

1. Terms and Conditions

- a. By submitting an application for an account and subject to paragraph 23 below, you confirm that you have read, understand, accept and agree to these terms and conditions. They are made available to you before you are granted any account, so if you disagree with any of these terms and conditions, do **not** submit an application for an account. Upon our acceptance of your application for an account, these terms and conditions form a binding agreement between you, being the Training Provider named on the account application (**Training Provider, you or your**), and Catapult eLearning Pty Ltd (ABN 34 120 380 412) (**we, our, us or Catapult eLearning Pty Ltd**), for the provision of access to Catapult eLearning Pty Ltd's:
 1. Learning Management System (**LMS**);
 2. units of competency which include learning resources and online systems for the submission and assessment of student work and messages (**Units**); and
 3. rights to use our website, our LMS and the content in each Unit that is ordered, (being the **Services**).
- b. We may amend these terms and conditions from time to time. We will make the latest version of these terms and conditions available on our website situated at <https://www.catapult-elearning.com/about/policies>. Those changes will appear in bold font for a period of 28 days after they are made and you will receive a notice to your nominated email account when changes are available to be viewed at our website. You may terminate your account and our Services by written notice to us if you do not accept those changes within the 28 day notice period. Upon termination you will no longer be able to purchase access to additional Units. Existing students may access and complete their work for up to a period of 6 months, provided that Enrolment Fees have been paid.
- c. Until you terminate your account and our Services under paragraph 1.b, you are deemed to accept those changes, if you continue to use the website after you log on for the first time after such change has been made and brought to your attention.
- d. We will only inform you of changes made to these terms and conditions as mentioned in paragraph 1.b above.

2. Your Rights

When we create an account for you as a training provider for our LMS (**User Account**), you are granted a non-exclusive right as a Training Provider to:

- a. access the features of our LMS, including course management, enrolment information, statistical logs and sub-user account information;
- b. create student, trainer and administrator accounts;
- c. enrol students in the Units that have been purchased for or by them;
- d. use any and all of the Services associated with the Units that have been purchased; and
- e. provide access to trainers and enrolled students (**end users**) based upon the Services provided under these terms and conditions (for the relevant Units in which each student has enrolled).

3. Your Obligations

- a. You are responsible for safeguarding your User Account in all circumstances and will remain responsible for the use of the LMS by any person to whom you have given access to the LMS, and any person who gains access to your data or the LMS as a result of your failure to use reasonable security precautions, even if you did not authorise that use. We do not accept responsibility for any loss or damage arising from your failure to comply with these obligations.
- b. You can control most of the data and communications from your User Account. We may need to provide you with certain information, such as service announcements and administrative messages. These messages are considered part of the LMS and your User Account, and you may opt-out from receiving any marketing messages or materials. If you added your email and phone number to your User Account and you later change or deactivate that email or phone number, you must update your User Account information, to minimise the possibility of us communicating with an unintended recipient.

4. Enrolment Fee

- a. There is no fee for creating a User Account with Catapult eLearning Pty Ltd.
- b. When we create your User Account, you will be able to create student accounts, and enrol those students in Units.
- c. Unless otherwise agreed with us in writing, you will pay a fee for each Unit that each student is enrolled in, which will allow that student to access that Unit (**Enrolment Fees**).
For the avoidance of doubt, this means that if you have 12 students, and each student is enrolled in one Unit, you will need to pay for 12 Enrolment Fees.
- d. We will issue you with a tax invoice within the meaning of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (**Tax Invoice**) for the Enrolment Fees on a monthly basis.
- e. You will pay the Enrolment Fees within 30 days from the date of the Tax Invoice, by electronic funds transfer or credit card to our nominated account.
- f. Failure to pay the Enrolment Fees (or any instalment as and when due) by the nominated date will constitute a breach of these terms and conditions and will entitle us to terminate your User Account and the Services if the breach remains unremedied for at least 7 days. We reserve the right to refer any outstanding payments to a collection agent. All fees reasonably incurred by us for those collections will be paid by you. We may also revoke full or partial access to our Services in the case of failure to pay the Enrolment Fees. This may include suspending access for existing students and other end users of your User Account.
- g. Goods and Services Tax (**GST**) is applicable to all Catapult eLearning Pty Ltd products and Services, and will appear on all Tax Invoices.
- h. If you make an incorrect order, or wish to change the Units you have purchased, you have 7 days to delete the incorrect order and receive a credit for the incorrect order amount. We will not provide a credit after a student has accessed a Unit.

5. The Services

In return for the Enrolment Fees, or your undertakings where students pay the Enrolment Fees, we will provide access to the Services.

