

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);

“Course Redevelopment”: a complete rework of the E-Learning Software Package, often involving reworking the instructional design of the E-Learning

Software Package, updating any technology or platform used to deliver the E-Learning Software Package, and potentially restructuring the E-Learning Software Package;

“Course Refresh”: minor updates to content, design, or interactivity without fundamentally changing the content of the E-Learning Software Package;

“Course Revision”: more significant updates than a Course Refresh, however, less significant updates than a Major Content Revision, such as modifying the learning objectives, updating media, or changing interactions based on user feedback in the E-Learning Software Package;

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

“Data Protection Legislation” shall mean (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the Processing of Personal Data to which a party is subject, including UK Data Protection Laws (the UK GDPR, the DPA 2018, and the Privacy and Electronic Communications Regulations 2003);

“DPA” means the UK Data Protection Act 2018, including any replacements thereof;

“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 the relevant Statement of Work;

“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; widespread or exceptional Staff illness which could not have been mitigated by AHE; 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 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;

“Maintenance”: ongoing support by AHE to support the continued functioning of the E-Learning Software Package as intended over time, such as bug fixes and broken links in the E-Learning Software Package. In the event E-Learning Software Package is customised to the Customer, it shall also include the minor updates to the customised content such as an updated logo, update to institution support links or introduction video due to change in institution staff;

“Major Content Revision”: significant updates which are required to be undertaken by AHE due to any changes in laws, regulations or other substantial shifts that come into force from time to time, that materially affect the E-Learning Software Package content;

“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;

“Term”: has the meaning given in the Letter; and

“UK GDPR” has the meaning given in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

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 Work to use the E-Learning Software Package for the Customer's own internal purposes.

2.2 Except as expressly permitted under the Agreement or with AHE's prior written consent, the Customer shall not:

2.2.1 extract, copy, modify, adapt, translate or create derivative works from the E-Learning Software Package or any part of its content;

2.2.2 incorporate any part of the content into separate training materials, learning resources or other products outside the E-Learning Software Package;

2.2.3 remove, alter or obscure any copyright, trademark or other proprietary notices contained within the E-Learning Software Package;

2.2.4 transfer, sub-license, distribute or otherwise make the E-Learning Software Package, or any part of it, available to any third party; or

2.2.5 continue to use the E-Learning Software Package, or any copied, extracted, modified or adapted content derived from it, after expiry or termination of the licence, unless otherwise agreed in writing by AHE.

2.3 AHE shall use its reasonable endeavours to:

2.3.1 tailor the E-Learning Software Package as described in the Statement of Work;

2.3.2 support the satisfactory operation of the E-Learning Software Package;

2.3.3 deliver the E-Learning Software Package as a SCORM package which will be loaded by the Customer onto the Customer's Virtual Learning Environment or Learning Management System; and

- 2.3.4 meet any performance dates or milestones specified within the Statement of Work.
- 2.4 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 during the Term of the Agreement and for six (6) months following its expiry or termination,, 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 Customer's right to use the E-Learning Software Package until full cleared payment is received by AHE from the Customer.
- 5 Change of Scope and Maintenance**
- 5.1 If either party wishes to change the scope or provision of the E-Learning Software Package for any reason, 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. AHE reserves the right to decide under which definition the proposed changes fall, and shall provide the Customer with a written estimate of the consequences of the proposed changes in both applicable Charges and content of the E-Learning Software Package.
- 5.2 For the avoidance of doubt, Maintenance, as defined in these Terms and Conditions, does not constitute a Change of Scope, and shall be provided by AHE to the Customer as a service under the Agreement. AHE does not warrant that at all times the functionality of the E-Learning Software Package is guaranteed, however, it shall at its earliest convenience ensure that all necessary Maintenance is carried out in a timely manner. AHE does not require the consent or written approval of the Customer to perform Maintenance under this Agreement.
- 5.3 In the event AHE deems that a Major Content Revision is necessary:
- 5.3.1 AHE shall notify the Customer of the changes scheduled to be made and their impact on the Customer's E-Learning Software Package;
- 5.3.2 AHE shall provide the Customer with access to the revised E-Learning Software Package under the same terms and conditions of the Customer's existing Agreement, unless explicitly otherwise specified in the written estimate by AHE; and
- 5.3.3 AHE shall inform the Customer whether additional Charges shall apply for the updated E-Learning Software Package, depending on the nature of the Major Content Revision and the existing Agreement between AHE and the Customer. Any additional Charges shall be agreed in writing by the parties before they are incurred.
- 5.4 If the proposed changes by either party fall outside of the definition of Major Content Revision and/or Maintenance, the parties must agree a variation to the Statement of Work which shall include the likely time to implement the proposed changes, an updated pricing model to reflect the additional work of the proposed changes, and an overview of any other

impact the variation shall have on the Agreement. As per clause 5.1, AHE shall provide the Customer with a written estimate containing the terms of the variation. For the avoidance of doubt, at the very least, the following fall outside the definitions of Major Content Revision and Maintenance and will require the parties to enter into a variation of the Agreement:

- (i) Course Redevelopment;
- (ii) Course Refresh; and
- (iii) Course Revision.

