



TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

1. BACKGROUND

- 1.1 MLS is a company that provides Services in relation to learning solutions and learning management systems.
- 1.2 Moodle operates a separate Partner Program and MLS is a Certified Premium Moodle Partner that is entitled to provide the Services in connection with, inter alia, the Application or any other Moodle software, software subscription, managed hosting, support, consulting, training, certification, learning experience design, content marketplace, AI application and services, and customisation and integration services, all of which may comprise the Services specified in the Schedule.
- 1.3 The Client specified in the Schedule wishes to engage MLS to provide the Services and MLS agrees to provide the Services to the Client on the terms and conditions of this Agreement.

2. PROVISION OF SERVICES

- 2.1 Subject to the Client paying the Fees in accordance with clause 6, MLS will use its best endeavours to provide the Services to the Client during the Term.
- 2.2 The provision of Services by MLS is not exclusive and does not limit MLS in any way from providing similar or identical Services to any other third party.
- 2.3 Subject to the precise Services identified in the Schedule, the Client may be allocated an Application or software subscription which allows the Client to use (and continue to use) the Application and Services generally.
- 2.4 MLS may agree to provide any other services in excess of those listed in the Schedule as requested by the Client ("**Other Services**") for an additional fee in excess of the Fee ("**Additional Charges**"). MLS shall use all reasonable endeavours to inform the Client of the Additional Charges, and the Client shall accept the Additional Charges in the manner provided for in clause 3.5 as a precondition to MLS' performance of the Other Services.
- 2.5 Unless otherwise agreed by MLS in writing, the Services will not include:
 - (a) anything specifically excluded in the Schedule or correction of errors or defects that are caused by the Client or any other person altering any part of the Services, Application, or Client Materials that is not authorised by MLS;
 - (b) rectification of information technology errors caused by improper or negligent usage or failure to comply with instructions, specifications, or technical data;
 - (c) consulting or training;
 - (d) learning experience design or content marketplace;
 - (e) AI application or AI Services; and
 - (f) customisation or integration.

3. ACCEPTANCE AND TERM

- 3.1 Unless this Agreement is expressly stated in writing to be for a singular project, event, or service, this Agreement will continue for the Term and subject to clauses 3.3, 3.4 and 7, the parties may, at least 30 days prior to the expiry date of the Term, agree in writing to renew the Agreement for a further term.
- 3.2 The Agreement may only be accepted by the Client signing where indicated and returning a copy to MLS, through the Client continuing to instruct MLS in writing to perform the Services, or by the Client paying money to MLS for the Services.
- 3.3 The Agreement (and the terms and conditions contemplated by them) commence on acceptance by the Client and take effect to govern the relationship between the parties from the point where MLS commences work on the Client's behalf, even if some of the work commenced prior to the Client's acceptance of same.
- 3.4 At the end of the Term, MLS may agree to extend this Agreement (in its discretion), subject to any new terms and conditions that it may require, including any new Fee that may be payable.
- 3.5 If the Client instructs MLS in respect of other matters during the Term, the Agreement will also apply to any new matters, as agreed in writing between the Client and MLS, including any additional associated Fee or Additional Charges. For the avoidance of doubt, there is no obligation on MLS to provide a new Schedule showing the particulars and Fee or Additional Charges relating to any new matter other than as detailed in writing between the Client and MLS.

4. CLIENT OBLIGATIONS AND WARRANTIES

- 4.1 The Client will promptly do all acts and things necessary to assist MLS in the performance of the Services, including, (without limitation):
 - (a) Performing the Client Tasks (if any);
 - (b) Provide MLS with any information that MLS may require at any time during the Term for the purposes of assessing the Client's credit worthiness or solvency or to determine whether a conflict of interest may exist.
 - (c) Providing MLS with access to Client materials, personnel, equipment or facilities as required or directed by MLS, which may include (without limitation) an internet connection of sufficient speed, quality and bandwidth to allow MLS to perform the Services (if on site). If the Client does not provide access to the Client Materials, personnel, equipment, or facilities and MLS is unable to perform the Services as a result, then MLS may terminate this Agreement:
 - (i) by providing written notice to the Client identifying the breach and MLS' intention to terminate the Agreement; and
 - (ii) if the Client does not rectify the breach within fourteen (14) days of receiving notice of the

breach.

Service Levels described in the Schedule.

- (d) Whilst on the Client's premises or the site location, ensuring MLS' personnel have full access to a safe and secure work environment while they are providing the Services.
- (e) Providing MLS with clear, timely, and accurate instructions and ensuring that MLS is able to contact the Client at all reasonable times when instructions (or further instructions) are required;
- (f) Notify MLS of any breach or suspected or contingent breach of this Agreement immediately upon becoming aware of same;
- (g) Ensuring that the Client has obtained and will maintain all requisite licences, authorities, consents, or approvals so as to be able to receive the Services or to otherwise operate the Application thereon for the entire Term.
- (h) Ensuring that all such routine, regular and preventative maintenance in connection with any Client Materials (such as tests, virus scanning, updating, etc.) is performed at appropriate intervals as recommended by MLS or otherwise as is prevalent in the industry and ensuring that any data or systems do not adversely impact the provision or receipt of Services.
- (i) Otherwise co-operating with MLS in connection with the Agreement and receipt of the Services.
- (j) Not use the Services or the Application in any way that in MLS' opinion, interferes with any other clients of MLS or users of the Application. This includes ensuring that no technical specifications are breached, or the number of Active Users is not exceeded, as listed in the Schedule. The Client must perform end-user testing in accordance with prudent practice and otherwise after maintenance or upgrades and ensure that any proposed changes to any Client Materials (particularly hardware or software) are notified to MLS so that any adverse impact on the Application, the managed hosting thereof, or the Services generally may be reasonably addressed.
- (k) The Client warrants that it will not distribute, on-sell, or allow a third party to use the Application without the express written consent of MLS.

4.2 The Client will pay all Fees, Additional Charges, Reimbursable Expenses and any other expenses or costs charged or incurred by MLS in connection with the performance of the Services or Other Services, in accordance with clause 6.

4.3 The Client agrees that any time frames provided by MLS in connection with the performance of the Services are indicative only and are not intended to be binding on MLS.

