all Proposals and SOWs thereunder are automatically terminated;
2. You must immediately cease all access to Moodle's networks, the Moodle Workplace Software, the Hosting Interface and use of Moodle's Intellectual Property; and
3. You must immediately pay Moodle all outstanding Fees due.

## 8.4 Survival of terms

Clauses 4.4, 5(d), 6, 7.1(a), 7.2, 8, 9, 10 and 11 of this Agreement survive expiry or termination of this Agreement and will continue in full force and effect. Termination or expiry of this Agreement is without prejudice to the rights and remedies of the Parties arising before the date of termination or expiry.

# 9 LIABILITIES & INDEMNITIES

## 9.1 Limitation of Liability

To the full extent permitted by law, Moodle:

1. has not made and excludes all warranties, terms, conditions or undertakings, whether express or implied, written or oral, statutory or otherwise (including any implied warranty of merchantability or of fitness for a particular purpose) in respect of the Supplied Software; and
2. WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF ANTICIPATED PROFITS OR LOSS OF REVENUE, PURE ECONOMIC LOSS, COSTS, DAMAGES, CHARGES OR EXPENSES WHATSOEVER ARISING UNDER OR PURSUANT TO THIS AGREEMENT HOWEVER CAUSED WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT, STATUTE, EQUITY OR OTHERWISE.
3. The maximum claim for damages for any single claim or series of claims by You under this Agreement is to be capped at the value of Fees for one (1) year of Service.

## 9.2 Indemnity

- a. Each party agrees to indemnify and hold harmless each other party and its representatives (**Indemnified Parties**) from and against any lawsuits, claims, losses, costs, damages or liabilities (or actions or proceedings in respect thereof) that the Indemnified Parties incur or may incur related to or arising from:
  - I. any breach by the indemnifying party or any of its representatives of this Agreement;
  - II. any personal injury or damage to property caused by the acts or omissions of the indemnifying party;
  - III. any negligence or wilful misconduct of the indemnifying party or its representatives in the performance of this Agreement;
  - IV. any third-party claim or demand that the Moodle Workplace Software infringes or violates any third party's copyright will be indemnified by Moodle, only where You promptly provide written notice to Moodle in compliance with clause 5 of the EULA or Customer Terms.



- b. Each indemnity provided under this clause 9.2 will be reduced to the extent that the loss or damage was caused or contributed to by the acts or omissions of the Indemnified Parties.
- c. The indemnity above is a continuing obligation and survives termination of this Agreement.
- d. It will not be necessary for the Indemnified Party to incur expense, loss or make payment before enforcing the indemnity in this Agreement. Before making any demand for performance of the indemnity each Party will allow the other Party such time as is reasonable in the circumstances to investigate its alleged liability and to negotiate a settlement of or to defend the relevant action, claim, proceeding or demand.

## 9.3 Representations And Warranties

Each Party represents and warrants that during the Term of this Agreement, it:

1. where it is an incorporated entity, is a validly existing corporation, registered under the laws of its place of incorporation and has taken all necessary corporate action to authorize the entry into and performance of this Agreement;
2. has the power to enter into and perform its commitments under this Agreement;
3. is not insolvent or bankrupt or unable to pay its debts when they are due;
4. has not and is not the subject of allegations of professional misconduct, fraud, corruption, money laundering or being a member of a criminal organization; and
5. has fulfilled its tax obligations.

# 10 DISPUTE RESOLUTION

## 10.1 Dispute Resolution

(a) In the event of any dispute between the Parties concerning or arising out of this Agreement or any Proposal and/or SOW, the Parties must meet to attempt to resolve the dispute prior to the commencement of any proceeding.

- a. The Party initiating the dispute must give notice setting out the nature of the dispute and available dates to meet to resolve the dispute.
- b. Either Party may commence legal proceedings in relation to the dispute if:
  - I. the Parties fail to resolve the dispute within 30 days of the first meeting;
  - II. the Parties fail to agree on a meeting within 14 days of receipt of the dispute notice; or
  - III. a Party fails to attend a scheduled meeting.

## 10.2 Continuity

Despite the existence of a dispute, the Parties must continue to perform their obligations under this Agreement unless Moodle, by notice to You, suspends the Services pending the outcome of the dispute.

