



Terms & Conditions

Terms & Conditions

Thank you for choosing eCreators®.

eCreators provides learning management systems (LMS) software, digital e-learning content and deployment services, curated learning content, LMS training services and LMS hosting services, among other products and services (collectively referred to as "our products and services"). By using our products and services, you are entering into an agreement with us, eCreators Cloud Services Pty Ltd ACN 622 589 342 of Level 1, 468 St Kilda Road, Melbourne VICTORIA 3004 ("eCreators" and "we", "us" and "our").

These terms and conditions outline your legal rights with eCreators when you engage us to provide the products and services as outlined in our Quote to you and constitute a binding Agreement.

eCREATORS® CONTENT DEVELOPMENT SERVICES

You may use eCreators Content Development Services to create courses to deploy on eCreators LMS Hosting Services or on your own hosting service. If you use our Content Development Services, then the following terms and conditions will apply to you.

1) Supply of Content Development Services

- a) eCreators shall provide the Content Development Services as described in the Quote. You acknowledge that the Quote is a complete and accurate statement of your entire requirements and that you have not relied on any other representation made by eCreators.
- b) The creation, development and deployment of Your Course is a collaborative approach between you and eCreators. You acknowledge that the progress of the Content Development Services depends on communication and responsibilities between both parties, including the following responsibilities:
 - (i) eCreators will use reasonable endeavours to comply with the Timeframe specified in the Quote.
 - (ii) You will provide all materials specified in the Quote to eCreators in accordance with the Timeframe (Your Content).
 - (iii) If eCreators becomes aware of any event that may cause a delay in meeting the Timeframe in the Quote, eCreators will notify you of the cause of the delay and the estimated date of completion.
 - (iv) You acknowledge that any delay or Variation to a development phase may necessitate an amendment of the timing for a subsequent development phase.

2) Variation

- a) If you require any changes to the scope and nature of the Content Development Services in the Quote (a Variation), and eCreators determines that such changes will require additional time, material or resources, then we shall let you know:
 - (i) *the additional time, material and resources required; and*
 - (ii) *any changes to the Quote, including but not limited to changes to the Timeframe and/or Fees.*
- b) eCreators reserves the right to refuse the Variation.

3) Acceptance

- a) eCreators shall test Your Course to confirm it meets the functions and specifications provided in the Quote.
- b) After eCreators tests Your Course, you will be provided with a development version of Your Course in a staging environment for you to review and provide notice of any changes.
- c) You will be deemed to have accepted the development version of the Your Course if:
 - (i) *you give notice to eCreators of acceptance; or*
 - (ii) *unless you notify eCreators within fourteen (14) days that you do not accept Your Course.*
- d) If you do not accept Your Course, you shall notify eCreators why you do not accept Your Course and you and eCreators shall collaborate together to rectify, amend or vary Your Course and/or the Content Development Services. This may involve amending the Quote.
- e) If Your Course is accepted, then eCreators shall deploy Your Course to a live environment that can be accessed by the end-users.

4) Intellectual Property

- a) You retain all rights and ownership to Your Content. We do not claim any rights to Your Content.
- b) When you provide us with Your Content, you grant us a license to use Your Content as part of providing the Course Development Services. This license is only for the purpose of creating Your Course.

- c) You warrant that Your Content does not infringe the Intellectual Property Rights of any third party and you shall indemnify us from any claim, demand, loss or damage, including reasonable attorney's fees, arising out of or related to Your Content.

5) Licence to use our Background Materials and Services

- a) Our Background Materials and Services are licensed, not sold, to you. eCreators, or its licensee, is the sole owner of all right, title and interest in the Intellectual Property Rights in the Background Materials and Services.
- b) eCreators grants to you a non-exclusive, non-transferable, non-sublicensable right to use our Background Materials and Services for Your Course and only for the purposes of this Agreement.

eCreators® LMS HOSTING SERVICES

You may use eCreators LMS Hosting Services to host Your Course. If you use eCreators LMS Hosting Services, then the following terms and conditions will apply to you.

