Terms of Service

of

Avetica B.V.

Version: January 2025

Introduction

These Terms of Service[1] describe how Avetica B.V. operates as a company and how we aim to deliver quality and security to our clients within the framework of current laws and regulations. The Terms of Service are an integral and inseparable part of the Contract between Avetica B.V. and the Client. Hence the terms include the following topics:

- What you can expect from Avetica in the provision our Services and what the role of Moodle Pty is;
- What we expect from you when making use of our Services;
- Who owns the software, data and content and how we have arranged security;
- How we deal with a situation where one of the Parties experiences problems or disagreements.

Where Moodle is used in the context of the software program or learning management system, this can also be read as Moodle LMS and Moodle Workplace. The terms and licence(s) for use of the Moodle learning management system can be viewed at moodle.org.

Article 1: Definitions and Context

In addition to the Contract, the following terms are used in these Terms of Service, which are always capitalised and used in both the singular and plural:

1. **Availability**: The extent to which Avetica's hosted Moodle services are accessible and operational for the Client within a specified time period. Availability is usually expressed as a percentage of the total time when the services should be available, excluding scheduled maintenance periods and force majeure circumstances.
2. **Services**: The service provided to the Client by Avetica, as described in the Contract.
3. **Functional Design:** A detailed description, possibly with drawings and workflows, of new software to be developed, so that both Parties have a clear picture of the working and the result.
4. **User**: The User of the Moodle site, e.g. an employee, student or course participant. A User has their own user account.
5. **Data Controller**: The party that determines why and how personal data is processed. The Data Controller has control over the data and is ultimately responsible for the Processor's compliance with privacy and data protection rules.
6. **Recovery Time**: The time between the moment when Avetica responds to an incident report and the moment when the Incident is resolved.
7. **Hosting**: Providing an online environment in which a web-based application runs. This means that the provider manages and maintains the servers, storage, network and necessary software so that users can access the application over the Internet without having to install or manage any hardware or software themselves.
8. **Incident**: An unplanned interruption or reduction in quality of the Services or failure to meet the agreed specifications. This only applies if the Client can demonstrate it and Avetica can reproduce and confirm it.
9. **Customisation**: Additional functionality that is not available in Moodle as standard and is developed at the request of the Client to meet specific needs or requirements. In the context of Moodle, this is called a 'Moodle plug-in'. Customisation also includes developing a theme in the Client's house style.
10. **Maintenance**: Application management by Avetica, such as performing Updates and Upgrades of Moodle and additional plug-ins.
11. **Client**: The person or organisation that has concluded a Contract with Avetica.

[1] The Terms of Service are also Avetica's Service Level Agreement (SLA).

[1] These Terms of Service are a translation from Dutch. In case of ambiguity regarding the translation, the Dutch version applies.

12. **Contract**: The Contract, consisting of a signed quotation or sent purchase order, of which Avetica's Terms of Service form an inseparable part, concluded between the Parties for providing the Services.
13. **Party**: Every Party to the Contract.
14. **Response Time**: The time between Avetica receiving an incident report and the moment when Avetica starts analysing the Incident.
15. **Service Levels**: The level of Services with regard to maintenance, support and Availability as set out in these Terms of Service.
16. **Support**: The support provided by Avetica to the Client in the use of the provided Services, including technical and functional support and educational advice and consultancy. Support includes resolving Incidents, answering questions, and offering advice on the use and configuration of Moodle and additional plug-ins and systems. Support can be provided both proactively and reactively.
17. **Update**: Minor improvements and resolved security issues incorporated into a new Moodle version, denoted by the Z in version x.y.Z.
18. **Upgrade**: New additions and changes incorporated into a new Moodle version, denoted by X or Y in version X.Y.z.
19. **Processor**: A party that processes data on behalf of the Client. The Processor performs specific tasks with the data, such as storing or managing it, but does not decide how that data is used. This is always done according to the instructions of the Client who is ultimately responsible for the data.
20. **Business Day**: from 09:00 to 17:00 (Central European Time), on Mondays to Fridays, with the exception of official public holidays recognised in the Netherlands.

Article 2: Applicability

1. These Terms of Service apply to every offer, quotation and Contract offered by Avetica for its Services. They form an integral part of any Contract. Differing terms and conditions of the Client are only binding for Avetica if they have been accepted by Avetica in writing.
2. The Contract is concluded as soon as the Client accepts Avetica's quotation in writing or electronically. This can be done by issuing a purchase order (PO number), a written or electronic order, such as an e-mail or support ticket agreeing to the work and costs. This shall be regarded as unconditional acceptance of the Contract or order. After acceptance, the Contract can only be amended by mutual consent. Verbal undertakings are only binding if confirmed in writing by Avetica.
3. In the event of conflict between different documents, the following order applies:
    a. Quotation or Contract;
    b. Terms of Service;
    c. Any additional terms.
4. The applicability of any purchasing or other terms and conditions of the Client is expressly rejected, unless they are expressly accepted in full or in part by Avetica in writing.
5. The Parties are bound by the licences of the used Moodle software;