5. MLS WARRANTIES

5.1 MLS will use reasonable endeavours to carry out the Services:

- (a) With due care and skill;
- (b) By appropriately qualified persons;
- (c) In accordance with any applicable statutory, legislative or industry requirements or standards; and
- (d) Notwithstanding any planned Outages or maintenance, at the Service uptime without Outages as contemplated in the

5.2 If MLS does not provide the Service uptime as described in clause 5.1(d), MLS will provide a corresponding Service Credit as contemplated in the Schedule.

(a) For the avoidance of doubt, the Service Credits will only be granted in circumstances where MLS has been notified by the Client of Outages that cause the Service Levels to drop below the requisite Service uptime.

(b) MLS is not responsible and will not provide Service Credits due to any Outages caused by circumstances outside the control of MLS including, but not limited to, internet service or infrastructure provider downtime, Force Majeure Events, or other technical problems with the Client's hardware or software.

(c) Any Service Credits due to the Client accumulate throughout the Term and are payable as follows:

(i) If the Client does not renew this Agreement for a further term, then the Client will be entitled to a refund of the equivalent value of the accumulated Service Credits at the end of the Term; or

(ii) If the Client renews this Agreement for a further term, then the Client will be entitled to a discount on the further term equal to the Service Credits accumulated during the Term.

6. FEES AND CHARGES

6.1 The Fee that MLS will charge in the performance of the Services are set out in the Schedule and will generally include, but may not be limited to:

- (a) Services for the amounts or rates set out in the Schedule;
- (b) Reimbursable Expenses;
- (c) Additional Charges (if any); and
- (d) GST on the above.

6.2 MLS must give the Client a valid Tax Invoice from time to time (usually annually in advance of performing the Services) showing the Fee, Additional Charges, Reimbursable Expenses, and GST claimed in respect of the Services performed during the relevant period. Failure to provide a Tax Invoice in accordance with this clause does not disentitle MLS to make a future claim for such period or amounts.

6.3 The Client must pay the amount, which is due to MLS, in accordance with the Agreement within thirty (30) days of receipt of each Tax Invoice, unless otherwise agreed in writing with MLS.

6.4 If any payment is not received as cleared funds into MLS' nominated bank account on the due date for payment, MLS may:

- (a) Reverse or reduce any discount that the Client may have otherwise been entitled to under this Agreement; and
- (b) Charge interest in its sole and absolute discretion, calculated daily, from either the date that the Services (or part thereof to which the Tax Invoice relates) were first performed or alternatively, from the date upon which an invoice was rendered or fell due for payment. Interest will be charged at the same rate as the Queensland Law Society Standard Default Rate at the time of default.

6.5 The Client indemnifies MLS and agrees to pay and reimburse MLS

on demand all costs, fees, charges or expenses which MLS may suffer or incur in connection with the provision of Services due to the Client's negligence or breach of the Agreement (including default or enforcement thereunder) and including, (without limitation) legal and other costs on a full indemnity basis and will be added to the amount outstanding and will themselves bear interest in accordance with clause 6.4(b).

- 6.6 In the event that any amounts are not paid by the Client when due and owing or any other provision of the Agreement is not complied with to MLS's satisfaction, MLS may, without prejudice to any of its other rights, suspend any further Services or other obligations to the Client under the Agreement, or suspend any licences, subscriptions or methods of accessing the Application without being liable to the Client or any other person for any losses of any nature, including (without limitation) Consequential Loss, howsoever the loss may be caused.
- 6.7 The Client shall not be entitled to withhold from, set off against, or otherwise reduce or attempt to reduce any payments due to MLS other than as available to the Client under this Agreement.
- 6.8 Where any part of a Tax Invoice submitted by MLS is disputed by the Client, then, pending resolution of the dispute or difference, the Client shall pay to MLS that part of the Tax Invoice, which is not in dispute, in the manner provided in clause 6.3.
- 6.9 In the event that the Services to be performed include consulting or training services, the Fee will be payable in advance and MLS will require at least seven (7) days written notice of cancellation, failing which all Fees paid in advance will be forfeited and be non-refundable at the election of MLS.
- 6.10 Notwithstanding anything to the contrary in this Agreement, the Client acknowledges that the Fee has been calculated in part based on the number of Active Users listed in the Schedule. Should the number of Active Users exceed the number listed in the Schedule during any given year of the Term, the Client agrees that, at the absolute discretion of MLS, the Client will be liable for and must pay Additional Charges to MLS relative to the number of excess Active Users.

7. SUSPENSION AND TERMINATION

- 7.1 MLS may elect not to renew this Agreement beyond the initial Term, without being under any obligation to provide reasons, upon the giving of 30 days' notice in writing.
- 7.2 In the event that MLS exercises its right to terminate the Agreement in clause 7.1, it will not be liable to the Client or any other person for any claim, action, suit, demand or proceeding in any manner whatsoever, including (without limitation) any Consequential Loss, except to the extent that it arises from gross negligence on the part of MLS.
- 7.3 If the Client commits a breach of a Fundamental Term of the Agreement, or if MLS commits a breach of a Material Term of the Agreement, and the offending party fails to remedy that breach within fourteen (14) days of receiving notice from the other party requiring it to do so, the party not in breach may terminate the Agreement by written notice to the offending party, in which case termination is effective immediately.
- 7.4 If an Insolvency Event occurs in relation to a party, then either party may terminate the Agreement by written notice to the other, in which case termination is also effective immediately.
- 7.5 MLS may also terminate this Agreement on fourteen (14) days' written notice to the Client and cease to perform the Services if the Client:

- (a) Requires MLS to act dishonestly, unethically or unlawfully;
- (b) Fails to provide MLS with adequate instructions;
- (c) Fails to comply with its payment obligations in clause 6;
- (d) Loses legal capacity;
- (e) Suffers, in MLS' sole opinion, a material or adverse change in its financial position; or
- (f) Puts MLS into a position where, in the opinion of MLS, a conflict of interest exists or will exist if MLS performs or continues to perform the Services. MLS may only terminate the Agreement under this clause 7.5(f) if it has provided the Client with written notice of the conflict of interest or potential conflict of interest, and the Client fails to rectify the conflict of interest or take the necessary steps to prevent the potential conflict of interest from occurring, within fourteen (14) days of the notice.