1) License

- a)** The LMS Hosting Services are licensed to you for your use. They are not sold to you and you cannot transfer your license without specific authorisation to do so.
- b)** eCreators remain the sole owner of all right, title and interest to the LMS Hosting Services.
- c)** We require certain licenses from you to operate and enable the LMS Hosting Services. When Your Course is uploaded to the LMS Hosting Services, you grant us a non-exclusive, worldwide, royalty-free, sublicensable and transferable license to use, reproduce and display Your Course for the purposes of providing the LMS Hosting Services.
- d)** You also grant us a license to modify Your Course so as to better showcase Your Course on the LMS Hosting Services.
- e)** We can access, view or listen to Your Course in limited ways, such as:
 - (i) to provide the LMS Hosting Services;*
 - (ii) to respond to support requests;*
 - (iii) to detect, prevent or otherwise address fraud, security, unlawful or technical issues; or*
 - (iv) to enforce the terms of this Agreement.*
- f)** If we reasonably believe that Your Course violates the law, or infringes or misappropriates the rights of third parties or otherwise violates a material term of this Agreement, we will notify you and request Your Course is removed or:

- (i) Suspend the LMS Hosting Services to you; or*
 - (ii) Disable your access to the LMS Hosting Services.*
- g)** Notwithstanding clause 6(f), eCreators will remove or disable access to the LMS Hosting Services without prior notice where your use of the LMS Hosting Services:
 - (i) is in connection with unlawful, dangerous or unauthorised activity or infringes the Intellectual Property Rights of a third party;*
 - (ii) may disrupt or threaten the use of the LMS Hosting Services by others;*
 - (iii) is found in an unauthorised area of our products and services which you do not have access to; or*
 - (iv) is excessive in terms of reasonable technical limits on file volume, file size and any other technical limits.*
- h)** From time to time we may apply upgrades, bug fixes and other maintenance services to the LMS Hosting Services. We will use reasonable efforts to provide you with prior notice of any maintenance.

2) Your Responsibilities for LMS Hosting Services

- a)** You shall ensure that all information you provide to us is accurate, complete and not misleading.
- b)** You represent and warrant that you own or have all necessary rights to use Your Course and any and all materials and information contained in Your Course, that you provide to us for deployment on our LMS Hosting Services.
- c)** You are responsible for all activity that occurs via your account. You must immediately notify us if you become aware of any person using the LMS Hosting Services who is not authorised by to do so.
- d)** You must not misuse the LMS Hosting Services, and you must ensure your employees do not misuse the LMS Hosting Services. This includes making sure that you or your employees will not:

- (i) *reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of any software or other Intellectual Property Rights in respect of the LMS Hosting Services;*
 - (ii) *rent, lease, sell, sublicense, assign or transfer your rights in the LMS Hosting Services;*
 - (iii) *install, upload or execute any computer programs until such program has been verified and confirmed by eCreators as suitable for the LMS Hosting Services;*
 - (iv) *interfere with the network or disrupt any other user of our products or services;*
 - (v) *circumvent any access or use of the LMS Hosting Services by any means other than the interface we provide to you;*
 - (vi) *permit any act which infringes the Intellectual Property Rights which subsist in LMS Hosting Services and which belong to eCreators;*
 - (vii) *make any copy of any software or other Intellectual Property Rights in respect of the LMS Hosting Services without the express permission of eCreators;*
 - (viii) *use the LMS Hosting Services for any illegal, unauthorised or dangerous purpose including unsolicited commercial e-mail; or*
 - (ix) *use the LMS Hosting Services to publish any material for which you are not the Intellectual Property Right owner or licensed by the Intellectual Property right owner or which material is defamatory.*
- e)** You acknowledge and agree to be bound by all applicable third-party licences including Moodle which is supplied subject to the General Public Licence and which licence can be found at <https://docs.moodle.org/dev/License> . You agree that such terms and conditions apply as if the same were set out in full this Agreement.

3) Third-Party Services

- a)** The LMS Hosting Services are integrated with various third-party services and applications (collectively, “Third-Party Services”) that we may make available to you or that you may purchase.
- b)** These Third-Party Services may have their own terms and policies, and your use of them will be governed by those terms and policies. We don't control Third Party Services, and we're not liable for Third Party Services or for any transaction you may enter into with them, or for what they do. Your security when using Third Party Services is your responsibility.
- c)** You also agree that we may, at any time and in our sole discretion, and without any notice to you, suspend, disable access to or remove any Third-Party Services. We're not liable to you for any such suspension, disabling or removal, including without limitation for any loss of profits, revenue, data, goodwill or other intangible losses you may experience as a result (except where prohibited by applicable law).
- d)** The LMS Hosting Services may contain links to third-party sites. When you access third party sites, you do so at your own risk. We don't control and aren't liable for those sites and what those third parties do.