Article 3: Execution

1. Avetica guarantees that the Services will be executed to the best of its ability with due care and skill, unless agreed otherwise in writing. This will be done according to the latest knowledge and insights. Avetica thereby has an obligation of effort, not an obligation of result. For proper execution, Avetica may have certain work performed by third parties. Such outsourcing shall not result in an increase in the price agreed in the Contract. Avetica will remain fully responsible for the execution of the Contract.
2. The Client must do everything reasonably necessary for the timely and correct execution of the Services. This means that the Client shall ensure that all necessary information and facilities are made available to Avetica in good time.

3. The Client will be given secure access to the Moodle site with the role of 'site administrator'. All actions carried out using this account are the responsibility of the Client and at the Client's risk. If the Client suspects abuse, this must be reported to Avetica as soon as possible so that steps can be taken.
4. In order to execute the agreed Services, Avetica always needs access to the Client's Moodle site with the role of 'site administrator'. The Client is not permitted to deny access.
5. If Avetica or third parties engaged by Avetica perform work at a location designated by the Client, the Client shall provide the necessary facilities, without charging Avetica for this.
6. If one of the Parties deems it necessary, the Parties shall strive to consult about the Services and any associated timetable.
7. If one of the Parties anticipates that a time in the aforementioned timetable will not be met, it shall inform the other Party of this as soon as possible where this is reasonably possible. The Party that is first to exceeds a time is aware that this may have an effect on the timetable and is responsible for the impact on the rest of the timetable.
8. If one of the Parties deems it necessary, the Parties will schedule an evaluation to discuss the following aspects, amongst other things:
    a. work performed;
    b. number of hours booked relative to the result;
    c. communication between Avetica and the Client.
9. Complaints relating to the Services provided shall be sent by an authorised employee of the Client to klachten@avetica.nl. Avetica management will send back a written response within 10 Business Days.
10. Both Parties shall treat information that they provide to one another before, during or after the Contract as confidential if the information is marked as confidential or could reasonably be considered confidential. This obligation also applies to employees of both Parties and third parties engaged by them.
11. Avetica will not take cognisance of any data that the Client stores or distributes through Avetica's servers, unless this is necessary for the execution of the Contract or Avetica is required to do so by law or a court order. In that case, Avetica will limit access to the data as much as possible within the limits of what is possible.

Article 4: Development and Delivery of Customisation

1. If the Contract includes the development of customisation in Moodle, the quotation will clearly describe what customisation will be developed and how this will be done. Avetica will carry out the development carefully, based on the information provided by the Client. The Client is responsible for the accuracy and completeness of this information. Where necessary, Avetica will draft a Functional Design before starting the development of the customisation. After written approval of the Functional Design, Avetica will present a final Contract for the development and implementation of the customisation.
2. After the Contract has been approved, Avetica will develop the customisation to Moodle Pty standards and working with the latest browsers.
3. Avetica will deliver the customisation or parts thereof when it believes that they meet the agreed specifications.
4. Stated delivery times are indicative unless a deadline is expressly agreed in writing. Avetica is only in default after written notice of default from the Client. Exceeding delivery times does not result in an entitlement to compensation.
5. The Client must review and approve or reject the delivered customisation within twenty-one (21) days of receipt. If this does not happen, the work is considered to be accepted. In the case of delivery in phases, the Client must approve or reject after each phase according to the same procedure.
6. If the Client rejects the customisation, this will be explained in writing with arguments. Avetica will attempt to remedy the reason for rejection by revising the customisation or explaining why the rejection is unjustified. The Client then has seven (7) days to approve or reject the revision or explanation.

7. If the Client continues to reject the work after the first revision, a maximum of five (5) revision rounds will follow. If further revisions are not considered useful, both Parties may terminate the Contract for the rejected part. The Client will then pay for the hours actually worked, up to a maximum of the amount quoted, taking into account demonstrably culpable behaviour by Avetica. The Client may not use the rejected work.
8. After acceptance of the work, any liability for defects lapses, unless Avetica knew or should have known of the defect at the time of acceptance.
9. If Customisation includes an integration (interface) and the external IT system is modified which affects the operation of the integration, Avetica will treat restoring the integration as additional work.
10. If the Client requests additional work which falls outside the original Contract, this additional work will be invoiced on the basis of subsequent calculation and Avetica's usual rates. The Client understands that the desired additional work will affect the schedule and cost. Avetica will notify the additional costs of the additional work in writing in a timely manner, and Avetica will start performing the additional work after approval by the Client.