- 7.6 The Client may also terminate this Agreement on fourteen (14) days' written notice to MLS if MLS:

- (a) Requires the Client to act dishonestly, unethically or unlawfully;
- (b) Loses legal capacity;
- (c) Suffers, in the Client's reasonable opinion, a material or adverse change in its financial position;
- (d) Puts the Client into a position where, in the opinion of Client, a conflict of interest exists or will exist if MLS performs or continues to perform the Services. The Client may only terminate the Agreement under this clause 7.6(d) if it has provided MLS with written notice of the conflict of interest or potential conflict of interest, and MLS fails to rectify the conflict of interest or take the necessary steps to prevent the potential conflict of interest from occurring, within fourteen (14) days of the notice.

- 7.7 MLS may also remove the Application or cease to perform the Services (or further Services) and remove any offending content from the Application where it is compelled to by law or by a governmental, regulatory or other authority or where any of the technical data, specifications or performance standards have been, in MLS' reasonable opinion, breached or contravened.

- 7.8 On termination:

- (a) Accrued rights or remedies of a party are not affected; and
- (b) Each party must deliver to the other party any of the other party's Confidential Information or other property or material in the party's care, custody or control; and
- (c) Termination will not affect clauses, 4.2, 6, 8, 9, 10, 11, 24, 28.4, 29, and 30.

8. INTELLECTUAL PROPERTY

- 8.1 The Client acknowledges that Moodle LMS is provided under the terms and conditions of the GNU General Public Licence. Moodle Workplace is exclusively owned and licensed by Moodle under the terms of its proprietary Moodle Workplace licence.
- 8.2 MLS grants to the Client a non-exclusive, non-transferrable, non-assignable, non-sublicensable, and revocable global licence to use the Intellectual Property Rights in any MLS Material in connection with the Client's receipt of the Services. The Client acknowledges that all MLS Material is confidential.

- 8.3 The Client grants to MLS a limited right to use any Client Materials provided to MLS in connection with the performance of the Services and warrants that the use of the Client Materials by MLS will not infringe any Intellectual Property Rights of any third party or otherwise contain any offensive, upsetting, defamatory, offensive material or material that invades the privacy or another person.
- 8.4 The parties further warrants that at no stage will the Client Materials, Services or the Application be used for any illegal or immoral purpose or to provide a mirroring service for other websites, or for activities that in either party's reasonable opinion are akin to trolling, phishing, spam bots, data mining, embedding viruses, mailbombing, IRC bots, game emulators, the transmission of 'junk mail', or other disparaging or offensive activities or pursuits.
- 8.5 MLS grants to the Client a non-exclusive, non-transferrable, non-assignable, non-sublicensable, and revocable licence to use the Intellectual Property Rights in any improvements made by the Supplier to the Client Materials, in connection with the Client's receipt of the Services. The Client acknowledges that all improvements are confidential.
- 8.6 The licences granted to the Client by MLS in this clause 8 do not include the right to sublicense or assign to third parties without MLS' written consent.
- 8.7 The licences granted to the Client by MLS do not include the right to reproduce, alter, copy, modify vary, add to or tamper with the Application or any software or coding that accompanies same or the Services generally. The Client must not integrate any third-party code in the Application without MLS' written consent.
- 8.8 Each party must not, and must ensure that its directors, officers, employees, agents or representatives do not, use any Intellectual Property of the other party without express written consent, except as provided for above.
- 9. CONFIDENTIALITY**
- 9.1 Each party acknowledges that in the course of performing their obligations herein it may be furnished with, receive, or otherwise have access to Confidential Information and/or materials, documents, or other information of or concerning the other party which the other party considers to be confidential, proprietary, a trade secret, or otherwise restricted.
- 9.2 All Confidential Information furnished by a party to the other in the course of performing their obligations herein shall remain the property of and be deemed proprietary to the disclosing party. Each party agrees:
- To receive such Confidential Information in strict confidence and not disclose it to any third party without the prior written consent of the disclosing party;
 - To accord such Confidential Information at least the same level of protection against unauthorised use or disclosure that the receiving party customarily accords to its own confidential, proprietary, or trade secret information of a like nature, but in no event less than reasonable care; and
 - To use such Confidential Information solely and exclusively for the purposes of and in accordance with the Agreement.
- 9.3 In the event of any disclosure or loss of, or inability to account for, any Confidential Information of the disclosing party, the receiving party shall notify the disclosing party promptly upon becoming aware thereof.
- 9.4 Notwithstanding the foregoing, neither party shall be liable for disclosure of any Confidential Information of the disclosing party if the same:
- Is in the public domain at the time of its disclosure or thereafter enters the public domain through no fault of the receiving party;
 - Is or becomes known to the receiving party on a non-confidential basis without breach of any obligation of confidentiality in this Agreement;
 - Is independently developed by the receiving party without reference to the disclosing party's Confidential Information; or
 - Is legally required to be disclosed (provided that the receiving party promptly informs the disclosing party of the requirement and affords the disclosing party a reasonable opportunity to resist the required disclosure).
- 9.5 Each party acknowledges that:
- The other party may suffer financial and other loss and damage if any unauthorised act occurs in relation to Confidential Information of the other party, and that monetary damages would be an insufficient remedy; and
 - In addition to any other remedy available at law or in equity, the other party is entitled to injunctive relief to prevent a breach of and to compel specific performance of this clause 9.
 - The provisions of this clause 9 shall survive the termination or expiration of the Agreement for any reason.
- 10. LIMITATION OF LIABILITY**
- 10.1 MLS may, as part of their performance of the Services, provide advice or recommendations from time to time. All decisions made with respect to the implementation of such matters are at the risk and are the responsibility of the Client.
- 10.2 MLS may also be required to perform ongoing routine maintenance, upgrades or replacement of certain components of the Services from time to time. Where possible, MLS will use reasonable endeavours to provide at least seven (7) days' prior notice of any planned Outages or downtime and will endeavour to do so outside of normal business hours, that is, outside Monday to Friday 0900-1700h (Australian Eastern Standard Time).
- 10.3 Notwithstanding clause 10.2, MLS may perform emergency maintenance, upgrades, or replacement at any time and without any obligation to give notice. MLS will have sole discretion as to what constitutes an emergency.
- 10.4 MLS will perform regular back-ups of the Application and any ancillary data, which will be stored in a secure facility controlled by MLS. MLS will use reasonable endeavours to assist the Client with any data recovery, however, is not liable to the Client on any account whatsoever for any unrecoverable instances.
- 10.5 MLS will provide Support to a maximum of three (3) concurrent personnel of the Client to assist the Client's personnel with the Client's personnel providing Support to the Client's end users directly. MLS is not under any obligation to provide Support to the Client's end users and has sole discretion as to the manner and medium in which any Support to the Client's personnel will be offered, and which is currently delivered through an online portal (no email, phone or other support).

