

AHE Terms and Conditions – Moodle Digital Product

1 Interpretation

1.1 In these terms and conditions, the following expressions shall have the following meanings unless the context otherwise requires:

“Agreement”: the contract between AHE and the Customer for the provision of the Digital Product in accordance with these terms and conditions;

“AHE”: Advance HE (a company limited by guarantee incorporated in England and Wales under company number 4931031, and registered as a charity in England under charity number 1101607 and in Scotland under charity number SC043946);

“Background IPR”: any Intellectual Property Rights vested in or licensed to either party prior to or independently of the performance by either party of their obligations under the Agreement;

“Business Days”: a day that is not a Saturday, Sunday, or bank or public holiday in England;

“Charges”: the charges, fees, expenses and any other sums specified for the Digital Product;

“Commencement Date”: the date of purchase of the Digital Product;

“Confidential Information”: all information (in whatever form) in respect of the business of each of the parties, including Background IPR, any ideas; business methods; finance; prices, business, financial, marketing or development plans; customer lists or details; computer systems and software; products or services, know-how or other matters connected with products or services manufactured and/or marketed; and information concerning either party’s relationships with actual or potential clients, customers or suppliers and the needs and requirements of the parties and such persons; which is (in each case) provided or obtained by one party to or for the other and which is (whenever reasonably practicable) marked or otherwise designated as confidential at the time of disclosure or which would otherwise be regarded as confidential by a reasonable business person;

“Customer”: the organisation or individual which purchases the Digital Product from AHE;

“Deliverables”: any document, piece of equipment, software product, data listing, diagram, plan, drawing, image, video, products, workbooks, presentations, materials or any other creation in any form (including drafts) developed by AHE or its Staff in order to complete performance of the Digital Product;

“Digital Product”: the software to be supplied by AHE to the Customer;

“Force Majeure”: any circumstance not within a party’s reasonable control including: acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; Staff illness or cancellation; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; military coup; nuclear, chemical or biological contamination or sonic boom; any state’s exit from the European Union; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; inability to obtain the relevant visa for Staff to undertake required international travel; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts; and interruption or failure of any utility service;

“Intellectual Property Rights”: trade marks, service marks, trade names, design rights, copyright (including rights in software), patents and patent applications, and any rights or property similar to any of the foregoing in any part of the world whether registered or not registered together with the right to apply for the registration of any such rights, and all rights or forms of protection having equivalent or similar effect, in any part of the world;

“Platform”: the website on which AHE is offering the Digital Product for purchase.

“Staff”: any employee, consultant, sub-contractor of AHE or any other persons engaged by AHE who are involved in the provision of the Digital Product; and

“Term”: the duration of the licence granted by the purchase to use the Digital Product.

1.2 Clause, paragraph, and schedule headings shall not affect the interpretation of the Agreement and references to clauses, paragraphs and schedules are to the clauses and schedules of the Agreement.

1.3 Words in the singular include the plural and vice versa.

1.4 Any reference to a statute or provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time and includes any replacement legislation or subordinate legislation for the time being in force made under it.

1.5 Any phrase introduced by the term **“include”**, **“including”**, **“in particular”**, **“for example”** or any similar expression will be construed as illustrating and will not limit the sense of the words preceding that term.

