

Moodle US Master Services Agreement

Version 3.2

Parties: Moodle US LLC, of 8101 College Blvd, Suite 100 PMB1007, Overland Park, KS 66210
 (“**Moodle**”, “**we**” or “**us**”)

and

The party listed in item 1 of Schedule 1
 (“**Customer**” or “**You**”)

Recitals:

- A. Moodle provides consulting, software development and 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.



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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 will be provided separately where applicable and attached to this Agreement as Schedule 2.

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".

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, an affiliate, 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.



Open Source License means any software license identified by the Open Source Initiative as an open source license by virtue of meeting its open source definition; and "Open Source" shall have a corresponding meaning.

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 such data as defined under any applicable Privacy Laws including the General Data Protection Regulation (GDPR) (EU) 2016/679 and the California Consumer Privacy Act 2018.

Privacy Laws means any applicable privacy or data protection laws including the General Data Protection Regulation (GDPR) (EU) 2016/679 and the California Consumer Privacy Act 2018.

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

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.

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.

Supplied Software means the software program, learning management system, application or platform that is hosted, provided, developed or supported by Moodle for Your use as part of the Services under this Agreement and may include Moodle Workplace Software.

The specific software and version thereof will be set forth in the Proposal and/or SOW.

Start Date is the date that this Agreement commences as specified in [Schedule 1](#).

Term is defined in [clause 8.1](#) to mean auto-renewing one year terms and includes the Initial Term and any Extended Term as also defined in [clause 8.1](#).

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.



1.2 Interpretation

In this Agreement unless the text or the context indicates a contrary intention:

- (a) words importing the singular include the plural and vice versa;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) any rule of construction that an agreement should be construed to the disadvantage of the party responsible for its drafting or preparation does not apply; and
- (d) if a day on or by which an obligation must be performed or an event must occur is not a business day in the location where the performance of the obligation or the occurrence of the event must occur under this Agreement, the obligation must be performed or the event must occur on or by the next business day.

2 Ordering Procedure

2.1 Proposals & Statement of Works (SOW)

- (a) The full binding terms between the Parties will comprise:
 - (i) any Proposal and/or SOW as issued by Moodle and signed by You or as later varied in writing by the Parties; and
 - (ii) the terms and conditions set out in this Agreement.
- (b) 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.
- (c) 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

The parties may agree that Clause 3.2 and/or Clause 3.4 shall not apply to this Agreement by indicating as such at Item 5 of Schedule 1.

3.1 Fees for Services

- (a) Subject to prompt payment of the Fees, 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 that accessing or using the Services or making part or full payment for the Services also constitutes Your acceptance of this Agreement and any Proposal and/or SOW.
- (b) 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.
- (c) Where the Services do not include hosting, clauses 3.2 and 3.4 do not apply. Such other Services (whether consulting, software development, support services or otherwise) will be performed on a time and materials basis, unless otherwise specified in the relevant Proposal and/or SOW. All such other Services will be deemed accepted by You unless rejected in writing by You in a Defect Notice within 15 days of delivery of the Services.
- (d) Any Defect Notice rejecting Services must clearly outline the alleged discrepancies between the performance of the Services and the Proposal and/or SOW and must allow Moodle to rectify any discrepancies within 15 days of notification.
- (e) The personnel assigned to perform the Services shall be determined solely by Moodle.
- (f) You hereby acknowledge and agree that successful performance of the Services requires You to provide relevant information and data as requested by Moodle from time to time together with unrestricted access to the Supplied Software.
- (g) Any requested changes to the specifications or scope outlined in the Proposal and/or SOW ("Revised Scope") must be provided by You in writing. Moodle shall review the Revised Scope in consultation with You within ten days of receiving the Revised Scope and any Revised Scope must then be signed by both Parties in order to affect



or amend the performance of the Services as originally outlined in the Agreement. Notwithstanding any provision to the contrary hereunder, prior to Moodle signing the same, Moodle shall have the right to accept or reject any Revised Scope.

3.2 Moodle-Hosted Services

This clause 3.2 applies where the Services include Moodle-Hosted Services:

- (a) Subject to payment of the Fees and ongoing compliance with this Agreement and any applicable Proposal and SOW signed by Moodle and You, Moodle grants You a non-transferable, non-assignable, non-sublicensable, revocable license to access the Supplied Software solely for either internal purposes or to provide value-added services to third parties in accordance with clause 4.3, in compliance with the Supplied Software's technical documentation and only as specified in any applicable Proposal or SOW signed by Moodle and You. Upon termination of this Agreement, You must immediately cease accessing any Supplied Software, unless expressly permitted by Moodle in writing.
- (b) Your use of any software other than the Moodle Workplace Software may be governed by its own licensing terms, including the GNU General Public License v 3.0.
- (c) No license, right or interest in any Moodle trademark, brand name, service mark or trade dress is granted hereunder.
- (d) If the Supplied Software is acquired by or on behalf of a unit or agency of the U.S. Government (the "Government"), You agree that such Supplied Software is "commercial computer software" or "commercial computer software documentation" and that, absent a written agreement to the contrary, the Government's rights with respect thereto are limited by the terms of this Agreement, pursuant to applicable Federal Acquisitions Regulations and/or an applicable Defense Federal Acquisition Regulation Supplement
- (e) 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.
- (f) You are solely responsible, at your sole cost and expense, for procuring all necessary hardware, software, equipment and services necessary for You and Your users, including Authorized Personnel to access the Internet and to access and use the Supplied Software via the Hosting Interface at the URL.
- (g) 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 and Privacy Laws);



- iv. may offend any applicable laws; or
- v. may otherwise be regarded by Moodle, on reasonable grounds, to be unacceptable.

3.3 Support Services & Uptime

- (a) 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 3.3(c) and (d) for Services not received.
- (b) 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.
- (c) 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%

- (d) 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.



3.4 Customer-Hosted Instances

This clause 3.4 only applies where the Services include a Customer-Hosted Instance of Moodle Workplace Software:

- (a) Your use of the Moodle Workplace Software as part of any Customer-Hosted Instance is subject to the Customer Terms that will be incorporated (when necessary) as Schedule 2, 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) 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 in writing 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 may be 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 clauses 3.3(c) and (d) shall not apply.
- (f) Without limiting any of Your obligations under the Customer Terms incorporated (when necessary) as Schedule 2, and without limiting any other obligation You owe us, You must not provide access to the source code of the Moodle Workplace Software to anyone other than Your Authorized Personnel.

4 Your Site

4.1 Your Responsibilities

You are entirely responsible for:

- (a) the content on Your Site (including all data that we host on Your behalf as part of the Services);
- (b) all use of Your Site by You, Your Authorized Personnel and users;
- (c) 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
- (d) all dealings You have with users of Your Site.



4.2 Security

You and Your users shall implement security measures and procedures in accordance with Moodle's [password policy](#) recommendations to ensure that You and Your end-users protect Log-In Information and do not permit any unauthorized person to access or use the Supplied Software. You will be responsible and liable to Moodle for any unauthorized access or use unless it is proven that You and Your end users complied with Moodle's [password policy](#).

4.3 Restrictions

You must not:

- (a) resupply the Supplied Software, whether the Supplied Software itself or the Supplied Software as a service, to a third party; or
- (b) 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 permitted 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 for use of the Software or Services

You agree to indemnify, defend and hold harmless Moodle and its affiliates from any and all third party claims, liability, damages and/or costs (including, but not limited to, attorney's fees) arising from:

- (a) all use of the Software or Services in a manner contrary to any term of this Agreement;
- (b) the infringement or violation by You or Your users of any Intellectual Property Rights of any other person; and/or
- (c) the infringement or violation by You or Your users of any other right of any person, or entity, or applicable law, including any Privacy Laws.

It will not be necessary for Moodle or its affiliates to incur expense, loss or make payment before enforcing the indemnity in this clause. Before making any demand for performance of the indemnity Moodle will allow You such time as is reasonable in the circumstances, and in any event no fewer than sixty (60) days, to investigate Your alleged liability and to negotiate a settlement of or to defend the relevant action, claim, proceeding or demand. This obligation to indemnify survives any termination of the Agreement.



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 also to clauses 9.1(d) - (f) inclusive, 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

6.1 General Rights

- (a) Unless this Agreement provides to the contrary, each Party's rights, title and interest in and to all of its pre-existing intellectual property are unaffected by this Agreement.
- (b) The Parties acknowledge and agree that nothing in this Agreement constitutes a transfer of any Intellectual Property Rights, including any rights You have to Your data.
- (c) You acknowledge and agree that:
 - (i) You have no rights, title, license or interest in any Intellectual Property of Moodle including Moodle Workplace™ except where a license is expressly provided for in this Agreement; and



- (ii) 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.
- (d) 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.
- (e) In keeping with the underlying public benefit principles of Open Source, and unless otherwise directed by You in writing, Intellectual Property created by Moodle for the Customer may be released by Moodle back to the Open Source software development community. Such release shall occur for the sole purpose of advancing the availability of better code, in a manner consistent with the prevailing software licenses. No release of this kind shall disclose Confidential Information.
- (f) Your use of any third party software or Open Source software as part of the Services may be subject to its own applicable license terms, including the applicable Open Source License terms.