Universal Service Terms (Applicable to All Our Products and Services)

The following terms and conditions apply to all of eCreators products and services.

Fees & GST

1) Fees

- a) You will pay the Fees as set out in payment schedule in the Quote. You are required to pay the full amount of Fees unless we otherwise agree in writing.
- b) If the Fee is not specified in a Quote, then the published rates of eCreators shall be payable.
- c) If you do not pay the Fees per the payment schedule, eCreators is entitled to suspend the provision of the products and/or services until the Fees are paid.
- d) If you dispute the whole or any part of the amount claimed in an invoice submitted by eCreators pursuant to this Agreement, you shall pay the undisputed amount. The dispute regarding the remainder may be referred to a dispute resolution procedure prescribed by this Agreement. If it is subsequently resolved that a further amount is payable, you will pay that amount together with interest calculated at the Interest Rate.
- e) All fees set out in the Quote are exclusive of all taxes, including any goods and services tax (GST) or value-added tax. If GST is imposed on any supply made under this Agreement, the party making the supply will collect GST from the recipient in addition to the fees payable for the supply.

Confidential Information

2) Confidential Information

- a) A party must not, without the prior written consent of the other, use or disclose the other party's Confidential Information unless expressly permitted by this Agreement or required to do so by law or any regulatory authority.
- b) A party may:
 - (i) *use the Confidential Information of the other party solely for the purposes of complying with its obligations and exercising its rights under this Agreement; and*
 - (ii) *disclose the Confidential Information to its personnel or advisers to the extent necessary for them to know the information for purposes related to this Agreement, but only if reasonable steps are taken to ensure that the confidentiality of the information is retained.*
- c) Each party must implement and maintain effective security measures to prevent unauthorised use and disclosure of the other party's Confidential Information whilst it is in the receiving party's possession or control.
- d) Each party must return, or at the other party's option destroy, all Confidential Information of the disclosing party in the receiving party's possession or control, on the earlier of the discloser's request or on termination of this Agreement for any reason.
- e) This clause shall survive the termination or expiry of this Agreement.

Privacy

3) Privacy

- a) The parties will not use or disclose any personal information for a purpose other than discharging their obligations under this Agreement.
- b) The parties agree to comply at all times with the Australian Privacy Principles contained in Schedule 1 of the *Privacy Act 1988* (Cth) (or an applicable privacy code approved by the Federal Privacy Commissioner pursuant to that Act) or, the privacy laws of the country in which this Agreement has jurisdiction.
- c) The parties will take all necessary steps to protect the personal information in their possession against misuse or loss and it will return all such information to the owner (or if requested by the owner, destroy or de-identify such information) upon termination or expiry of this Agreement.
- d) This clause will survive the termination or expiry of this Agreement.

Customer Conduct

4) Customer Conduct

- a) You must use the products and services we provide to you responsibly.
- b) You shall:
 - (i) *comply with all applicable laws;*
 - (ii) *conduct all appropriate virus and security checks;*
 - (iii) *keep your user accounts, passwords and activation code details confidential and not disclose the same to any other party.*
 - (iv) *comply with eCreator's Acceptable Use and Publishing Policy which may be updated and changed from time to time and is currently located on its website*
[\(<https://support.eCreators.com.au/hc/en-us/articles/211209543-Acceptable-Use-and-Publishing-Policy>\);](https://support.eCreators.com.au/hc/en-us/articles/211209543-Acceptable-Use-and-Publishing-Policy)

5) Restraint Period

During the term of this Agreement and for a period of six (6) months after the term of this Agreement, you shall:

- a) not solicit for employment, whether directly or indirectly through a Related Entity, any person who is or was an officer, employee or contractor of eCreators;
- b) promptly advise eCreators if a person who is or was employed or contracted by eCreators seeks to be employed or contracted by you or a Related Entity; and
- c) ensure that each of your Related Entities act in a similar manner.

Support, Backup and Modification of the Services

6) Support Services

Our objective is to provide you with a continuously operating Service that has minimal downtime. All support requests will be handled as soon as possible and in accordance with our Service Level Agreement

(<https://support.ecreators.com.au/hc/en-us/articles/217239366-Service-Level-Agreement>).