1.6	In the event and only to the extent of any conflict between these terms and conditions and other documents, these terms and conditions shall prevail except where the other documents (as applicable) specifically states that its terms are to prevail over these terms and conditions.	5	<u>Confidentiality</u>
2	<u>Digital Product</u>	5.1	Each party agrees:
2.1	AHE grants the Customer a non-exclusive, non-assignable and non-sub-licensable, worldwide licence to use the Digital Product solely for the Customer's own internal business or personal purposes. AHE reserves the right to revoke this licence at any time for any reason.	5.1.1	to keep the other's Confidential Information confidential;
2.2	AHE shall use its reasonable endeavours to timely deliver the Digital Product and to provide the availability thereof after purchase. AHE does not warrant, nor guarantee that the availability of the Digital Product shall be perpetual and/or without interruptions.	5.1.2	not to use the other's Confidential Information save for complying with its obligations under the Agreement;
3	<u>Customer Obligations</u>	5.1.3	not to disclose the other's Confidential Information to a third party other than to:
3.1	The Customer agrees:	(i)	the party's employees, officers, representatives or advisers (and in the case of AHE the Staff) who need to know such information for the purposes of exercising that party's rights or carrying out its obligations under or in connection with this agreement and who are under a similar duty to protect Confidential Information; or
3.1.1	to co-operate with AHE in all matters relating to the Digital Product;	(ii)	in the case of AHE, to AHE's customers to the extent that such customers have a right to audit AHE and its sub-contractors; or
3.1.2	to solely use the Digital Product within the parameters of the Terms of Use.	(iii)	to the extent required to do so by law, an order by a court of competent jurisdiction or any governmental or regulatory authority.
3.2	If AHE's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Customer or its agents, sub-contractors, consultants or employees, AHE shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.	6	<u>Intellectual Property Rights</u>
4	<u>Payment</u>	6.1	Save as otherwise set out in the Agreement, neither party shall acquire any right, title or interest in the other's Background IPR.
4.1	All purchases made by the Customer on the Platform are final. The Customer agrees to pay the Charges in full upon ordering the Digital Product. These Charges are at all times non-refundable once the purchase has been made. It is within AHE's full discretion to (partially) refund any final purchases by the Customer.	6.2	The Customer shall not use the any of the Background IPR of AHE and/or the Deliverables provided by AHE for any purpose other than using the Digital Product for internal business or personal purposes only, granted other use has not been permitted by the prior written agreement of AHE.
4.2	Unless stated otherwise, the Charges are payable in pounds sterling and are inclusive of any value added tax ("VAT") or any equivalent sales tax in any applicable jurisdiction. Acceptable payment methods can be found in the Terms of Use of the Platform.	6.3	In the event the Customer breaches this Intellectual Property Rights clause 6, AHE reserves the right to immediately cease providing the Digital Product to the Customer, to demand the Customer to cease using and/or keeping copies of the Digital Product, and to hold the Customer liable for any damages that may arise out of said breach. These rights are accrued additionally to all other rights AHE reserves under this Agreement.
4.3	Without prejudice to any other right or remedy that it may have, if the Customer fails to pay AHE for the Charger, AHE may:	7	<u>Data Protection</u>
4.3.1	charge interest on such sum from the due date until payment is made in full both before and after any judgment, at 4% above the base lending rate from time to time of the Royal Bank of Scotland plc. accruing on a daily basis and being compounded quarterly until payment is made; and	7.1	AHE may receive the Customer's name, address, phone number, email address, bank details under this Agreement. AHE shall process this data in accordance with the applicable Privacy Policy available on the Platform.
4.3.2	immediately withdraw/suspend the right to use the Digital Product until full cleared payment is received by AHE from the Customer.	7.2	The parties acknowledge and agree that neither party anticipates that any additional personal data shall be processed under this Agreement, however, both parties agree and acknowledge that all applicable Data Protection Legislation shall be adhered to.
		8	<u>Liability and Insurance</u>
		8.1	Nothing in the Agreement limits or excludes the liability of AHE (if any) for personal injury or death