6.2 Moodle Hosted Services

- (a) 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, for the purpose of Moodle providing the Services.
- (b) You will ensure, and You hereby represent, that You have all necessary rights or licenses in relation to Intellectual Property subsisting in any matter, thing or process supplied by You pursuant to this Agreement for use by Moodle in providing the Services to You under this Agreement.

6.3 Modified Software

- (a) Only as and when specified in the signed Proposal or signed SOW, and only upon payment in full of the relevant Fees, title to all Intellectual Property Rights in modified or customized code that is developed for You during the provision of the Services shall pass to You.
- (b) In the absence of any agreement in writing to the contrary between the Parties, Moodle shall retain ownership in all Intellectual Property in any modifications or customizations developed for You, including any Intellectual Property which comes into existence during the performance of the Services.



7 Data Protection

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 under Privacy Laws at all times in respect of all Personal Data supplied to Moodle for the purposes of the Services.
- (c) You hereby represent, warrant, and covenant to Moodle that You are in, and will maintain, strict compliance with all Privacy 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. The Parties agree that such processing shall be covered by a [Privacy Notice](#) and (when executed by You) the Data Processing Agreement directly provided or made available within Moodle's Privacy Notice, and in any event in compliance with Article 6.1(b) of GDPR (where applicable) or any other applicable Privacy Laws.

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 7.2(a) or any obligation that You may have under the Customer Terms governing Customer-Hosted Instances, 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 & Termination

8.1 Term

- (a) This Agreement begins on the Start Date as stated in [Schedule 1](#) 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.
- (b) Each Proposal and/or SOW extends (i) for the period specified in the Proposal and/or SOW, if so specified, or (ii) until the Services listed in the Proposal and/or SOW have been completed, or (iii) for the Term, for ongoing Services.



- (c) Either Party may terminate this Agreement, or any Proposal and/or SOW thereunder without cause, upon **sixty (60) days** prior written notice to the other Party. If You cancel ongoing Services, Your access and Your payment obligations will be terminated upon the expiry of the sixty (60) day notice period, and at Moodle's discretion You may then be entitled to a pro-rata refund of any Fees paid for Services not performed or You may be liable for outstanding Fees for Services already performed, calculated at the standard rate. If Moodle (acting reasonably) terminates due to Your inappropriate conduct Moodle will determine any refund at its sole discretion.

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:

- (a) 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;
- (b) 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
- (c) ceases to carry on business.

8.3 Consequences of termination

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

- (a) all licenses and permissions granted under this Agreement, any Customer Terms, the Proposal and/or SOW will cease;
- (b) You must immediately pay Moodle all outstanding Fees due under that Proposal and/or SOW; and
- (c) You must immediately cease use of the Services the subject of that Proposal and/or SOW.

On termination or expiry of this Agreement:

- (d) all Proposals and SOWs thereunder are automatically terminated;
- (e) You must immediately cease all access to Moodle's networks, the Moodle Workplace Software, the Hosting Interface and use of Moodle's Intellectual Property;
- (f) You must immediately pay Moodle all outstanding Fees due; and
- (g) in Moodle-Hosted Instances:
 - (i) Your Site will be put into maintenance mode and will no longer be functionally accessible by You or Your users;
 - (ii) a backup of Your Site will be created on the date of termination or expiry and shall only be accessible by You for a period of 30 days following which the backup will be deleted and hosting control panel access will cease;



- (iii) when the backup of Your Site is created a support ticket will also be created and the person specified in Item 2 of Schedule 1 will be notified to enable You to access the site backup; and
- (iv) 90 days after termination or expiry, Your internal client technical records will be archived, We shall confirm data destruction and effacement in writing to You and We shall upload a record confirming data destruction and effacement into the support ticket.

8.4 Survival of terms

Clauses 4.4, 5(d), 6, 7.1(a), 7.2, 8, 9.1(b)-(g) inclusive, 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 General Warranties & Liabilities

9.1 Limitations of Liability by Moodle and its affiliates

- (a) Moodle warrants that during the Term the Supplied Software will materially conform with the documentation for the version of the Supplied Software that You are using or accessing, and that it will function as described therein.
- (b) To receive any warranty remedies herein, You must report any disparity between the Supplied Software and the documentation for the version of the Supplied Software that You are using or accessing in writing to Moodle within fourteen (14) days of such disparity being detected by You or Your users.
- (c) Upon compliance with clause 9.1(b) due to a breach of the warranty in clause 9.1(a), Moodle will determine in its sole discretion whether to:
 - (i) provide You with access to, or use of, a different instance of the Supplied Software; or
 - (ii) refund any paid Fees that are attributable to the period of the Term after the date of any written notice from You under clause 9.1(b).
- (d) EXCEPT AS EXPRESSLY PROVIDED ABOVE IN THIS CLAUSE 9.1, AND TO THE FULL EXTENT PERMITTED BY LAW, MOODLE AND ITS AFFILIATES HAVE NOT MADE AND EXCLUDE 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 SERVICES, INCLUDING THE SUPPLIED SOFTWARE.
- (e) YOU WILL NOT SEEK, AND TO THE FULL EXTENT PERMITTED BY LAW MOODLE AND ITS AFFILIATES WILL NOT BE LIABLE FOR, ANY:
 - (i) SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES;