Article 5: Secure Moodle Hosting

1. Avetica provides the Hosting of the Moodle software for the Client. Avetica is responsible for secure Hosting and is the Processor for the Client which in turn is the Data Controller.
2. When a Moodle version has 'end-of-life' status and is no longer supported with Updates, an Upgrade to a newer version must be performed by Avetica. Responsibility for the Client using a supported Moodle version remains with the Client. Avetica always reserves the right to perform an Upgrade for security reasons.
3. Avetica is not responsible for the security and further development of Moodle's software, nor for the community plug-ins listed at moodle.org/plugins. A possible impact for the Client may be that a certain functionality or (community) plug-in is no longer available due to security reasons or technical reasons.
4. Avetica may on its own initiative install community plug-ins and plug-ins which it has developed itself on the Client's Moodle site and determine their configuration with the aim of adding value to the user experience of the Client's Users.
5. The Client may not publish any information through the Services that breaches Dutch or European laws and regulations. This includes copyrighted material without permission, threatening, offensive or discriminatory information, child pornography and breach of privacy. Avetica has a complaints procedure for reports of such content. In the event of justified complaints, Avetica may remove the material and inform the Client accordingly. Avetica may report criminal information and hand over relevant data to authorities. In the event of repeated complaints, Avetica may suspend the Services or terminate the Contract. The Client indemnifies Avetica against loss caused by the aforementioned situations.
6. Avetica sets a storage limit. If this is exceeded, additional fees will be charged.
7. The Client gives Avetica permission to copy (parts of) the Moodle site for the execution of the Contract. For example, this may be necessary to create a test site or a backup.
8. Avetica may carry out an Upgrade to a supported version of Moodle if security requires it. Any costs will be charged to the Client.
9. Avetica may purchase Services from third parties and sell them to the Client, e.g. from Moodle Integration Partners.
10. Avetica is responsible for ensuring that each Moodle site is provided with a valid and secure TLS certificate[2]. If the Client requires a TLS certificate other than the certificates from the supplier Let's Encrypt, the cost will be charged to the Client. If the Client provides its own TLS certificate, the Client is responsible for timely renewal and delivery. Avetica requires the Client to use a TLS certificate when exchanging data with external IT systems.

[2] Formerly known as SSL certificate

11. The Client may order domain names through Avetica. The request and use of a domain name depend on the registering authorities' rules and procedures. Avetica only mediates and does not guarantee that it will be granted. In the case of registration in our name, Avetica will assist in moving, transferring or terminating the domain name at the Client's written request. If the Contract is dissolved for breach of contract, Avetica can terminate the domain name with a notice period of one month.

Article 6: Availability & Backup

1. Avetica guarantees 99.9% Availability of your Moodle site, calculated quarterly.
2. The actual Availability is calculated quarterly, where "DB" is the actual Availability, "GB" is the desired Availability in minutes, and "G" is the sum of the number of minutes that an Incident lasts.

$$DB = \frac{GB - \sum G}{GB} * 100\%$$

3. Non-Availability due to force majeure or maintenance is not counted as an Incident when calculating the actual Availability.
4. In the event of a major incident involving a prolonged outage of the Services, we will move to another location where the Services will be available within a few Business Days.
5. All data is backed up every night. This backup is retained for at least two weeks. Charges for restoring data from a backup are calculated based on the applicable hourly rate. The backup of your Moodle site can be made available upon request and after payment. After termination of the Contract, the backups will be deleted within one (1) month. The Client is responsible for requesting a backup in a timely manner at termination.
6. Avetica can decide not to install certain Updates, Upgrades, plug-ins, add-ons or patches if this would negatively affect the Services. There is also the option to uninstall plug-ins or add-ons.
7. If there is a threat to the computer systems or networks of Avetica or third parties, for example due to excessive use or viruses, Avetica may take measures to prevent this. The cost of this may be charged.
8. In the event of breakdowns, maintenance or other causes of non-Availability of the Services, Avetica shall inform the Client about the nature and expected duration of the interruption.
9. Avetica may take its systems and networks down temporarily for maintenance, modification or improvement. This will take place outside office hours as much as possible, and Avetica will inform the Client about this in a timely manner. Loss caused by these interruptions will not be compensated.
10. Avetica can modify its systems and networks to improve the Services and rectify any errors. If this leads to significant changes, the Client will be informed in a timely manner.
11. If the guaranteed Availability is not met, only the remedies provided for in this article shall apply.
12. If the actual Availability is less than the desired Availability, Avetica will be given a warning by the Client. If Avetica has received two (2) or more warnings, the Client is entitled to compensation of a proportion of the monthly fees charged as shown in the table below.