- 10.6 MLS shall not be liable for physical or financial injury or loss or damage of any kind to the Client or any other person, including Consequential Loss, arising in connection with the Agreement or the performance of the Services unless MLS caused or contributed to the physical or financial injury, loss, or damage, in which case MLS remains liable to the extent that MLS caused or contributed to the physical or financial injury, loss, or damage.
- 10.7 Irrespective of whether the Agreement contemplates the provision of Services or the provision of goods and/or Services, MLS's liability is hereby limited to the lowest amount of any combination of:
- (a) The replacement of any goods supplied or the supply of equivalent goods;
 - (b) The repair of any goods;
 - (c) The payment of the cost of replacing any goods or acquiring the equivalent goods;
 - (d) The payment of the cost of having any goods repaired;
 - (e) The provision of the Services again; or
 - (f) The payment of the cost of having the Services provided again.
- 10.8 For the avoidance of doubt, MLS's aggregate liability for all losses and damages arising from or relating to its performance of this Agreement, including the provision of the Services, whether arising in contract, tort or otherwise during the Term shall not exceed the Fee received by MLS from the Client under this Agreement.
- 10.9 MLS is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, Consequential Loss, loss of opportunity or benefit, loss of a right, or any other direct or indirect loss suffered by the Client or any other person, howsoever arising and the Client hereby indemnifies MLS to the fullest extent possible on account of same (including in respect of legal costs on an indemnity basis).
- 10.10 Where the Schedule provides for MLS to supply Managed Hosting Services, MLS will use reasonable endeavours to supply or host a single instance of the Application in accordance with the Service Level described in the Schedule, excluding any Outages for upgrades and routine maintenance of any software or hardware. Failure to do so does not constitute a breach of this Agreement and MLS will not be liable in the event of any unavailability or loss of the Application for any period of time, howsoever caused.
- 10.11 For clarity, the limitations set out in this clause 10:
- (a) Do not apply to any failure of the Client to pay the Fee to the Supplier in accordance with clause 6; and
 - (b) If a breach occurs that is due to the wilful or negligent actions of MLS, the Client will allow MLS fourteen (14) days to remedy the breach from the date of notice of the breach prior to commencing any legal recovery action against MLS or MLS reimbursing the Client.
- 10.12 The limitations and exclusions contained in this clause 10 apply to the liability of MLS under any indemnity given by MLS under the Agreement.

11. INDEMNITY

- 11.1 The Client is liable for and indemnifies MLS, its officers,

employees, agents, and representatives against all proceedings, claims, demands, damages, reasonable amounts paid in settlement, costs and expenses (including legal costs on an indemnity basis) losses, and liabilities of whatever nature (whether actual or contingent) suffered or incurred, sustained or threatened against MLS:

- (a) Arising out of the Client's breach of the Agreement, unless MLS caused or contributed to the injury, loss, or damage, in which case the indemnity is reduced relative to the extent that MLS caused or contributed to the injury, loss, or damage;
- (b) Arising out of MLS' use of any plans, specifications, drawings, reports, documents, information, software, hardware, applications, websites (including any content thereon), hyperlinks, or other material supplied or performed by a third party including any party engaged by or at the suggestion or recommendation of MLS.
- (c) Arising out of any works undertaken, goods supplied, or services performed by a third party including any party engaged by or at the suggestion or recommendation of MLS.
- (d) Arising from MLS acting on instructions or information from the Client and its officers, employees or agents;
- (e) Arising in connection with any certification, reporting requirements, claims for exemptions or refunds, additions for late payment, interest, penalties and other expenses (including legal expenses on an indemnity basis) that may be assessed against MLS on account of the Client; or
- (f) As a result of any breach of the Agreement by the Client or its officers, employees, agents, or representatives including any breach in connection with MLS's Confidential Information or Intellectual Property Rights or any breach or non-compliance with any warranty, covenant or obligation.

- 11.2 MLS is liable for and indemnifies the Client, its officers, employees, agents, or representatives against all proceedings, claims, demands, damages, reasonable amounts paid in settlement, costs and expenses (including legal costs on an indemnity basis), losses (but not including Consequential Loss), and liabilities of whatever nature (whether actual or contingent) suffered or incurred, sustained or threatened against the Client:

- (a) Arising out the MLS' breach of the Agreement, unless the Client caused or contributed to the injury, loss, or damage, in which case the indemnity is reduced relative to the extent that the Client caused or contributed to the injury, loss, or damage; or
- (b) As a result of any breach of the Agreement by MLS or its officers, employees, agents, or representatives including any breach in connection with the Client's Confidential Information or Intellectual Property Rights or any breach or non-compliance with any warranty, covenant, or obligation.

12. ADDITIONAL INSURANCE REQUIREMENTS

- 12.1 Where, as a result of the Client's request for MLS to perform the Services, it becomes necessary for MLS to increase any level of insurance cover in respect of professional indemnity insurance, public liability insurance, workers compensation insurance or any other applicable insurances, the Client will reimburse on demand the full cost of the difference in the price increase to MLS in arranging any additional insurance cover in respect of the performance of the Services to the Client and as a precondition to the performance of the Services.

- 12.2 MLS must notify the Client in writing in advance of arranging any

additional insurance cover as contemplated in clause 12.1.

13. CHANGES TO THE AGREEMENT

- 13.1 The Agreement may only be varied, added to, or amended by the mutual written agreement of the parties.
- 13.2 Any proposed variation to the Agreement by either party must be requested in writing.

14. FORCE MAJEURE

- 14.1 Neither party is in breach of the Agreement or is liable to the other in respect of any failure or delay in the performance of that party's obligations that is caused, whether wholly or in part and directly or indirectly by a Force Majeure Event or act or omission.
- 14.2 Subject to clause 14.3, clause 14.1 does not apply to any obligations of the Client to pay money under the Agreement.
- 14.3 If owing to Force Majeure Event a party remains unable to perform an obligation imposed by the Agreement for a continuous period of 30 days, either party may terminate the Agreement immediately by written notice to the other party, and, upon such termination under this clause any payment made to MLS for Services not received by the Client at the date of termination must be repaid by MLS to the Client on a pro-rated basis immediately on termination and, if not repaid, is recoverable by the Client from MLS as a liquidated debt.

15. GST

- 15.1 If anything supplied under or in connection with the Agreement constitutes a taxable supply for the purposes of the GST Act, the supplier may recover from the recipient an amount on account of GST.
- 15.2 The amount on account of GST is:
- (a) equal to the value of the supply calculated in accordance with the GST law multiplied by the prevailing GST rate; and
 - (b) is payable:
 - (i) at the same time and in the same manner as the recipient is required to pay or provide monetary consideration for the supply to which the additional amount relates; or
 - (ii) where the recipient is not required to pay or provide monetary consideration for the supply in accordance with GST Law to the recipient of the supply.

16. FURTHER ASSURANCE

- 16.1 Each party must promptly at its own cost do all things necessary or desirable to give full effect to the Agreement (or the terms and conditions contemplated by them) including signing all documents.

17. SEVERABILITY

- 17.1 If anything in the Agreement is unenforceable, illegal or void then it is severed, and the rest of the Agreement remain in force.

18. COUNTERPARTS AND ELECTRONIC SIGNATURES

- 18.1 The parties may execute the Agreement in counterparts including email or electronic versions of same, which shall, in

the aggregate, when signed by both parties constitute one instrument. Each counterpart shall be deemed an original instrument as against any party who has signed it.

- 18.2 By executing this Agreement, the parties agree that the Agreement may be executed:

- (a) Electronically by email; or pursuant to the requirements of s14 of the *Electronic Transactions (Queensland) Act 2001*, namely via Docusign, Proposify, or a similar electronic signing service.

- 18.3 Pursuant to s11(2)(b) of the *Electronic Transactions (Queensland) Act 2001*, the parties agree to receive this Agreement and associated information by electronic means and to provide information by electronic means if requested, and the parties agree that any email versions of the signed and scanned contract shall be binding as if the original copies had been signed by the parties.

19. ENTIRE UNDERSTANDING

- 19.1 The Agreement:
- (a) Contains the entire agreement and understanding between the parties on everything connected with its subject matter; and
 - (b) Supersedes and merges any prior agreement or understanding on anything connected with that subject matter.

20. GENERAL

- 20.1 Where a party may exercise any right or discretion or make any decision, the party may do so in its absolute discretion, conditionally or unconditionally, and without being required to give reasons or act reasonably.
- 20.2 Unless expressly stated, the Agreement does not create a relationship of employment, trust, agency or partnership between the parties.
- 20.3 The Agreement does not establish any exclusive dealings and either party is free to deal with third parties in respect of the kinds of Services contemplated by the Agreement.
- 20.4 Prior to signing, the Client has obtained, or has had the opportunity to obtain and have elected not to do so, independent legal and financial advice and have entered into the Agreement freely and voluntarily without undue influence from any person.
- 20.5 The person(s) executing this Agreement warrants that he/she is authorised to execute this document and bind the Client to the obligations set out herein and in the attached Terms and Conditions.

21. NOVATION

- 21.1 The Client agrees that consent will not be unreasonably withheld to MLS novating the Agreement and entering into a new Agreement on the same or similar terms or to transfer its file and/or the performance of the Services (where partly performed) to a different person, firm or entity in the event of a sale, separation or merger.

22. NOTICES

- 22.1 A notice to be given by one party to the other party under the Agreement must be in writing and sent by email to the email

address of the addressee listed in the Schedule.

- 22.2 Should a party's email address for notice change during the Term, the party must notify the other party in writing as soon as practicable of the change of email address.
- 22.3 For the avoidance of doubt, a failure to inform the other party of a change to a party's email address for notices does not affect the date and time when the notice is deemed to be received pursuant to clause 22.4 if the notifying party has sent notice to the email address on record at the time of sending notice.
- 22.4 A notice is deemed given and received if received before 1700h (AEST) on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt, provided that an email is not deemed given or received unless at the conclusion of the transmission the sender's email client indicates that the message has been delivered.

23. WAIVER

- 23.1 MLS' failure or delay to exercise a power or right is not a waiver of same.
- 23.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 23.3 No waiver is effective unless it is in writing.
- 23.4 The waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

24. GOVERNING LAW

- 24.1 The laws of the State of Queensland govern the Agreement and each party irrevocably submits to the non-exclusive jurisdiction of the Courts of Queensland and any courts competent to hear appeals from those Courts.

25. MULTI-YEAR TERM

- 25.1 Notwithstanding any other provision in this Agreement, if the Term is for a period of longer than 12 months, the Client will be entitled to a discount to the Fee on the conditions of this clause 25 ("Discount").
- 25.2 The Discount to the Fee will be as negotiated between the parties and documented in the Schedule.
- 25.3 The Discount will be applied as follows:
- (a) Where the Client pays the Fee in full upfront (for all years of the Term), then MLS will apply the Discount cumulatively to the initial invoice;
 - (b) Where the Client pays each year of the Term's Fee annually, MLS will apply the Discount cumulatively to the invoice for the last year of the Term.
- 25.4 If the Client terminates this Agreement before the end of the Term for any reason other than those listed at clauses 7.4 and 7.6, or MLS terminates this Agreement before the end of the Term for any of the reasons listed at clauses 7.3, 7.4, 7.5, and 7.7, then any entitlement to the Discount is forfeited by the Client and MLS may, at its absolute discretion, invoice the Client to recoup the Discount.