- (ii) LOSS OF ANTICIPATED PROFITS OR LOSS OF REVENUE;
- (iii) PURE ECONOMIC LOSS, COSTS, DAMAGES, CHARGES OR EXPENSES WHATSOEVER; OR
- (iv) PUNITIVE DAMAGES;

ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED, WHETHER IN TORT (INCLUDING NEGLIGENCE), CONTRACT, STATUTE, EQUITY OR OTHERWISE.

- (f) To the full extent permitted by law, the maximum liability of Moodle and its affiliates for any single claim or series of claims by You under or in connection with this Agreement is to be capped at the value of Fees for one (1) year of Services.
- (g) You agree that the Fees and any other charges for the Supplied Software and Services are based on and are reflective of the allocation of risk contemplated by this clause 9.1 and the indemnity from You in clause 4.4.

9.2 Moodle Workplace Software Indemnity

- (a) Moodle agrees to indemnify and hold You harmless from and against any lawsuits, claims, losses, costs, damages or liabilities (or actions or proceedings in respect thereof) that You incur or may incur arising from any third-party claim or demand that the Moodle Workplace Software infringes or violates any third party's copyright.
- (b) Notwithstanding the foregoing, Moodle shall not be obligated to indemnify You if such a third-party infringement or violation claim arises from:
 - (i) content that You place or cause to be placed on Your Site; or
 - (ii) Your use of the Supplied Software, or Your user's use of the Supplied Software, in any way which amounts to a breach of this Agreement.
- (c) It will not be necessary for You to incur expense, loss or make payment before enforcing this indemnity. Before making any demand for performance of the indemnity You must allow Moodle such time as is reasonable in the circumstances, and in any event no fewer than sixty (60) days, to investigate its alleged liability and to negotiate a settlement of or to defend the relevant action, claim, proceeding or demand. This indemnity does not survive any termination by You during the first year of the Term.

9.3 Representations and Warranties

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

- (a) is a validly existing corporation registered under the laws of its place of incorporation, unless otherwise notified to the other Party;
- (b) has the power to enter into and perform its obligations under this Agreement and has taken all necessary corporate action to authorize the entry into and performance of this Agreement;
- (c) is not the subject of an Insolvency Event;



- (d) has not been and is not the subject of allegations of professional misconduct, fraud, corruption, money laundering or of being a member of a criminal organization; and
- (e) is complying with its tax obligations.

10 Dispute Resolution

10.1 Dispute Process

- (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.
- (b) The Party initiating the dispute must give notice setting out the nature of the dispute and available dates to meet to resolve the dispute.
- (c) 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 Variation

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

11.2 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.



11.3 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.

11.4 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.

11.5 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.

11.6 Severability

If any part of this 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.

11.7 Notices

- (a) 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: TO BE PROVIDED

Attention to: Head of Sales and Marketing

With a copy to: legal-us@moodle.com

Customer / You:

As set out in [Schedule 1](#) or as otherwise notified by that Party to Moodle in writing from time to time.

- (b) 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.

11.8 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.

11.9 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.

11.10 Jurisdiction & Governing Law

This Agreement will be governed by and construed 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 exclusively be instituted in the courts of the State of Delaware or the federal courts of the United States of America. Notwithstanding the foregoing, both Parties may agree that any proceedings may be commenced in a mutually convenient alternative forum or jurisdiction.



Schedule 1 – 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 11.7)

Name:

Email:

Address:

Item 3: Billing and Invoicing Details

Billing Contact:

Billing Address:

Item 4 Start Date

Item 5 Scope of Services

Clause 3.2 to apply? Yes / No.

Clause 3.4 to apply? Yes / No.

For the avoidance of doubt, all other clauses apply.



Schedule 2 - Customer License Terms

For Customer-Hosted Services (relating to Moodle Workplace)

[To be inserted, or provided separately when necessary]



AGREEMENT EXECUTION

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

Signature of person authorized to bind Customer:

Office/Capacity of person signing above:

Printed Name:

Date:

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

Signature:

Printed Name: Donald P Hazelwood

Date:

