



HowNow Licence Terms and Conditions

V3.1 – Updated 10th November 2023

BETWEEN

1. **Wonderush Limited (HowNow)**, a company incorporated in England and Wales with registration number 09644569 and having its registered office at *86-90 Paul Street, London, England, EC2A 4NE* (the "Provider"); and
2. *The business or organisation, whose details are set out on the HowNow Commercial Agreement, that subscribes to the HowNow Digital Learning Platform* (the "Customer").

AGREEMENT

1. Definitions

1.1 In this Agreement:

"Business Day" means any weekday other than a bank or public holiday in England;

"Business Hours" means the hours of 8:00 to 20:00 GMT/BST on a Business Day;

"Charges" means the charges specified in the Commercial Agreement and any other costs or fees which are agreed in writing by the parties from time to time;

"Commercial Agreement" means the Commercial Agreement signed by the Provider and the Customer setting out the principal commercial terms of the licence.

"Customer Confidential Information" means: (a) any information disclosed by the Customer to the Provider at any time before the termination of this Agreement (whether disclosed in writing, orally or otherwise) that at the time of disclosure: (i) was marked or described as "confidential"; or (ii) should have been reasonably understood by the Provider to be confidential; and (b) the Customer Data;

"Customer Data" means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Services by the Customer (but excluding analytics data relating to the use of the Platform and server log files);

"Customer Personal Data" means any Personal Data that is processed by the Provider on behalf of the Customer in relation to this Agreement;

"Data Protection Laws" means all applicable laws relating to the processing of Personal Data including, while it is in force and applicable to Customer Personal Data, the UK Data Protection Act 2018 and/or the General Data Protection Regulation (Regulation (EU) 2016/679), and any replacement of such regulations;

"Effective Date" means the Effective Date specified in the Commercial Agreement;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Implementation Services" means the configuration, implementation and integration of the Platform (if any) in accordance with the terms of the Commercial Agreement;

"Initial Term" means the Initial Term specified in the Commercial Agreement;

"Intellectual Property Rights" or **"IPRs"** means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Maintenance Services" means the general maintenance of the Platform, and the application of Updates and Upgrades;

"Personal Data" has the meaning given to it in the Data Protection Laws applicable in the United Kingdom from time to time;

"Platform" means the digital learning platform owned and operated by the Provider, as described on the Website;

"Privacy Policy" means the Provider's privacy policy available on the Website at <https://gethowonow.com/privacy-policy.pdf>.

"Services" means any services that the Provider provides to the Customer or has an obligation to provide to the Customer under this Agreement;

"Support Services" means support in relation to the use of, and the identification and resolution of errors in, the Platform, but excluding the provision of training services;

"Supported Web Browser" means the current release from time to time of Microsoft Edge, Mozilla Firefox, Google Chrome (recommended) or Apple Safari;

"Technical Support Services Document" means the Technical Support Services Document provided to the Customer by the Provider, together with the Commercial Agreement;

"Term" means the term of this Agreement;

"Update" means a hotfix, patch or minor version update to any Platform software; **"Upgrade"** means a major version upgrade of any Platform software; **"Website"** means www.gethowonow.com.

2. Term

2.1 This Agreement shall come into force upon the Effective Date and shall continue in force until terminated in accordance with Clause 15, or any other relevant provision of this Agreement.

3. Implementation

3.1 The Provider shall provide the Implementation Services (if any) to the Customer.

3.2 The Customer acknowledges that a delay in the Customer providing information or access to the Customer's systems, or any other failure to perform its obligations in this Agreement, may result in a delay in the Implementation Services.

3.3 The Provider shall retain all Intellectual Property Rights in any deliverables created by the Provider in providing the Implementation Services ("Deliverables"). The Customer is granted a worldwide, non-exclusive licence to use the Deliverables during the Term in connection with its authorised use of the Platform.

4. Licence to use the Platform

4.1 The Provider grants to the Customer a worldwide, non-exclusive licence to use the Platform by means of a Supported Web Browser for the internal business purposes of the Customer during the Term.