26. PRIVACY AND NOTIFIABLE DATA BREACHS

- 26.1 In providing the Services, MLS must comply, and ensure that its officers, employees, agents and subcontractors comply with the

Privacy Act 1988 (Cth) ("**the Act**") and not do anything, which if done by the Client would breach an Australian Privacy Principle (as defined in the Act). MLS will notify the Client if it becomes aware that it may be required to disclose Personal Information, as defined in the Act, by law or to the Australian Information Commissioner.

- 26.2 If MLS becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach (as defined in the Act) in relation to any Personal Information (as defined in the Act) held by MLS as a result of this Agreement or its provision of the Services, MLS agrees to:
- (a) Notify the Client in writing as soon as possible, which must be no later than within three (3) days; and
 - (b) Unless otherwise directed by the Client, carry out an assessment in accordance with the requirements of the Act.
- 26.3 Where MLS is aware that there are reasonable grounds to believe there has been, or where the Client notifies MLS that there has been, an Eligible Data Breach in relation to any Personal Information held by MLS as a result of this Agreement or its provision of the Services, MLS will:
- (a) Take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;
 - (b) Unless otherwise directed by the Client, take all other action necessary to comply with the requirements of the Act; and
 - (c) Take any other action as reasonably directed by the Client.
- 26.4 MLS must ensure that any subcontract entered into by MLS for the purposes of fulfilling MLS' obligations under the Agreement imposes on the subcontractor the same obligations regarding privacy and Eligible Data Breaches that MLS has under the Agreement. Each subcontract must also require the same obligations (where relevant) to be included by the subcontractor in any secondary subcontracts.
- 26.5 MLS will notify the Client as soon as reasonably practicable if it becomes aware of a breach or possible breach of the obligations contained in this clause.

27. VULNERABILITY MANAGEMENT

- 27.1 The Client may request a scan, audit, or penetration test ("**Vulnerability Testing**") of the Client Site or MLS' host infrastructure as required by the Client.
- 27.2 Any Vulnerability Testing required by the Client must be conducted independently by a CREST approved provider as agreed between the parties and will be arranged by MLS.
- 27.3 Any costs associated with Vulnerability Testing are in addition to the Fees and are the sole responsibility of the Client.
- 27.4 Any high-risk issues identified by the Vulnerability Testing must be remedied by MLS at MLS' cost.

28. ARTIFICIAL INTELLIGENCE

- 28.1 The Client understands and agrees that the Services may include accessibility to AI applications for use with the Application ("**AI Services**").
- 28.2 MLS' provision of the AI Services will be guided by the AI Principles.
- 28.3 By using the AI Services, the Client permits MLS to use the Client's

data input, which may or may not be in aggregated and anonymised form, for the purpose of delivering the Service, reporting on use, analysing and calculating costs, and to train the AI Services to deliver an improved user experience.

(v) 6 months; or

(vi) 3 months; or

(vii) 1 month.

28.4 By using the AI Services, the Client understands and agrees that output generated by the AI Services:

- (a) May not be accurate and should not be relied on as the sole source of truth, factual information, or as a substitute for professional advice;
- (b) Must be reviewed for accuracy, appropriateness, and suitability for purpose before being used or shared;
- (c) Must not be used for a purpose that may have a legal or material impact on a person, such as making legal, medical, educational, employment, or other important decisions for a person; and
- (d) May provide incorrect, incomplete, or offensive information and material that does not represent the views of MLS.

29.3 The Client will comply with the subclauses of clause 29.1 as if they consisted of several separate covenants and restraints consisting of all subclauses of clause 29.1 combined with each separate Restraint Period and each separate Restraint Area.

29.4 The Client covenants and agrees that:

- (a) the Client approves of the drafting of this clause 29 and considers it to go no further than reasonably necessary to protect MLS' business and goodwill; and
- (b) any combination of the acts referred to in this clause for the separate Restraint Period and Restraint Area would be unfair, would damage MLS, and would lead to substantial loss to MLS.

29.5 If any of the restraints under this clause 29 is or becomes void, invalid, or otherwise unenforceable for any reason by a court of competent jurisdiction, that unenforceability does not in any way affect the enforceability of the other separate covenants.

29.6 If any of the covenants in this Contract are found by a court of competent jurisdiction to be void, invalid, or otherwise unenforceable, but would be valid and enforceable if:

- (a) part of the wording was deleted; or
- (b) the activities were reduced; or
- (c) the Restraint Area was reduced; or
- (d) the Restraint Period was reduced; or
- (e) any combination of the actions specified in clauses 29.6 (a), (b), (c) or (d) were undertaken,

the covenant applies with such modifications as may be necessary to make the covenant valid and enforceable.

29. RESTRAINT OF INTERFERENCE WITH MLS EMPLOYEES

29.1 The Client will not, without the prior written consent of MLS, directly or indirectly:

- (a) Induce, encourage or solicit any employee or personnel of MLS to terminate, restrict, and/or interfere with their relationship with MLS; and/or
- (b) Offer or attempt to offer any employee or personnel of MLS employment, or contracted or unpaid work with the Client,

within the Restraint Area and during the Term and Restraint Period.

29.2 For the purposes of this clause 29:

(a) **"Restraint Area"** means:

- (i) Within Australia and New Zealand; or
- (ii) Within Australia; or
- (iii) Within the States of Queensland, New South Wales, and Victoria; or
- (iv) Within the States of Queensland and New South Wales; or
- (v) Within the State of Queensland; or
- (vi) Within the Local Government Areas of Gold Coast City and Brisbane; or
- (vii) Within the Local Government Area of Gold Coast City.

(b) **"Restraint Period"** means, from the earlier of the date this Agreement is terminated or expiry of the Term:

- (i) 24 months; or
- (ii) 18 months; or
- (iii) 12 months; or
- (iv) 9 months; or

30. ADDITIONAL OBLIGATIONS FOR MOODLE WORKPLACE CLIENTS

30.1 If the Services provided by this Agreement include the Client's use of and access to Moodle Workplace, the Client acknowledges and agrees:

- (a) to be bound by the terms and conditions annexed hereto at 'Annexure A' ("**Workplace Terms**"), in addition to the terms and conditions of this Agreement; and
- (b) in the event of a conflict between the Workplace Terms and the terms and conditions contained in this Agreement, the Workplace Terms shall prevail.