# 11 GENERAL

## 11.1 Special Conditions



The Parties agree to the further special conditions (if any) specified in the Schedule or in any Proposal and/or SOW. If there is any inconsistency between the special conditions and a provision of the Proposal and/or SOW or this Agreement the special conditions prevail to the extent of that inconsistency but nothing in the special conditions may grant any license to install Moodle Workplace Software on a Customer Server in a manner not permitted by Customer Terms.

## 11.2 Variation

This Agreement, or any Proposal and/or SOW, may only be varied by written agreement between the Parties.

## 11.3 Waiver

- (a) A failure to exercise or delay in exercising any right, power or privilege by any Party will not operate as a waiver of that right, power or privilege.
- (b) A single or partial exercise of any right, power or privilege will not preclude any other or further exercise of that right, power or privilege, or the exercise of any right, power or privilege.

## 11.4 Force Majeure

- (a) A Party will not be responsible for a failure to comply with its obligations under this Agreement to the extent that failure is caused by a Force Majeure Event, provided that the Party keeps the other Party closely informed in such circumstances and uses reasonable endeavors to rectify the situation.
- (b) Without limiting any other right to terminate under this Agreement, if a Force Majeure Event affects a Party's performance under this Agreement for more than 30 consecutive days, the other Party may immediately terminate this Agreement by written notice.

## 11.5 Assignment

Neither Party may assign, encumber or otherwise deal with any rights or obligations under this Agreement without the prior written consent of the other Party.

## 11.6 Further assurances

The Parties agree that they will sign, execute and complete all such further assurances and documents and do all such things as may be reasonably required to complete the matters in or contemplated by this Agreement.

## 11.7 Severability

If any part of the Agreement is, or becomes, void or unenforceable, that part is, or will be, severed from this Agreement so that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

## 11.8 Notices

1. Any communication under or in connection with this Agreement must be in writing and be addressed as shown below: **Moodle**: Post: 8101 College Blvd, Suite 100, Overland Park KS 66210  
Email: [don.hazelwood@moodle.com](mailto:don.hazelwood@moodle.com)  
Attention to: Head of Sales and Marketing  
With a copy to: [legal-us@moodle.com](mailto:legal-us@moodle.com)

### **Customer / You:**

As set out in the or as otherwise notified by that Party to Moodle in writing from time to time.



1. Notices sent in accordance with subclause (a) will be conclusively taken to be given or made when delivered, received or left at the physical or registered address or email address of the other Party or to any other postal address or email address which that Party may have notified the other Party. If delivery or receipt is on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4pm (local time), it will be conclusively taken to have been received at the commencement of business on the next day on which business is generally carried on in that place.

## **11.9 Relationship between Moodle and You**

Nothing in this Agreement shall be construed to place the Parties in a relationship whereby either shall be considered to be the agent of the other for any purpose whatsoever.

## **11.10 Counterparts**

This Agreement may be executed in any number of counterparts (including by email or facsimile). All counterparts taken together constitute one and the same instrument.

## **11.11 Jurisdiction & Governing Law**

This Agreement will be governed by and construed and interpreted in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction). Any legal suit, action, proceeding, or dispute arising out of or related to this Agreement may be instituted in the federal courts of the United States of America or the courts of the State of Delaware. Notwithstanding the foregoing, either Party may elect to bring any proceedings in a mutually convenient alternative forum or jurisdiction.



# AGREEMENT EXECUTION

Executed by **Customer** in accordance with its constituent documents:

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Signature of Authorized Representative

Signature of Secretary/other Director

---

Full Name of Director / Individual

Name of Secretary/other Director in full

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Executed by **Moodle US, LLC** by its duly authorized representative:

\_\_\_\_\_  
Signature of Authorized Representative

Don Hazelwood

\_\_\_\_\_  
Name of Authorized Representative

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## **SCHEDULE - SPECIFIC DETAILS**

### **Item 1 Customer Entity Details & Status**

Legal Entity Name: \_\_\_\_\_

Trading / Business Name: \_\_\_\_\_

Company EIN: \_\_\_\_\_

Primary Site:  
\_\_\_\_\_





## Item 2 Customer Notice Details

(pursuant to clause 11.8)

Attention:

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Address:

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Email:

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## Item 3 Start Date

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## Item 4 Special Conditions

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# ANNEXURE - CUSTOMER TERMS or EULA

[To be inserted, or provided separately]