- 4.2 The Platform may only be used by employees, contractors and clients of the Customer.
- 4.3 The licence granted by the Provider under Clause 4.1 is subject to the following prohibitions: (a) the Customer must not sub-license its right to access and use the Platform; (b) the Customer must not make any alteration to the Platform; and (c) the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform without the prior written consent of the Provider.
- 4.4 The Customer shall use reasonable endeavours, including reasonable security measures relating to Administrator Account access, to ensure that no unauthorised person may gain access to the Platform using an Administrator Account.
- 4.5 The Customer must not use the Platform in any way that causes, or may cause, damage to the Platform or impairment of the availability or accessibility of the Platform.
- 4.6 The Customer must not use the Platform: (a) in any way that is unlawful, illegal, fraudulent or harmful; or (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 4.7 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.
- 4.8 If any amount due to be paid by the Customer to the Provider under this Agreement is overdue, or the Customer is in material breach of any other provisions of this Licence Terms, and the Provider has given to the Customer at least 30 days' written notice to remedy and the default has not been remedied, the Provider may at its discretion suspend or terminate the access of the Customer to the Platform.

5. Maintenance Services and Support Services

- 5.1 The Provider shall provide the Maintenance Services and the Support Services to the Customer during the Term, as set out in the Technical Support Services Document.
- 5.2 If any amount due to be paid by the Customer to the Provider under this Agreement is overdue, or the Customer is in material breach of any other provisions of this Licence Terms, and the Provider has given to the Customer at least 30 days' written notice to remedy and the default has not been remedied, the Provider may at its discretion suspend the Maintenance Services and the Support Services.

6. Customer obligations

- 6.1 Save to the extent that the parties have agreed otherwise in writing, the Customer agrees to provide to the Provider such: (a) co-operation, support and advice; (b) information and documentation; and (c) governmental, legal and regulatory licences, consents and permits; as are reasonably necessary to enable the Provider to perform its obligations under this Agreement.
- 6.2 The Customer agrees to provide to the Provider such access to the Customer's computer hardware, software, networks and systems as may be reasonably required by the Provider to enable the Provider to perform its obligations under this Agreement.

7. Customer Data

- 7.1 The Customer grants to the Provider a non-exclusive licence to use the Customer Data to the extent reasonably required for the performance of the Provider's obligations and to the exercise the Provider's rights under this Agreement. The Customer also grants to the Provider the right to sub-license these rights to its hosting, connectivity and telecommunications service providers, subject to any express restrictions elsewhere in this Agreement.
- 7.2 The Customer warrants to the Provider that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.
- 7.3 The Provider shall use reasonable endeavours to ensure a back-up copy of Customer Data is made at least daily and will be retained by the Provider for a minimum period of 90 days

following the termination of the Agreement.

8. Late payments

- 8.1 In addition to the right of the Provider to suspend or terminate this Agreement, if the Customer does not pay any amount properly due to the Provider under this Agreement, the Provider may claim interest from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

9. Confidentiality

- 9.1 The Provider shall: (a) keep the Customer Confidential Information strictly confidential; (b) not disclose the Customer Confidential Information to any person without the Customer's prior written consent; and (c) use the same degree of care to protect the confidentiality of the Customer Confidential Information as the Provider uses to protect the Provider's own confidential information of a similar nature, being at least a reasonable degree of care.
- 9.2 This Clause 9 imposes no obligations upon the Provider with respect to Customer Confidential Information that: (a) is known to the Provider before disclosure under this Agreement and is not subject to any other obligation of confidentiality; (b) is or becomes publicly known through no act or default of the Provider; or (c) is obtained by the Provider from a third party in circumstances where the Provider has no reason to believe that there has been a breach of an obligation of confidentiality.
- 9.3 The restrictions in this Clause 9 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Provider on any recognised stock exchange.

10. Data protection and Privacy Policy

- 10.1 The Provider and the Customer shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data. Details of the rights and obligations of the Provider and the Customer are set out in the Provider's Privacy Policy.