	resulting from its negligence, fraudulent misrepresentation or any other matter which cannot be excluded or limited by law.			information and records to AHE, or (to the extent technically practicable) erase or destroy all such information and records including Digital Product, and certify, in writing signed by an authorised signatory, to AHE that it has done the same.
8.2	All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.	9.5		Clauses which expressly or by implication have effect after termination shall continue in full force and effect, including clauses 5 (Confidentiality), 6 (Intellectual Property Rights), 7 (Data Protection), 8 (Liability and Insurance), this clause 9.5, clause 11 (Dispute Resolution) and clause 14.8 (Law and Jurisdiction).
8.3	Subject to clause 9.1:			
8.3.1	neither party shall under any circumstances whatsoever be liable to the other party for:			
(i)	any indirect, special, or consequential losses of any nature and howsoever caused, even if the losses were reasonably foreseeable or the other party has been advised of the possibility of such loss occurring; or	10		<u>Force Majeure</u>
(ii)	any direct or indirect loss of profit, business, contract, goodwill, corruption of data or information, revenues or anticipated savings.	10.1		Neither party to the Agreement shall be deemed to be in breach of the Agreement, or otherwise liable to the other party, in any manner whatsoever for any failure or delay in performing its obligations under the Agreement due to Force Majeure, provided that as soon as reasonably practicable upon a party becoming aware of a Force Majeure it shall notify the other party in writing of the Force Majeure and the anticipated duration of such Force Majeure.
8.3.2	AHE's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the Agreement shall in all other circumstances be limited to the sum of the Charges paid or payable by the Customer to AHE.	10.2		If the Force Majeure in question continues for more than 30 (thirty) Business Days either party may give notice in writing to the other to terminate the Agreement. The notice to terminate must specify the termination date, which must not be less than 5 (five) Business Days after the date on which the notice is given, and once such notice has been validly given, the Agreement will terminate on that termination date.
9	<u>Termination</u>			
9.1	Without prejudice to any other rights or remedies which a party may have, either party may terminate the Agreement with immediate effect by giving notice in writing without incurring liability to the other party by reason of such termination if the other:			
9.1.1	becomes (or, in the reasonable opinion of the terminating party, is at serious risk of becoming) insolvent or unable to pay its debts as they fall due; or	11		<u>Dispute Resolution</u>
9.1.2	is in material breach of any part of the Agreement and that breach (if capable of remedy) is not remedied within 20 (twenty) Business Days after notice being given requiring it to be remedied (and where such breach is incapable of remedy, the terminating party shall be entitled to terminate the Agreement with immediate effect).	11.1		If any dispute or claim arises out of or in connection with the Agreement, the parties will first attempt to resolve amicably by way of good faith negotiations and discussions any such dispute or claim as soon as reasonably practicable.
9.2	AHE may immediately terminate the Agreement on written notice to the Customer without incurring liability to the Customer by reason of such termination.	12		<u>Publicity and publication</u>
9.3	Any accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.	12.1		The Customer shall not publicise the terms of the Agreement, or use the name of AHE or any trade name or trade mark used by AHE or refer to AHE in any other way in any press release, promotional literature, publications or advertising material, including any website, "blogs", social media or other online services, without the prior written consent of AHE.
9.4	To the extent that the Customer has any information or records derived directly from Confidential Information, Intellectual Property Rights or other data of AHE, the Customer shall return to AHE all such	13		<u>Anti-corruption and anti-bribery</u>
		13.1		Each party shall comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (" Relevant Requirements ").
		13.2		Neither party shall engage in any activity, practice or conduct which would constitute an offence under

sections 1, 2 or 6 of the Bribery Act 2010 (whether such an act was committed in the UK or not).

13.3 If any breach by either party (or anyone acting on its behalf) of this clause 13 is suspected or known, that party must notify the other party immediately and must respond promptly to the other party's enquiries and co-operate with any investigation.

13.4 Any breach of this clause 13 by either party or anyone acting on its behalf shall be deemed a material breach of the Agreement not capable of remedy.

15 General

15.1 **Waiver:** A waiver of any right under the Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

15.2 **Variation:** AHE may vary and update these terms from time to time, which shall be published on the Platform. It is the responsibility of the Customer to ensure that they have read and understood the most up to date terms and conditions.

15.3 **Notices:** Any notice given under the Agreement must be made in writing.

15.4 **Agency:** Nothing in the Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act

in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

15.5 **Severability:** If any provision of the Agreement is or becomes illegal, void or unenforceable for any reason, such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the parties shall immediately commence good faith negotiation to remedy such invalidity.

15.7 **Third parties:** The parties to the Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

15.8 **Law and Jurisdiction:** The Agreement and any dispute or claim (including any non-contractual dispute or claim) arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the laws of England and (subject to clause 11) the courts of England shall have exclusive jurisdiction to settle any such dispute or claim.