Access to the Services will be granted to your trainers, administrators and the enrolled students, after they proceed to access the Units, in accordance with the terms found in the [Administrator Use Policy](#), the [Trainer Use Policy](#), and the [Student Unit Use Policy](#) (as the case may be), as accessible from the links in these terms and conditions.

6. Data

The Services provide you, your trainers, administrators and the enrolled students with the ability to store data on our servers, including enrolment details, answers to questions, statistical information and messages. We do not claim any proprietary rights or interests over the information or data which any of you may store on our servers. In the event that your User Account and Services are terminated (for whatever reason), you will be provided with direct access to your data for a period of 30 days, provided that you have no outstanding Enrolment Fees at the time of termination.

7. Term

- a. These terms and conditions are effective from the date of our acceptance of your application, and your User Account and our Services will continue until they are terminated by either party under paragraph 16.
- b. On termination, you will be charged for:
 1. any Units that have been ordered more than 7 days prior to the termination date; and
 2. all Units that students have accessed.

8. User Conduct:

- a. Use of the Services are subject to the Use policies, which can be accessed from these links:
 1. 'Administrator Use Policy': <https://www.catapult-elearning.com/Legal/CatapultAdmin.pdf>
 2. 'Trainer Use Policy': <https://www.catapult-elearning.com/Legal/CatapultTrainer.pdf>
 3. 'Student Use Policy': <https://www.catapult-elearning.com/Legal/CatapultStudent.pdf>
- b. As a user of our LMS, you agree that you will not:
 1. attempt to reverse engineer, decompile or attempt to extract the source code of the LMS or any other web application provided to you by Catapult eLearning Pty Ltd;
 2. use the Services for an illegal, unlawful, improper or infringing purpose, or in a way that facilitates criminal activity;
 3. install spiders, data scrapers, viruses or other malicious software or otherwise use the Services in a manner which may threaten the integrity and security of the LMS, website or Catapult eLearning Pty Ltd products;

4. upload, transmit, post or share any virus or malicious computer code or software which may cause damage to, or violate the privacy of Catapult eLearning Pty Ltd or any other user of the site;
 5. upload, transmit, post or share any explicit, pornographic, obscene or offensive images or text;
 6. make requests of our server at an unreasonable frequency that we determine compromises our ability to provide the Services;
 7. use the website to send unsolicited commercial messages in any form, including in any way that would contravene the *Spam Act 2003 (Cth)*;
 8. obtain materials or information through means not intentionally made available through our Services; or
 9. use our Services to infringe a third party's intellectual property rights, confidential information or other legal rights.
- c. You agree to use any Services available from our website in accordance with these terms and conditions, applicable laws and regulations relating to your use of the internet in the jurisdictions of which you are a resident and from which you are accessing our Services. You will not Share the Services with persons that are not contemplated by these terms and conditions or make them public. **Share** means to email, post, transmit, upload, or otherwise make available to third parties.
- d. You must not access, tamper with, or use any restricted areas of the Services to which we have not granted you access. Our LMS, our Services and the systems of third party providers that assist us in delivering the LMS must not be:
1. probed, scanned, or vulnerability tested;
 2. the subject of circumvention of any security or authentication measures;
 3. accessed or searched, or attempted to be accessed or searched by any means, other than via published interfaces that we provide (in accordance with the applicable terms and conditions), unless you have been specifically allowed to do so in a separate written agreement with Catapult eLearning Pty Ltd;
 4. forged (in respect of any TCP/IP packet header or part of the header information) in any manner or format;
 5. used to send altered, deceptive or false source-identifying information; or
 6. interfered with, or disrupted, including by affecting the access of any other user, host or network, sending a virus, overloading, flooding, spamming, mail-bombing the Services, or by scripting the creation of data in such a manner as to interfere with or create an undue burden on the Services.

- e. You will not use encryption technology or other technological measures to interfere with our Services or to otherwise infringe our Intellectual Property Rights. You will provide reasonable cooperation to assist us with identifying the source of any problem with the Services that we reasonably suspect may be attributable to your network or third party providers that you use in conjunction with our Services.
- f. You acknowledge that:
 - 1. Catapult or its associated entities own all copyright, inventions, patents, trademarks, circuit layouts and all other rights in the Units arising from intellectual activity in the industrial, scientific, literary or artistic fields (**Intellectual Property Rights**). You will not engage in any acts which challenge, oppose or infringe those Intellectual Property Rights; and
 - 2. individuals that are officers or employees of Catapult or its associated entities own all moral rights in the works comprised within the Units, within the meaning of the *Copyright Act 1968* (Cth) (**Moral Rights**). You will not engage in any acts which infringe those Moral Rights.