Actual Availability	Compensation
95 to 99.9%	20% of monthly fees
90 to 95%	40% of monthly fees

13. If the Client receives compensation as described in this article four (4) times in one calendar year, the Client is entitled to terminate the Contract without this giving the Client any entitlement to compensation.
14. Avetica will incorporate all compensation due as a result of the above articles in the monthly invoices. If the Client believes that no or too little compensation has been incorporated incorrectly, it will inform Avetica of this. Avetica will investigate the Client's complaint and, if it is justified, will pay out the underpaid compensation within one month.

Article 7: Management & Maintenance

1. Avetica will ensure that your Moodle site remains up-to-date by installing new Moodle versions. Avetica is thereby dependent on the Availability of Updates and Upgrades from Moodle Pty's developers and the developers of community plug-ins.
2. Installing an Update (also known as 'minor releases') of Moodle falls within the agreed hosting charges. The costs for performing an Upgrade (also known as a 'major release') will be charged on.
3. The Client is responsible for ensuring that the Moodle site falls within the Moodle support policy. The Client will ask Avetica to perform an Upgrade to the supported version where Avetica will provide the cost of the Upgrade including additional work in writing. Following written approval of the cost, Avetica will implement the Upgrade of the Client's Moodle site.
4. It is not possible to downgrade a Moodle site to a previous version.
5. Avetica is not obliged to maintain, change or add specific features or functionality of the Moodle site with new versions of Moodle.
6. Avetica does not accept modifications to the Moodle source code and/or community plug-ins. Should the Moodle site contain a modification in the source code due to historical reasons, the site will not be updated. The Client is responsible for the additional costs of reinstating, modifying and testing modifications in the event of new releases.
7. The following applies to the installation and management of external plug-ins:
    a. For plug-ins not developed by Avetica or not in the Moodle plug-in database, Avetica will always perform a code review to detect security and privacy issues. The costs of this shall be borne by the Client.
    b. Avetica may remove outdated and unsupported community plug-ins for reasons of data security and privacy and will inform about this the Client in a timely manner.
8. Avetica may delete old course backups (older than two (2) years) and old log files (older than six (6) months). Old course backups are probably obsolete and help reduce our carbon footprint.

Article 8: Modification requests

1. The Client can ask Avetica to make a modification (Request for Change), which may result in Updates, Upgrades or modifications to the software or configuration. Avetica will determine whether this falls within the agreed Services or is considered additional work. Avetica uses the following prioritisation:

Priority	Period
Low	Request for Change does not need to be implemented urgently Maximum turnaround time 4 weeks
High	Request for Change needs to be implemented fairly urgently Maximum turnaround time 1 week

2. If the modification will result in costs for the Client, Avetica will provide an indication of price with functional specifications in advance. After written approval from the Client, Avetica will start performing the modifications.
3. After delivery of the modification, Client has five (5) Business Days to accept the modification. If no notification is received within this period, the modification will be deemed to have been accepted.

Article 9: Technical Support

1. If the Client notes an Incident (technical or functional), the Client shall first try to resolve the Incident itself. If the Client fails to find a solution, it shall report the Incident to Avetica as described in this article. If the Incident is related to another Incident, or may have been discovered previously, the Client shall notify Avetica of this (in writing).
2. Client will always report Incidents to Avetica via the website *http://customerservices.avetica.nl* or the e-mail address *customerservices@avetica.nl*. Incidents reported to Avetica by other means fall outside the response and resolution times.
   In emergencies (Priority 1, Crash), the Client should also report Incidents immediately by phone to *+31 (0)88 6644864* and by e-mail to *customerservices@avetica.nl*. Outside office hours, excluding the time between 23:00 and 07:00, the Client can call the emergency number on +31 (0)88 - 66 44 888. The emergency number should only be called in the event of a report with priority 1, Crash. If the emergency number is abused, Avetica is entitled to charge all costs directly to the Client with a starting rate of €100 excluding VAT per Incident.
3. Avetica has a digital application for the registration, progress and reporting of Incidents. This ticket system is intended only for the Client's contact persons registered with Avetica. They may contact Customer Services. The aim of this is to prevent unwanted requests relating to information security and/or privacy. Avetica may close tickets if Avetica waits a long time (> two (2) weeks) for a response from Client and it is not an urgent problem.
4. Each report of an Incident is assigned a priority. The following prioritisation is used:

Priority	Consequence of Incident	Example
1 (Crash)	The Moodle site is no longer usable at all for Users.	No User can log in.
2 (Major)	A particular functionality of the Moodle site is no longer available to Users.	A module or plug-in gives error messages
3 (Minor)	User is not experiencing direct problems with the Moodle site, but there is a problem in the display of one or more functionalities of the Moodle site.	The display of a component of a module or plug-in is not correct in a particular browser.