11. Warranties

- 11.1 The Provider warrants to the Customer that: (a) the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement; and (b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement.
- 11.2 The Provider warrants to the Customer that the Platform, when used by the Customer in accordance with this Agreement, will not to the best of its knowledge infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.
- 11.3 The Customer warrants to the Provider that when using the Platform, it will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.
- 11.4 To the extent permitted by applicable law, unless expressly stated in this Agreement, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

12. Indemnity

- 12.1 The Provider shall indemnify and shall keep indemnified the Customer against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Customer and arising directly or indirectly as a result of any breach by the Provider of the terms of clause 11.2.
- 12.2 The Customer shall indemnify and shall keep indemnified the Provider against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Provider and arising directly or indirectly as a result of any breach by the Customer of the terms of clause 11.3.

13. Limitations and exclusions of liability

- 13.1 Nothing in this Agreement will: (a) limit or exclude any liability for death or personal injury resulting from negligence; (b) limit or exclude any liability for fraud or fraudulent misrepresentation; (c) limit any liabilities in any way that is not permitted under applicable law; or (d) exclude any liabilities that may not be excluded under applicable law.
- 13.2 The limitations and exclusions of liability set out in this Clause 13 and elsewhere in this Agreement govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.
- 13.3 Neither party shall be liable to the other party in respect of: (a) any losses arising out of a Force Majeure Event; (b) any loss of profits or anticipated savings; (c) any loss of revenue or income; (d) any loss of use or production; (e) any loss of business, contracts or opportunities; (f) any loss or corruption of any data, database or software; (g) any special, indirect or consequential loss or damage.

14. Force Majeure Event

- 14.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.
- 14.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must: (a) promptly notify the other; and (b) inform the other of the period for which it is estimated that such failure or delay will continue.
- 14.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

15. Termination

- 15.1 The Provider and the Customer may terminate this Agreement by giving to the other not less than the period of notice required, including observing any applicable minimum term requirement, as set out in the Commercial Agreement.
- 15.2 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits any material breach of this Agreement (including non-payment of sums due), and the breach is not remediable, or if remediable is not remedied within 30 days of written notice being served by the other party.
- 15.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
 - (a) the other party: (i) is dissolved; (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes unable to pay its debts as they fall due (iv) is or becomes insolvent or is declared insolvent; or (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party; or
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement).

16. Effects of termination

- 16.1 Following the termination of this Agreement for any reason, the Customer shall pay to the Provider all outstanding Charges in respect of Services provided to the Customer before the termination of this Agreement or which may be due in respect of Services which have been contracted under the terms of the Commercial Agreement and this Agreement, without

prejudice to the parties' other legal rights.

17. Notices

17.1 Any notice from one party to the other party under this Agreement must be given by one of the following methods (using the relevant contact details set out in the Scope of Work): (a) delivered by electronic mail, in which case the notice shall be deemed to be received upon delivery (providing that a 'read receipt' or other reply has been given); and (b) sent by recorded signed-for post, in which case the notice shall be deemed to be received 2 Business Days following posting; providing that, if the stated time of deemed receipt is not within Business Hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

18. No waiver

18.1 No waiver of any breach of any provision of this Agreement shall be: (a) considered to have taken place except with the express written consent of the party not in breach; and (b) shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of this Agreement.

19. Severability

19.1 If a provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect. If any unlawful and/or unenforceable provision of this Agreement would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

20. Third party rights

20.1 This Agreement is for the benefit of the parties and is not intended to benefit or be enforceable by any third party. The exercise of the parties' rights under this Agreement is not subject to the consent of any third party.

21. Variation

21.1 This Agreement may not be varied except in by means of a written document signed by or on behalf of each party.

22. Law and jurisdiction

22.1 This Agreement shall be governed by and construed in accordance with English law. Any disputes relating to this Agreement shall be subject to the exclusive jurisdiction of the courts of England.