9. Usage and Content

- a. We undertake all reasonable endeavours to provide you with uninterrupted access to our Services. However, from time to time, downtime may be caused or contributed to by:
 - 1. your breach of these terms and conditions;
 - 2. failure of the internet or third party software;
 - 3. an emergency. In that event, Catapult eLearning Pty Ltd will seek to provide advance notice where reasonably practicable; or
 - 4. a planned outage. In that event, Catapult eLearning Pty Ltd will provide advance notice by electronic mail to your nominated account to minimise downtime where reasonably practicable.
- b. There are inherent risks in dealings over the internet. Catapult eLearning Pty Ltd does not warrant that files, information, programs, Units or Content available to access or download from or via any Services accessible via the internet are free from harmful code.

10. Confidential Information

- a. *Confidential Information* means any information not generally known to the public that:
 - 1. either party notifies in writing is confidential;
 - 2. because of the circumstances of its disclosure should be treated as confidential;
 - 3. concerns the technical processes, finances, pricing or commercial operations of a party;
 - 4. contains the details of any negotiations or discussions between the parties in respect of these terms and conditions; or
 - 5. comprises the data uploaded by you to our servers.

- b. Neither party will use the other party's Confidential Information without prior written consent, except strictly for the purposes contemplated by these terms and conditions, and a party may only disclose the other party's Confidential Information:
 1. if required by law;
 2. to exercise their rights under these terms and conditions;
 3. if necessary to perform their obligations under these terms and conditions;
 4. if the other party has provided their written consent to the disclosure;
 5. if the Confidential Information is already in the public domain (otherwise than as a result of disclosure in breach of these terms and conditions).

11. User Information

- a. By agreeing to these terms and conditions, you agree to:
 1. confirm that all information provided by you is complete and accurate;
 2. update your user information as required to ensure that Catapult eLearning Pty Ltd retains an accurate record of your details; and
 3. keep the details of your secure access information private and confidential.
- b. We agree to handle your personal information in accordance with our Privacy Policy.
- c. We reserve the right to do any of the following, without limitation:
 1. permanently remove content related to your User Account; or
 2. terminate your User Account,

if you breach any provisions contained within these terms and conditions and do not remedy that breach within a reasonable period of time, if you commit a breach which presents a significant threat to the functionality, security, integrity or availability of the Services or any Content, or you or your end users are accessing or using the Services to commit an illegal act.
- d. Where lawfully permitted, we also reserve the right to access, read, preserve, and disclose any information as we reasonably believe is necessary to (i) satisfy any applicable law, regulation, legal process or governmental request, (ii) enforce these terms and conditions, including investigation of potential violations hereof, (iii) detect, prevent, or otherwise address fraud, security or technical issues, (iv) respond to user support requests, or (v) protect the rights, property or safety of Catapult eLearning Pty Ltd, the Services, the end users and the general public.

12. Intellectual Property Rights

- a. The copyright in this website and this interface, the LMS, and the contents of each of the Units, including but not limited to:
 1. graphics;
 2. book titles;
 3. text;
 4. layout;
 5. logos;
 6. branding;
 7. samples;
 8. animations;
 9. reports;
 10. downloadable documents;
 11. LMS functionality; and
 12. Access logs,

and all other content created by Catapult eLearning Pty Ltd and its content partners (together, **Content**) is owned by Catapult eLearning Pty Ltd. We may alter, add to, or remove elements of the Content from time to time, provided that we will not materially decrease the functionality of the Services or the Content of the Units without providing prior notice to you and an opportunity for you to terminate your User Account and relationship with us in those circumstances.

- b. Except where necessary for viewing the Content on this web site on your browser, as permitted under relevant legislation, or these terms and conditions, none of the Content may be reproduced, adapted, modified, uploaded, provided to a third party, linked to, framed, screen captured, distributed or transmitted in any form by any process without the prior written consent of Catapult eLearning Pty Ltd.

13. Indemnity and limitation of liability

- a. You indemnify us, our officers, employees, agents and contractors (**indemnified parties**) from any loss or damage, including any reasonable fees which we may suffer or incur, as a result of your breach of these terms and conditions. You will not be obliged to indemnify the indemnified parties against any loss or damage that they incur as a result of their own defaults.
- b. You agree to cooperate fully with us in the defence of any claim that is the subject of your indemnity.
- c. You agree to ensure that you will not enter into any agreement with a third party such that the performance of your obligations under these terms and conditions shall place you in breach of the agreement with the third party.
- d. You agree to indemnify us against any third party claims that we may suffer from your breach of paragraph 13c.

- e. To the maximum extent permitted by law, Catapult eLearning Pty Ltd will not be liable for any indirect or consequential losses arising from your use of or lack of access to the Units, including loss of profits or loss of earnings.