5. If Avetica wishes to carry out unexpected management and maintenance on the Hosting, it will announce this no less than one (1) week in advance where reasonably possible. Avetica may implement Critical Updates more quickly, whereby Avetica will inform the Client as soon as possible.
6. The following Response and Resolution Times will be observed by Avetica when performing management and maintenance:

Priority	Response Time	Resolution Time[3]
1 (Crash)	Within 1 hour after report from Client	Within 4 hours after response from Avetica
2 (Major)	Within 8 hour after report from Client	Within 16 hours after response from Avetica
3 (Minor)	An appointment for modification is made with the Client within 16 hours after report	By mutual agreement

[3] Resolution Times are met in at least 90% of cases.

7. The aforementioned Response and Resolution Times apply on Business Days and during office hours. If the Client reports Incidents outside Business Days, Avetica will only be obliged to meet the Response Times starting from the beginning of the next Business Day at 09:00 (excluding Priority 1 reports). For priority 1 (Crash) reports, if the report is made during office hours, it will be resolved the same day.
8. Avetica will inform the Client as soon as the report of the Incident is picked up. If possible, Avetica will indicate what the likely problem is, and provide an estimate of when Avetica expects the problem to be resolved. As soon as Avetica has resolved the Incident, Avetica will report its feedback to Client, including where possible the exact problems and solutions. The Incident shall be considered resolved as soon as Avetica has informed the Client accordingly.
9. If the Client believes that the Incident has not yet been (fully) resolved, it will respond to an existing report via Customer Services, so that all communication about the Incident is and remains centralised in one place. If the Client believes that the handling of the Incident is stagnating and the agreed resolution time is in danger of being exceeded, an escalation will be initiated by the Client. The purpose of escalation is to ensure that resolution is rectified through other (hierarchical) channels than the original one within the incident process. The Client will contact Avetica management or a designated employee for this purpose.
10. Both the Client and Avetica can report (in writing) to the other Party that there is a problem that requires further analysis and may result in an modification.
11. If the provisions of this article are not met, only the remedies specified in this article shall apply:
    a. If Avetica exceeds the Response Time as specified in article 5 over a period of one (1) month, Avetica will receive a warning;
    b. If Avetica has received two (2) or more warnings in one month, Avetica will draw up a proposal to avoid the need for future warnings. Avetica will submit the proposal to the Client and, once approved by the Client, it will be implemented without affecting other terms;
    c. Avetica will incorporate all compensation due as a result of the above articles in the periodic invoices. If the Client believes that no or too little compensation has been incorporated incorrectly, it will inform Avetica of this. Avetica will investigate the Client's complaint and, if it is justified, will pay out the underpaid compensation;
    d. If the Client receives compensation six (6) times in one calendar year, the Client is entitled to terminate the Agreement.

Article 10: Functional and educational Support

1. The provision of service by Avetica does not remove the Client's own responsibility for managing the service. This includes configuring the appropriate settings, managing authentication, authorisation, security, privacy settings and using the Service according to applicable laws and regulations.
2. The Client is responsible for the functional management of Moodle and the development and maintenance of the content.
3. If the Client wants help, instruction or advice relating to functionality, education and other matters outside technical Support, Avetica will be happy to provide it if we have the necessary expertise.
4. All time spent by Avetica on support queries will be charged retrospectively[4].

Article 11: Event

If the Services consist of the provision of (paid) events (such as the MoodleMoot) for which participants can register, the following applies:

1. Registrations for an event will be treated in order of application. If the maximum number of participants has already been reached, the registration will be kept in case someone drops out. Avetica will notify this is good time.

[4] See Appendix 1 for further explanation of what Avetica treats as paid Support.

2. Avetica may reject a registration or cancel a confirmed registration at its discretion. This will be confirmed by e-mail. The registration is not valid without explicit confirmation.
3. A registration becomes final as soon as payment for the event has been received.
4. Avetica has the right to change the programme, location and times of the event before the start, without the Client being entitled to a refund or compensation.
5. The Client may cancel participation in an event up to fourteen Business Days before the start date. The participation fee will then not be charged. In the event of cancellation within fourteen Business Days or in the event of no-show without valid cancellation, the Client shall remain liable for the charges. The Client can nominate a substitute up until the day of the event; this does not count as cancellation.
6. Avetica may take photos and videos during training sessions and use them for (online) promotion and marketing.