31. DEFINITIONS

31.1 Unless the contrary intention appears:

- (a) the singular includes the plural, and vice versa;
- (b) reference to a gender includes any gender;
- (c) other forms of defined words have corresponding meanings;
- (d) if an obligation is imposed on two or more parties, each

party is liable for the obligation individually and together with each other party;

- (e) a representation or warranty in favour of two or more persons is for the benefit of them jointly and separately;
- (f) reference to a person includes any other entity or association;
- (g) reference to a party includes that party's person representatives, successors and assigns;
- (h) reference to a document includes any variation or replacement of it;
- (i) reference to something which comprises more than one part or aspect includes a reference to each or any part or aspect;
- (j) reference to a group of persons includes a reference to all of them collectively, any two or more of them collectively, and each of them individually;
- (k) when the Agreement requires anything not to be done, this includes not allowing or permitting the thing to be done;
- (l) a reference to money is to Australian dollars, unless otherwise stated;
- (m) a provision of the Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of any provision in it;
- (n) a party which is a trustee is bound both personally and in its capacity as a trustee;
- (o) headings are inserted for convenience and do not affect the interpretation; and
- (p) "including" and similar expressions are not words of limitation;
- (q) a reference to legislation includes an amendment of or substitution and a regulation or statutory instrument issued under it.

31.2 In the Agreement:

"Active User" means an individual user who has logged in to the Application at least once during a successive 12-month period during the Term.

"Additional Charges" has the meaning given in clause 2.4.

"Agreement" means this Agreement, including the Schedule and any annexures.

"AI" means artificial intelligence, the simulation of human intelligence in machines designed to perform tasks such as learning, reasoning, problem-solving, and decision-making based on data.

"AI Principles" means the principles in MLS' Artificial Intelligence (AI) Principles document provided to the Client with this Agreement.

"Application" means the learning management systems known as "Moodle LMS" and "Moodle Workplace", software.

"Client" means the person named as Client in the Schedule, on whose behalf, the Services will be performed.

"Client Materials" means any materials provided by or to which access is given by the Client to MLS for the purposes providing the Services, including documents, plant, equipment, specifications, reports, technical information, studies, plans, charts, drawings, calculations, tables, trademarks, logos, schedules, software, hardware, websites, links, hyperlinks, devices and data stored by any means.

"Client Site" means the location, specifically the URL, at which the Application is situated for use by the Client and as listed in the Schedule.

"Client Tasks" means the client tasks specified in clause 4.1(b) to (k) and in the Schedule (if any).

"Confidential Information" of a party means the existence of the Agreement and all materials, documents or other information or any nature and in any form:

- (a) Relating to the business and/or affairs of that party;
- (b) Relating to the customers, clients, employees, subcontractors or other persons doing business with that party;
- (c) Which is by its nature, confidential;
- (d) Which is designated as confidential by that party; or
- (e) Which the other party knows or ought to know, is confidential;

and all trade secrets, knowhow, financial information and other commercially valuable information of that party, and in the case of MLS, includes the MLS Material.

"Consequential Loss" means (without limitation):

- (a) Loss of revenue;
- (b) Loss of reputation;
- (c) Consequential loss;
- (d) Indirect loss;
- (e) Loss of profits;
- (f) Loss of bargain;
- (g) Loss of actual or anticipated savings;
- (h) Lost opportunities, including opportunities to enter into arrangements with third parties; and
- (i) Loss or corruption of data.

"CREST" means the Council of Registered Ethical Security Testers.

"Deposit" means any deposit payable by the Client for the performance of the Services, as set out in the Schedule.

"Fee" means the fee for the provision of the Services calculated in clause 6.1 and as set out in the Schedule.

"Force Majeure Event" means any occurrence or omission outside a party's reasonable control, as a direct or indirect result of which the party relying on the event is prevented from or delayed performing its obligations under this document (other than a payment obligation), and includes:

- (a) A physical natural disaster including fire, flood, lightning or earthquake;
- (b) War or other state of armed hostilities (whether war is declared or

not), insurrection, riot, civil commotion, act or public enemies, national emergency (whether in fact or in law) or declaration of martial law;

- (c) Epidemic, Pandemic or quarantine restriction, including but not limited to those caused by the COVID-19 virus;
- (d) Ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel;
- (e) Confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency;
- (f) Law taking effect after the date of the Agreement; and
- (g) Strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors.

"Fundamental Term" means, in respect of the Client, clauses 4, 6, 8, 9, 10, 11, 14, 24, and 30.

"GST Act" means the Act titled *A New Tax System (Goods and Services Tax) Act 1999* as amended from time

"GST" means goods and services tax levied on a supply, as defined in the GST Act.

"Insolvency Event" means any of the following:

- (a) A controller (as defined by the *Corporations Act 2001 (Cth)*) is appointed to the party, or over any of the property of that party;
- (b) The party becomes bankrupt;
- (c) A controlling trustee is appointed to the party, or over any of the property of the party;
- (d) the party or the party's property becomes subject to a personal insolvency arrangement under Part X of the *Bankruptcy Act 1966 (Cth)* or a debt agreement under Part IX of that same Act;
- (e) the party is unable to pay its debts when they become due and payable;
- (f) the party ceases to carry on business; or
- (g) any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.
- (h) Any event that takes place as part of a solvent reconstruction, amalgamation, merger or consolidation, on terms approved in writing by the other party beforehand and in compliance with these terms is excluded from this definition.

"Material Term" means, in respect of MLS, clauses 2, 5, 8, 9, 10, 11, 14, and 24.

"MLS" means My Learning Space Enterprise Pty Ltd ACN 151 378 022 as Trustee for My Learning Space Unit Trust ABN 45 536 763 230 unless another entity is named as "MLS" in the Schedule.

"MLS Material" means any material provided by or to which access is given by MLS to the Client for the purposes of the Agreement, including any documents, equipment, reports, technical information, studies, plans, charts, drawings, calculations, tables, schedules and data stored by any means.

"Moodle" means Moodle Pty Ltd ACN 116 513 636.