14. Accuracy of information

You acknowledge that we do not have any input into, and make no representation about, the accuracy or truth of any data that you or your end users hold on our servers, or create in connection with the use of the Units.

15. Temporary Suspensions

We may at our discretion suspend your User Account or any end user's right to access or use any portion of the Services immediately upon notice to you if we reasonably suspect or determine that:

- a. your User Account or an end user's use of the Services (i) poses a security risk to the Services or any third party, (ii) could adversely impact our systems, the Services or the systems or content of any of our other customers, (iii) could subject us, our affiliates, or any third party to liability, or (iv) could be fraudulent;
- b. you are, including by the acts or omissions of your end users, in breach of these terms and conditions, and have not remedied that breach; or
- c. you have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

When reasonably practicable and lawfully permitted, we will provide you with advance notice of suspension of your User Account or access to the Services. We will use reasonable efforts to re-establish the Services promptly after we determine that the issue causing the suspension has been resolved.

16. Termination

- a. *Termination by You.* You may terminate our Services and your User Account:
 - 1. if we breach any provision of these terms and conditions and we fail to correct that breach within 14 days of notice of the breach;
 - 2. if we materially breach any provision of these terms and conditions and the breach cannot be corrected; or
 - 3. for convenience, on at least 30 days' notice.

Termination of the Services and your User Account does not relieve you of any obligation to pay any outstanding fees, including any Enrolment Fees.

- b. *Termination by Us.* We may terminate the Services and your User Account if:
 - 1. you fail to make the timely payment of Enrolment Fees or fees for any other products that we supply to you, and that failure continues for a period of 7 days;
 - 2. you materially breach any provision of the Terms, and (i) the breach cannot be corrected; or (ii) we notify you of the breach and you fail to correct it within 14 days of the notice;

3. you physically, verbally, or through other means abuse, threaten, bully, or harass us or our personnel in a manner which poses a serious threat to our health or safety;
4. we are required to do so by law (for example, where the provision of the Services to you is, or becomes, unlawful), in which case we will provide you with prior notice where it is reasonably practicable to do so;
5. we elect to discontinue the Services or Software, in whole or in part (such as if it becomes impractical for us to continue offering Services in your region due to a change of law), in which case we will provide you with 30 days' prior notice;
6. there has been an extended period of inactivity in your free account or trial account; or
7. in the case of our insolvency.

Termination of the Services and your User Account does not relieve you of any obligation to pay any outstanding fees, including the Enrolment Fee.

17. Force Majeure

A party will not be liable to the other party for any failure or delay in performing its obligations under these terms and conditions (except for the payment of money) to the extent that this is caused or arises from events which include, but are not limited to:

- a. fire, flood, lightning, storm or extreme weather conditions;
- b. strikes, lock-outs, boycotts or other industrial disputes;
- c. acts of war, terrorism, riots, civil commotion and explosions;
- d. government restrictions,

provided that a party affected by any of the abovementioned events must use reasonable endeavours to seek to overcome the event.

18. Independent Proprietor

The parties are independent of each other and are not in an agency, joint venture or partnership relationship.

19. Severability

Nothing in these terms and conditions is intended to exclude any implied term, condition or guarantee that cannot be legally excluded (including any consumer guarantees available to consumers under the Australian Consumer Law). If any part of these terms and conditions is determined to be invalid or unenforceable under applicable laws, then the invalid or unenforceable term or condition will be deemed severed and the remainder of these terms and conditions will continue in full force and effect.

20. Entire Agreement

These terms and conditions, including any other documents or terms incorporated by reference, records the entire agreement between the parties as to its subject matter. It supersedes any prior understandings or agreements between the parties in connection with it.

21. Governing Law

- a. These terms and conditions are governed by, and must be interpreted in accordance with, the laws of South Australia.
- b. You submit to the exclusive jurisdiction of courts in South Australia.

22. Assignment and other dealings

Your rights and obligations under these terms and conditions are personal. They cannot be assigned, transferred, novated, disposed of, encumbered or otherwise dealt with, without our prior written consent.

23. Authorised to contract

By agreeing to these terms and conditions you warrant that you are either acting on your own behalf or that you have full and complete authority to enter into these terms and conditions on behalf of and to bind any company or other entity which you represent or purport to represent, and that you have been duly authorised to act in such a manner by the company or entity.

24. Access by trainers, administrators and students

In return for the Enrolment Fees, we will grant access to the Units to the students enrolled in the Units, the trainers that train in those Units, and the administrators who administer the Units. In return for this access, you will ensure that each trainer, administrator and student agrees to abide by the reasonable terms and conditions of use published by us and referenced in paragraphs 5 and 8.a.