

## AHE Consultancy Terms and Conditions – provision of the E-Learning Software Package

### 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 E-Learning Software Package in accordance with these terms and conditions, the Letter and the applicable Statement of Work;

**“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 in the relevant Statement of Work;

**“Commencement Date”**: the date for commencement of the E-Learning Software Package specified in the relevant Statement of Work;

**“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;

**“Control”**: the ability to direct the affairs of another party whether by virtue of the ownership of shares, contract or otherwise (and **“Controlled”** shall be construed accordingly);

**“Customer”**: the organisation which purchases the E-Learning Software Package from AHE, as identified in the Letter;

**“Deliverables”**: any document, piece of equipment, software product, data listing, diagram, plan, drawing, image, 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 E-Learning Software Package as more particularly detailed in Schedule 1 to the Letter;

**“E-Learning Software Package”**: the E-Learning Software Package to be supplied by AHE to the Customer, as set out in the Letter and the relevant Statement of Work;

**“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;

**“Foreground IPR”**: Intellectual Property Rights in items or materials created by AHE and/or its Staff (or by a third party on behalf of AHE) specifically for the purposes of the Agreement including, Intellectual Property Rights in any Deliverables;

**“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;

**“Letter”**: the letter from AHE to the Customer confirming that AHE shall provide, and the Customer shall pay for, the E-Learning Software Package as set out in the Statement of Work on these terms and conditions;

**“Staff”**: any employee, consultant, sub-contractor of AHE or any other persons engaged by AHE who are involved in the provision of the E-Learning Software Package;

**“Statement of Work”**: the detailed plan attached to the Letter describing the E-Learning Software Package and setting out the estimated timetable (including any milestones) for delivery; and

**“Term”**: has the meaning given in the Letter.

- 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 the Letter and/or the Statement of Work, these terms and conditions shall prevail except where the Letter or the Statement of Work (as applicable) specifically states that its terms are to prevail over these terms and conditions.

## **2 E-Learning Software Package**

- 2.1 AHE grants the Customer a non-exclusive, non-assignable and non-sub-licensable, worldwide licence for the period defined in the Statement of Works to use the E-Learning Software Package for the Customer’s own internal purposes.
- 2.2 AHE shall use its reasonable endeavours to:
- 2.2.1 tailor the E-Learning Software Package as described in the Statement of Work;
- 2.2.2 ensure that the Software is operating satisfactorily;
- 2.2.3 deliver the E-Learning Software Package as a SCORM package which will be loaded by the Customer onto the Customers Virtual Learning Environment or Learning Management System; and
- 2.2.4 meet any performance dates or milestones specified within the Statement of Work.
- 2.3 AHE shall provide the E-Learning Software Package using appropriately experienced, qualified and trained Staff who possess a degree of skill and experience which is appropriate to the tasks which they are

allotted and shall procure that the Staff shall perform these tasks in a professional manner.

## **3 Customer Obligations**

- 3.1 The Customer shall:
- 3.1.1 co-operate with AHE in all matters relating to the E-Learning Software Package;
- 3.1.2 provide, in a timely manner, the materials defined in the Statement of Work and any other information as AHE may reasonably require for the performance of the E-Learning Software Package, and ensure that it is accurate in all material respects; and
- 3.1.3 not at any time during the Term do or say anything which damages or which could reasonably be expected to damage the interests or reputation of AHE or its Staff.
- 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.
- 3.3 The Customer shall not, without the prior written consent of AHE, at any time from the date of the Agreement to the expiry of six (6) months after the Term, solicit or entice away from AHE any person who is, or has been, an employee of AHE and involved in the provision of the E-Learning Software Package.

## **4 Charges, Invoicing & Payment**

- 4.1 AHE will invoice the Customer for the applicable Charges as specified in the Statement of Work.
- 4.2 The Customer shall pay each invoice submitted to it by AHE within 30 days of receipt of that invoice to the bank account specified in the relevant invoice.
- 4.3 Unless stated otherwise in the Statement of Work, the Customer will pay the Charges in pounds sterling plus value added tax (“VAT”) or any equivalent sales tax in any applicable jurisdiction, which shall be added by the Customer to its invoices at the appropriate rate.
- 4.4 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay any invoice on the due date, AHE may:
- 4.4.1 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
- 4.4.2 immediately withdraw/suspend the right to use the E-Learning Software Package until full cleared payment is received by AHE from the Customer.