Article 12: Scope

1. The specified Service Levels do not apply to the rectification of defects or bugs that do not qualify as Incidents, and/or result from or are related to:
    a. usage errors or inexpert use of the Services by the Client, which includes errors in the Client's own content;
    b. modification of or additions to the Services other than by or on behalf of Avetica;
    c. use of the Services in violation of the applicable terms or contrary to Avetica's instructions;
    d. The use of outdated browsers or operating systems by Users of the Moodle site
    e. using a version of Moodle that is no longer supported and/or maintained by Moodle Pty, Avetica or a community developer;
    f. unavailability of the Moodle site at the Client's own request, and/or unavailability of the Moodle site during agreed work;
    g. the inability of the Client to provide full assistance or assistance to Avetica's satisfaction in identifying or isolating the problem or Incident;
    h. a substantial increase in the processing of (too) much data leading to performance issues;
    i. failure of integrations and web services other than on Avetica's side;
    j. failure of Single Sign On (SSO) connections other than on Avetica's side;
    k. as a result of force majeure as interpreted by Dutch law;
    l. defects or bugs in community plug-ins;
    m. services from certified Integration Partners of Moodle Pty[5].
2. Avetica is never obliged to restore or reconstruct lost, corrupted or mutilated data.
3. For the use of staging, test and demo sites as part of the Hosting, a best effort obligation applies as an indication of Response Time. This means there is no guaranteed Response Time for Incidents reported for staging, test and demo sites.
4. The management of user information (data) and content is not the responsibility of Avetica, unless expressly agreed separately in a Contract.

Article 13: Fees and Payment

1. The Client shall pay Avetica a fee for the Services as stated in the Contract. If no fixed fee has been agreed, Avetica will charge for the actual recorded hours and costs, including preparation and travel time and travel expenses. Rates are based on Avetica's most recent price list, unless a different rate has been agreed. Time worked is rounded up in quarters of an hour. Travel time and travel expenses are calculated from the office in Maasdam, South Holland.
2. Avetica may pass on price increases if there are changes in hourly wages, annual indexation or other costs between the time of the offer and delivery. If, during execution, the work turns out to be significantly more

[5] For example: Blindside Networks, Poodll, ReadSpeaker

than has been estimated, Avetica may increase the fee and will inform the Client of this in writing, in good time and in advance.

3. All amounts are exclusive of VAT and other government levies.
4. The Client agrees to electronic invoicing by Avetica. If Services are provided in phases, Avetica may invoice per phase.
5. The Client may request that Services be performed outside normal business hours. The following supplements thereby apply:
    a. Monday to Friday before 09:00 and after 17:00: 150% of the hourly rate.
    b. Saturday, Sunday and recognised public holidays in the Netherlands: 200% of the hourly rate.
6. The payment period is 30 days from the invoice date, unless specified otherwise. Administration charges may be levied in the event of different billing arrangements.
7. All prices on the Quotation, price list(s) and/or other communications from Avetica are subject to programming and typing errors. No liability is accepted for the consequences of such errors.
8. Avetica may request payment in advance, and will only start the work upon receipt of the payment or an agreed part thereof. Failure to pay on time may affect delivery deadlines.
9. If the Client believes that an invoice is incorrect, this must be reported within the payment period. The payment obligation for the disputed part will be suspended until Avetica has investigated it. If the challenge proves to be unjustified, the Client must pay within seven (7) days. The Client may not offset or suspend payments.
10. The Client is automatically in default after the end of the payment period. Avetica may then restrict or suspend its Services, for example by restricting access to the Moodle site. In the event of non-payment, in addition to the amount due and interest, the Client shall also owe the full extrajudicial collection costs as calculated in accordance with the Besluit vergoeding voor buitengerechtelijke incassokosten (Reimbursement of Extrajudicial Collection Costs Decree).
11. If a fee is based on information provided by the Client and this is found to be incorrect, Avetica may adjust the fee accordingly, even after the Contract has been concluded.
12. Avetica may change the rates for a rolling Contract. The Client will be notified at least one month in advance. In the event of a price increase, the Client may terminate the Contract with one month's notice. Annual indexation of rates is possible without any right to terminate.
13. Avetica is allowed to index the rates once a year. The index figure shall be the CBS price index figure published periodically by Statistics Netherlands for the 3rd quarter concerning the sector "Business and ICT services (62 IT services)".

Article 14: Intellectual Property rights

1. The content and data in Moodle is and remains the Client's property. This means that the Client retains all intellectual property rights relating to the content. Avetica only processes the Client's content and data in the context of the Contract.
2. All intellectual property rights to customisations and advice developed or made available by Avetica, including preparatory material, belong exclusively to Avetica or its licensors. Avetica therefore has the right to reuse (parts of) the developed functionality and advice in other projects or products. Deviations from this are only valid if they are recorded in writing and signed, and then only apply to the materials and rights specifically mentioned.
3. The Client will only be granted the rights of use and powers stipulated in the Contract or granted in writing. The Client may not distribute or publish the works further. The right of use does not entitle the Client to the source code of the software. Rights of use also give no right to grant sub-licences to third parties, unless Avetica or the rightholder has given its express written consent for this.
4. The Client may not remove or alter any indications of copyright, trademarks, trade names or other intellectual property rights from the works, including indications concerning confidentiality and secrecy.