"Intellectual Property Rights" means all present and future rights in relation to copyright, trade marks, designs, patents, semiconductor and circuit layout rights, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of the Agreement, and whether in Australia or otherwise.

"Other Services" has the meaning given in clause 2.4.

"Outage(s)" means when an independent monitoring agent, such as Pingdom, cannot access the Client Site at 1-minute intervals for 5 successive checks.

"Partner Program" means the program through which MLS provides certified services for the Moodle software and related products including (without limitation) software subscription, managed hosting, support, consulting, training, certification, learning experience design, content marketplace, AI application and services, and customisation and integration services, all of which may form part of the Services under this Agreement.

"Reimbursable Expenses" means:

- (a) All proper business expenses and out-of-pocket expenses reasonably incurred by MLS in the provision of the Services.
- (b) Without limitation, mobile phone costs, travel, taxis, flights, motor vehicle, car parking expenses, mileage, accommodation, meal costs, telecommunications, internet, and any other additional expenses incurred in the provision of the Services.

"Related Entities" means a subsidiary, a related body corporate, associated entity or an officer as defined by the *Corporations Act 2001 (Cth)*.

"Schedule" means any letter of engagement, statement of work, quotation, schedule, particulars, annexure, scope of works or similar that is attached to or accompanies the Agreement that describes the Services and/or any Fee for the performance of same.

"Services" means the services to be provided by MLS to the Client and its Related Entities as specified in the Agreement or in any accompanying Schedule.

"Service Credit" means the credit the Client is entitled to if MLS does not perform the Service Levels, calculated on a monthly basis and as described in the Service Credits in the Schedule.

"Service Levels" means the service targets MLS is required to provide to the Client, calculated on a monthly basis and as described in the Service Levels in the Schedule.

"Supply" means a supply of good or services under the Agreement.

"Support" means assistance with technical issues related to the Services and questions related to the use of the Application.

"Tax Invoice" means a valid tax invoice that complies with the GST Act, rendered by MLS to the Client in accordance with clause 6.3.

"Term" means the period from the Commencement Date to the date specified in any Schedule as the end date, expiry date or similar, unless terminated earlier in accordance with clause 7.

"URL" means Uniform Resource Locator. The address of a web page which is entered into a browser.

ANNEXURE 'A' – Moodle Workplace Terms

1. Licence

- 1.1 Subject to the Client's payment of the applicable fees and to the Client's compliance with other terms and conditions of the Agreement with MLS as supplier of Moodle Workplace Services and any signed supplier order form, being the Agreement and any relevant Schedule(s) ("**Supplier Agreement**"), and subject also to the compliance with the applicable limit on the number of Active Users or registered users, MLS grants the Client a non-transferable, non-assignable, non-sublicensable, revocable licence to access a MLS-hosted instance of Moodle Workplace™ (the "**Software**") solely for either internal purposes or to provide value-added services to third parties, in compliance with the Software's technical documentation and only as specified in one or more applicable Supplier Agreement(s) executed by the Client.

1.2 Licence Termination

Where MLS requests, upon termination of the Software licence or expiration of the licence term as specified in a Supplier Agreement, the Client shall certify in writing to MLS that the Client has ceased use of any and all Software and proprietary materials and that all copies or embodiments thereof in any form, including partial copies within modified versions, have been destroyed.

2. Licence Exclusions

- 2.1 Except as expressly authorised herein, the Client shall not:
- (a) distribute, sublicense, disclose, market, rent, lease, or offer remote computing services, networking, batch processing or transfer of, the Software to any third party, or permit any person or entity to have access to the Software by means of a time sharing, remote computing services, networking, batch processing, service bureau or time-sharing arrangement; or
 - (b) if the Client is a U.S. customer, export the Software in violation of U.S. Department of Commerce export administration regulations, or if a customer elsewhere, breach any similarly applicable laws.
- 2.2 Without limiting 2.1(a), the Client must not provide the Software to a third party as a service without written approval obtained from MLS. For the avoidance of doubt, the Client is forbidden from reverse engineering the Software.
- 2.3 No licence, right or interest in any Moodle trade mark, trade name, or service mark is granted hereunder.

3. Title and Protection

- 3.1 The Client acknowledges and agrees for Moodle's benefit that Moodle retains title to all portions of the Software and other proprietary materials containing valuable proprietary information.
- 3.2 The Client acknowledges and agrees for Moodle's benefit that Moodle is not obliged to make any changes to the Software at the request or suggestion of the Client. However, where the Client provides any feedback, comments, suggestions or requests in relation to the Software, it agrees that Moodle will have no restrictions on any uses it may make in respect of it. Without limiting the foregoing, where Moodle modifies the Software at the suggestion of the Client, Moodle may offer such modifications to its other partners and customers without limitation.

4. Indemnity & Warranty

- 4.1 The Client agrees to indemnify and hold Moodle harmless for any damages, fines, penalties, or other liability arising out of any use of the Software by the Client or its users.
- 4.2 Any warranty provided by MLS in respect of the Software will be as specified in the Supplier Agreement. Except as provided in this clause, all Software provided hereunder is provided "as is".

5. Limitation of Liability

5.1 Liability Exclusions

The Client agrees and acknowledges for Moodle's benefit that under no circumstances will Moodle be liable for: loss of revenue; loss of actual or anticipated profits; loss of contracts; loss of the use of money; loss of anticipated savings; loss of business; loss of opportunity; loss of goodwill; loss of reputation; loss of, damage to or corruption of data; or consequential or indirect loss or special, punitive, or incidental damages (including, for the avoidance of doubt, where such loss or damage is also of a category of loss or damage already listed), whether foreseeable or unforeseeable, based on claims of the Client or any third party arising out of any breach or failure of express or implied warranty conditions or other term, breach of contract, misrepresentation, negligence, other liability in tort, failure of any remedy to achieve its essential purpose, or otherwise.

5.2 Liability Cap

The client agrees and acknowledges for Moodle's benefit that notwithstanding the form (e.g., contract, tort, or otherwise) in which any legal or equitable action may be brought, in no event will Moodle or its suppliers (including MLS) be liable for amounts that exceed, in the aggregate, the amount of fees paid by the Client for the Software licence in the first twelve (12) month period of the licence.