## **5 Change Control**

- 5.1 If either party wishes to change the scope or provision of the E-Learning Software Package, it shall submit details of the requested change to the other in writing (e-mail to suffice) and such change shall only be implemented if agreed in accordance with the remainder of this clause.
- 5.2 If the Customer requests a change to the scope or content:
- 5.2.1 AHE shall provide a Maintenance Service as set out in the Statement of Work;
- 5.2.2 If the changes fall outside of the Maintenance Service, AHE shall, within a reasonable time, provide a written estimate (e-mail to suffice) to the Customer of:
- (i) the likely time required to implement the change;
- (ii) any reasonable variations to the Charges arising directly as a result of the proposed change, including any Charges already incurred which the Customer may be liable to pay in accordance with clause 4.2 at AHE's discretion; and
- (iii) any other impact of the change on the terms of this Agreement;
- 5.2.3 if, following receipt of AHE's written estimate submitted in accordance with clause 5.2.1, the Customer does not wish to proceed, there shall be no change to this Agreement; and
- 5.2.4 if the Customer wishes AHE to proceed with the change, AHE shall do so after agreement on the necessary variations to the Charges, the E-Learning Software Package and any other relevant terms of this Agreement to take account of the change following which this Agreement shall be varied by the parties in accordance with clause 15.2.
- 5.3 If AHE requests a change to the scope or provision of the E-Learning Software Package, it shall send such request to the Customer in writing (e-mail to suffice), and the Customer shall be entitled to withhold or give its consent to such change. If the Customer permits AHE to proceed with the change, AHE shall do so, following a variation of this Agreement in accordance with clause 15.2.
- 6 Confidentiality**
- 6.1 Each party agrees:
- 6.1.1 to keep the other's Confidential Information confidential;
- 6.1.2 not to use the other's Confidential Information save for complying with its obligations under the Agreement;
- 6.1.3 not to disclose the other's Confidential Information to a third party other than to:
- (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
- (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
- (iii) to the extent required to do so by law, an order by a court of competent jurisdiction or any governmental or regulatory authority.
- 6.2 The restrictions contained in clause 6.1 shall continue without limitation of time except that they shall cease to apply to information which:
- 6.2.1 has in its entirety become public knowledge otherwise than through any unauthorised disclosure or breach of this clause 6;
- 6.2.2 the disclosing party has consented in writing to the Confidential Information being disclosed; or
- 6.2.3 is or has been independently developed by the other party without reference to or use of the disclosing party's Confidential Information.
- 7 Intellectual Property Rights**
- 7.1 Save as otherwise set out in the Agreement, neither party shall acquire any right, title or interest in the other's Background IPR.
- 7.2 All title to and all rights and interest in the Foreground IPR shall vest in AHE. AHE hereby grants to the Customer a fully paid-up, royalty free, non-exclusive, non-assignable and non-sub-licensable worldwide licence to use the Foreground IPR in the Deliverables for its internal business purposes.
- 7.3 The Customer shall not use the Foreground IPR and/or the Deliverables for any purpose other than as set out in clause 7.2 without the prior written agreement of AHE, and the Customer acknowledges that such agreement may be conditional on a further written licence agreement being entered into between the parties. For the avoidance of doubt, in the event that the Customer wishes to commercially exploit the Foreground IPR and/or the Deliverables outside the scope of the licence granted in clause 7.2 above, it shall not do so until a further written licence agreement has been entered into with AHE, which will include commercially reasonable royalty provisions in respect of any such exploitation.
- 7.4 The Customer hereby grants to AHE a non-exclusive, perpetual, irrevocable, transferrable, worldwide, royalty free licence (together with a right to sub-license) to use the Customer's Background IPR for any purpose relating to the provision of the E-Learning Software Package, and creation and delivery of the Deliverables.