5.5 If, following receipt of a written estimate submitted in accordance with this clause 5 by AHE to the Customer, the Customer does not wish to proceed with the changes to the scope of the Agreement, there shall be no change to this Agreement.

5.6 If the Customer wishes AHE to proceed with the change, the parties shall agree and sign a variation letter setting out the agreed changes, including any applicable changes to the Charges, timescales and other relevant terms of the Agreement. Once the variation has been agreed in accordance with clause 15.2, AHE shall implement the agreed changes to the E-learning Software Package.

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, provided that, where legally permitted, the party required to make the disclosure shall notify the other party as soon as reasonably practicable before making the disclosure.

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.

6.2.4 was lawfully in the possession of the receiving party before disclosure by the disclosing party and was not subject to any obligation of confidentiality; or

6.2.5 is lawfully received by the receiving party from a third party without breach of any obligation of confidentiality.

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 for the licence period specified in the relevant Statement of Work 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 With the prior written consent (e-mail to suffice) of AHE, the Customer may make amendments to the Foreground IPR in the form of reasonable adjustments, as defined under the Equality Act 2010, provided that:

(i) the amended Foreground IPR shall at no time be used for commercial purposes by the Customer, and, for the avoidance of doubt, shall only be used for the purpose of complying with the Equality Act 2010;

(ii) any and all costs relating to the amendments in the form of reasonable adjustments under this clause 7.4 shall be borne by the Customer;

(iii) the amended Foreground IPR shall only be distributed to individuals who require reasonable adjustments,

	and shall not in any shape or form be shared or distributed elsewhere; and		paid or payable by the Customer to AHE for the E-Learning Software Package.
(iv)	the amended Foreground IPR shall also vest in AHE in accordance with and under the same terms and conditions as set in clause 7.2.	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.
7.5	The Customer hereby grants to AHE a non-exclusive, perpetual, irrevocable, transferrable, worldwide, royalty free licence (together with a right to sub-licence) 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. The Customer warrants that it owns or has obtained all necessary rights and permissions to use and license to AHE, any Background IPR provided to AHE for use in connection with the E-Learning Software Package or the Deliverables.	10	<u>Termination</u>
		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). AHE may terminate the Agreement at any time and for any reason by giving written notice thereof to the Customer.
8	<u>Data Protection</u>	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:
8.1	The parties acknowledge and agree that neither party anticipates that personal data shall be processed under this Agreement. However, each parties acknowledges and agrees that they shall at all times comply with all Data Protection Legislation that is into force, and that may come into force from time to time. Each party shall be responsible for its own compliance with data protection requirements and shall not process personal data unless explicitly required for the performance of this Agreement or as otherwise agreed by the parties.	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).
9	<u>Liability and Insurance</u>	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.
9.1	Nothing in the Agreement limits or excludes the liability of either party for personal injury or death resulting from its negligence, fraudulent misrepresentation or any other matter which cannot be excluded or limited by law.	10.4	On expiry of the applicable licence or termination of the Agreement for any reason:
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.	10.4.1	For as long as the termination is not due to any of the circumstances set out in clauses 10.2.1 and 10.2.2 in relation to AHE, in accordance with clause 4.2, the Customer shall pay AHE the remainder of the fees as set out in the Payment Schedule. In the event the Payment Schedule includes that certain Charges are non-refundable to the Customer after signing the Agreement, the Customer shall pay AHE the full amount of non-refundable Charges upon termination;
9.3	Subject to clause 9.1:	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;
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		

- 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;
- 10.4.4 on expiry of the applicable licence or termination of the Agreement for any reason, the Customer shall Immediately cease using the E-Learning Software Package and, 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 all copies of the E-Learning Software Package in its possession or control, and certify, in writing signed by an authorised signatory, to AHE that it has done the same.
- 10.4.5 clauses which expressly or by implication have effect after expiry or 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. The affected party shall use reasonable endeavours to mitigate the effects of the Force Majeure and resume performance of its obligations as soon as reasonably practicable.
- 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 parties do not agree to refer the dispute or claim to mediation, or 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:** AHE shall reserve the right to amend and update these Terms and Conditions from time to time. Any such amendments or updates shall apply to Agreements entered into after the date on which the amended or updated Terms and Conditions take effect and shall not vary an existing Agreement unless otherwise agreed in writing by the parties.

No variation to the Statement of Work regarding the scope of the Agreement and the price payable under the Agreement shall be valid unless in writing and signed by a duly authorised representative of each party.

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). A notice shall also be deemed valid if sent to the email address provided by 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 **Entire Agreement:** The Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes all prior agreements, understandings and arrangements between them, whether written or oral. Each party acknowledges that, in entering into the Agreement, it has not relied on any statement, representation, assurance or warranty that is not expressly set out in the Agreement, provided that nothing in this clause shall exclude or limit liability for fraudulent misrepresentation

15.9 **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.