5. Avetica may take technical measures to protect the works. The Client may not remove or bypass this security.
6. Avetica retains the right to use the knowledge obtained through the performance of the Services for other purposes, as long as no confidential information is disclosed to third parties in the process. Similarly, the Client benefits from the knowledge gained from other Avetica clients.

Article 15: Liability

1. Avetica's total liability, regardless of the reason, such as a failure in executing the Contract or a wrongful act, is limited to compensation of the direct loss. This amount is capped at what the Client has paid to Avetica in the 12 months preceding the Incident. A series of related events is considered one Incident.
2. Avetica is not liable for indirect loss, consequential loss, loss of profit, missed savings, loss of data and loss due to business interruption.
3. The above limitations of liability lapse if the loss is the result of intent or gross negligence on the part of Avetica or its managerial employees.
4. A condition for compensation is that the Client reports the demonstrable loss in writing to Avetica management within 30 days of becoming aware of it.
5. The Client indemnifies Avetica against all claims by third parties and shall fully compensate Avetica.

Article 16: Personal data & Privacy

1. In the absence of a separately agreed Processor Agreement, the terms in this article shall apply. If a separate Processor Agreement has been concluded with the Client, this Processor Agreement shall prevail over the terms in this article.
2. Under the General Data Protection Regulation (GDPR), the Client is the Data Controller and Avetica is the Processor. This also means that all rights and obligations regarding personal data remain with the Client and/or the data subjects. Avetica shall only act in accordance with the Client's instructions and under the Client's responsibility.
3. Personal data will only be processed in the context of the Contract in order to be able to provide the Services, including reasonable additional purposes. The Client shall inform Avetica of the processing purposes if they are not already specified in the contract or terms and also if sensitive personal data is processed.
4. The Client guarantees that the processing of personal data complies with the GDPR. The Client shall indemnify Avetica against all claims and demands related to failure to comply with the GDPR.
5. Avetica will ensure appropriate security measures for personal data within its Services or infrastructure. Personal data may only be processed on behalf of the Client. Personal data will only be processed within the European Economic Area (EEA), unless agreed otherwise in writing.
6. Both Parties must comply with applicable data protection laws and regulations. Avetica may engage third parties for data processing, provided they have the same obligations as Avetica.
7. In the event of a (suspected) data breach, Avetica will inform the Client within 24 hours. The Client will decide whether the relevant regulator and/or data subjects will be informed. Avetica will support this, but the responsibility remains with the Client.
8. In the event of demonstrable suspicion of abuse, the Client may have an audit carried out to check compliance with security requirements, after reviewing existing audit reports at Avetica. The cost of an audit will always be borne by the Client.
9. If a data subject makes a request to exercise their legal rights under the applicable privacy laws and regulations (GDPR), Avetica will forward the request to to Client, who will deal with it. Avetica may inform the data subject about this.

Article 17: Duration and Termination

1. Each rolling Contract is entered into for the duration as stated in the quotation. This Contract can only be terminated in writing at the end of the contract period, with a notice period of two (2) months. If notice of termination is not given in time, the Contract will automatically be extended by twelve (12) months.
2. Contracts that are not rolling in nature shall terminate as soon as both Parties have fulfilled their obligations.
3. Neither the client nor Avetica can terminate the Contract prematurely, unless agreed otherwise in writing.
4. If the Client breaches these Terms of Service, Avetica may terminate the Contract with immediate effect and without court intervention and deny access to the Services. This right to terminate does not entitle the Client to compensation. Avetica will issue two (2) written warnings before action is taken.
5. Both Parties may terminate the Contract with immediate effect and without notice of default if the other Party is granted a payment moratorium or is declared bankrupt.
6. In the event of notice, termination or dissolution of the Contract, Avetica may terminate the Services and associated accounts immediately after the termination date and delete all stored data or make it inaccessible. Avetica is not obliged to proactively provide a copy of this data. The Client may request a copy before termination. The copy consists of the compressed database of the hosted Moodle site and the Client's 'moodledata' directory. Avetica makes no warranties as to the accuracy or form of this copy. If the termination of the Services entails additional costs for Avetica, these will be charged to the Client prior to execution. The costs must be proportional to the work to be delivered. Avetica shall not perform the work upon termination until the Client has paid the invoice.

Article 18: Final provisions

1. Avetica reserves the right to amend or supplement these Terms of Service. Amendments also apply to existing Contracts, with a deadline of thirty (30) days after announcement on the website, by e-mail or in writing. Minor amendments can be made at any time. If the Client does not accept an amendment, the Client must notify this to Avetica in writing. A solution will then be sought together and recorded in an addendum to the Contract.
2. The Contract is governed by Dutch law unless agreed otherwise. Disputes relating to the Contract shall be submitted to Rotterdam District Court unless mandatory law stipulates otherwise.
3. If any provision in the Contract is found to be invalid, the remainder of the Contract will remain valid. The Parties will then adopt a new provision that reflects the original intention as much as possible.
4. Both the Client and Avetica may assign their rights and obligations under the Contract to a third party that takes over the Services or relevant business activity.
5. In the event of a dispute between the Parties, Avetica's records are decisive unless the Client provides evidence to the contrary.
6. Avetica may use the Client's name and logo for reference material and for promotion on the website, unless the Client objects in writing.
7. The Parties must inform one another immediately of any changes in name, postal address, e-mail address, telephone number and bank account number.