- 8** **Data Protection**
- 8.1 The parties acknowledge and agree that neither party anticipates that personal data shall be processed under this Agreement.
- 9** **Liability and Insurance**
- 9.1 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.
- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- 9.3 Subject to clause 9.1:
- 9.3.1 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
- (ii) any direct or indirect loss of profit, business, contract, goodwill, corruption of data or information, revenues or anticipated savings.
- 9.3.2 each party'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 for the E-Learning Software Package.
- 9.4 Each party shall maintain during the Term with a reputable insurance company adequate insurance against its liabilities under the Agreement on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 10** **Termination**
- 10.1 The Customer may terminate the Agreement for any reason by giving at least 20 (twenty) Business Days' written notice to AHE (provided that the Customer shall compensate AHE in accordance with clause 10.4).
- 10.2 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:
- 10.2.1 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
- 10.2.2 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).
- 10.3 AHE may immediately terminate the Agreement on written notice to the Customer without incurring liability to the Customer by reason of such termination if there is a change of Control of the Customer.
- 10.4 On termination of the Agreement for any reason:
- 10.4.1 For as long as the termination is not due to the breach of clause 10.2.1 and 10.2.2 by AHE, in accordance with clause 4.2, the Customer shall pay AHE the remainder of the fees as set out in the Payment Schedule;
- 10.4.2 all sums payable to AHE shall become due immediately and the Customer shall immediately pay AHE all outstanding unpaid invoices and any interest thereon and, in respect of the E-Learning Software Package supplied for which no invoice has been submitted, AHE may submit an invoice, which shall be payable immediately on receipt;
- 10.4.3 the 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;
- 10.5.4 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 information and records to AHE, or (to the extent technically practicable) erase or destroy all such information and records including the E-Learning Software Package, and certify, in writing signed by an authorised signatory, to AHE that it has done the same.
- 10.5.5 clauses which expressly or by implication have effect after termination shall continue in full force and effect, including clauses 6 (Confidentiality), 7 (Intellectual Property Rights), 8 (Data Protection), 9 (Liability and Insurance), this clause 10.5, clause 12 (Dispute Resolution) and clause 15.8 (Law and Jurisdiction).
- 11** **Force Majeure**
- 11.1 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.

- 11.2 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.
- 12 Dispute Resolution**
- 12.1 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.
- 12.2 If the dispute cannot be resolved by the parties pursuant to clause 12.1 the dispute may, by agreement between the parties, be referred to mediation in accordance with the LCIA Mediation Rules (as at the date of such mediation), and those Rules are deemed to be incorporated by reference into this clause 12.
- 12.3 If the dispute or claim is not settled by mediation within 30 days of the commencement of the mediation, or such further period as the parties shall agree in writing, either party may commence proceedings under clause 15.8.
- 12.4 Nothing in this clause 12 shall prevent either party from applying at any time to the English courts for injunctive relief on the grounds of infringement, or threatened infringement, of the other party's obligations of confidentiality contained in the Agreement or infringement, or threatened infringement, of the applicant's Intellectual Property Rights, or if the case would be prejudiced by delay to allow for mediation.
- 13 Publicity and publication**
- 13.1 AHE shall be permitted to use the name of the Customer in any publication making reference to Foreground IPR as due acknowledgement of the source of the Charges received.
- 13.2 The Customer shall not publicise the terms of the Agreement, or any Statement of Work, 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.
- 14 Anti-corruption and anti-bribery**
- 14.1 Each party shall:
- 14.1.1 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**"); and
- 14.1.2 have and shall maintain in place throughout the Term its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate.
- 14.2 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).
- 14.3 If any breach by either party (or anyone acting on its behalf) of this clause 14 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.
- 14.4 Any breach of this clause 14 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:** No variation of the Agreement shall be valid unless in writing and signed by a duly authorised representative of each of the parties.
- 15.3 **Notices:** Any notice given under the Agreement must be made in writing, sent for the attention of the person, and to the address, given on the front page of the Agreement (or such other address or person as the relevant party may notify to the other party).
- 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 **Assignment and Sub-Contracting:** The Customer shall not, without the prior written consent of AHE, assign, transfer, charge, create a trust in, or deal in any other manner with all or any of its rights or obligations under the Agreement or any Statement of Work. AHE may assign or novate the Agreement and/or any Statement of Work to: (i) any separate entity Controlled by AHE; or (ii) any body or department which succeeds to those functions of AHE to which the Agreement relates. The Customer warrants and represents that it will (at AHE's reasonable expense) execute all such documents and carry out all such acts, as reasonably required to give effect to this clause 15.5.

- 15.6 **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 12) the courts of England shall have exclusive jurisdiction to settle any such dispute or claim.