Appendix 1: Notes on Customer Services

Guiding principle

Our guiding principle is that your Moodle site will function optimally and you will be able to use all of Moodle's features. To facilitate this, we offer Support and Consultancy. Below, we elaborate on what we mean by this and give examples to clarify the difference between (free) Support and paid consultancy.

Support

Avetica carries out the following work at the request of the site administrators:

- Install, Update and remove community plug-ins and themes
- Update the environment within the same version line (denoted by the Z in x.y.Z versions)
- Upload large files (larger than upload limit)

This form of Support is covered by the hosting contract and is therefore not charged.

Technical Support and Moodle consultancy

Your report to Customer Services may be a question about Moodle or a request for assistance in setting up and configuring Moodle or a plug-in. Depending on the nature of the report, this may result in paid technical Support or Moodle consultancy. Some examples of this are given below.

Technical Support (how to fix)	Moodle consultancy (how to use)
• Upgrade of Moodle, known as a 'major Upgrade' (denoted by X and Y in X.Y.z versions); • test and restore corehacks • upload Users • create FTP repository • Support with integrations with external systems such as authentication servers, HR systems and course administration systems • modification of language files • set up test/acceptance site • Pseudonymise test/acceptance site • grant FTP access • defects in the learning environment that are due to customised modifications by third parties (outside Avetica or Moodle's core) • support for Moodle versions that fall outside Moodle HQ security and support policies[6] • analyse a support question whereby the solution results in technical Support or Moodle consultancy • supply a complete backup of the Moodle site • test and analyse externally supplied plug-ins for security and privacy • supply personal data in a digitally readable format at the request of the Data Controller • test and configure external LTI connections	• train on Moodle functionality • contribute ideas and advise on Moodle set-up • set up and monitor roles and rights • set up and monitor courses/categories • set up authentication, authorisation, security and privacy settings. • configuration of the various components of Moodle according to client's requirements • Support with content, such as SCORM modules and media • support configuration and working of community plug-ins • support with functional management • clean up the environment

Work that you can also perform yourself but ask Avetica to carry out also comes under (paid) consultancy. Technical Support and Moodle consultancy is billed monthly in arrears according to our standard hourly rates.

[6] For current list see: https://moodledev.io/general/releases

Appendix 2: Terms of service in a nutshell

Customer Services contact details

- E-mail: customerservices@avetica.nl
- Telephone during office hours: +31 (0)88 - 66 44 864
- Emergency number outside office hours, excluding the time between 23:00 and 07:00: +31 (0)88 - 66 44 888

The emergency number should only be called in the event of a report with priority 1, Crash. If the emergency number is abused, Avetica is entitled to charge all costs directly to you with a starting rate of €100 excluding VAT per Incident.

Responsibilities

- Moodle LMS/Workplace is maintained by Australia-based Moodle Pty Ltd. Avetica is not responsible for the code of this software, nor is it responsible for community plug-ins.
- Avetica is responsible for good and secure Hosting.
- Avetica guarantees 99.9% uptime per quarter
- As the client, you are responsible for the functional management of Moodle.
- As the Data Controller, you are responsible for appropriate security under the GDPR. A Moodle version that is supported from Moodle HQ is an important part of this.

Support and application management

- All Incidents and problems must be reported to Customer Services.
- Depending on the type of support request, we charge a fee
- Updates to Moodle are performed (automatically) outside office hours unless agreed otherwise
- Updates to community plug-ins are performed on request or during an update process.
- Upgrades are always performed on the client's instructions and carried out on a project basis, unless the current version is no longer supported. An Upgrade will then follow whereby the fee will still be charged.
- As the client, you are responsible for properly testing the (test) Upgrade.

Customisation

- The client and Avetica must work together to implement the modification properly and test it in a timely manner.
- As the client, you are responsible for properly testing the customisation.
- We always ask for your written permission for costs for Additional Work.
- A definitive modification is always produced following your written permission
- Issues reported three weeks after a definitive modification is implemented will be charged.

Evaluation and complaints

- Both Parties may request a meeting to evaluate the Services and the work performed.
- Complaints about Avetica, the Services and employees should be sent to klachten@avetica.nl. Avetica management will respond in accordance with Avetica's standard complaints procedure.

Data breach and privacy

- A (potential) data breach that the Client wishes to report to Avetica can be sent to datalek@avetica.nl