7) Backup

eCreators is not responsible for backing-up externally hosted courses. If you do not use the eCreators LMS Hosting Services, then you will be responsible for ensuring Your Course is adequately backed-up once it is delivered to you.

8) Updates to the products and services

We may modify, update, or discontinue our products and services at any time, without liability to you or anyone else. We will make reasonable efforts to notify you of the modification, update or discontinuation. If we discontinue our products and services in its entirety, we will allow you a reasonable time to download Your Content and/or Your Courses and we may provide you with a pro-rata refund for any unused fees for that product or service that you prepaid.

Warranties and Liability

9) Disclaimer of Warranties

- a) eCreators warrants that we shall provide the products and services as described in the Quote.
- b) UNLESS STATED IN THIS AGREEMENT, THE PRODUCTS AND SERVICES ARE PROVIDED "AS-IS." TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND SUBJECT TO CLAUSE 9(A), WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.
- c) We disclaim any warranty that:
 - (i) *the products and services will meet your requirements other than as provided in the Quote; or*
 - (ii) *will be constantly available, uninterrupted, timely, secure, or error-free other than as provided in our Service Level Agreement.*
- d) We specifically disclaim all liability for any actions resulting from your use of our products and services. You may use and access the products and services at your own discretion and risk.

10) Limitation of Liability

- a) Our total liability in any matter arising out of or related to this Agreement is limited to the aggregate amount that you paid for the products and/or services in the three-month period preceding the event giving rise to the liability.
- b) However, nothing in this clause 10 will limit a party's liability with respect to damages for personal injury, including sickness and death.
- c) Either party's liability for any claim relating to this Agreement will be reduced to the extent to which the other party contributed to the damage arising from the claim.
- d) The limitations and exclusions in this clause 10 apply to the maximum extent permitted by law.

Breach and Termination

11) Termination

- a) This Agreement may be terminated by either party without cause on 30 days' notice.
- b) If you terminate a signed Quote without cause and without providing 30 days' notice, you shall be required to pay eCreators the full amount remaining payable under the Quote as if the Quote was not terminated.
- c) If any Fee remains unpaid for a period of fourteen (14) days, eCreators may suspend the provision of your products and services in accordance with clause 1(c) or terminate this Agreement.
- d) Either party may terminate this Agreement immediately by notice if:
 - (i) *the other party breaches (or threatens to breach) any clause and such breach is not remedied within 14 days of notice;*
 - (ii) *the other party becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;*
 - (iii) *the other party, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;*
 - (iv) *the other party being a natural person, dies; or*
 - (v) *the other party ceases or threatens to cease conducting its business in a normal manner.*
- e) If notice is given to you pursuant to this Clause 11 then you must pay all outstanding Fees to eCreators.
- f) Upon termination,
 - (i) *the parties shall return all Confidential Information to the other party;*
and

- (ii) *all licenses and rights to use the other party's content, course(s), Background Materials and Services and Intellectual Property Rights shall cease.*

Disputes

12) Dispute Resolution

- a) If you have any concern or dispute, you agree to first try to resolve the dispute informally by contacting us. If the dispute is not resolved within 30 days of submission and the parties do not agree to a further 30-day extension to try to resolve the dispute, then either party may assert their claims in court.

General

13) General

- a) Force Majeure: Each party shall not be liable for any delay or failure to perform its obligations if such failure or delay is due to Force Majeure.
- b) Assignment: You must not assign or otherwise deal in any other way with any of your rights under this Agreement without the prior written consent of eCreators.
- c) Severance: If a provision of this Agreement is invalid or unenforceable, it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.
- d) Subcontract: Any consent provided by the other party to subcontract shall not relieve the first party from any liability or obligation under this Agreement. Each party shall be liable to the other for the acts and omissions of their own subcontractors and employees and agents of subcontractors as if they were acts or omissions of the first party.
- e) Waiver: A provision of or right under this Agreement may not be waived or varied except in writing signed by the person bound.
- f) Governing Law: The law of Victoria, Australia applies to these Terms. The parties irrevocably submit to the exclusive jurisdiction of the Courts of Victoria
- g) Entire Agreement: This Agreement (and any documents executed in connection with it) is the entire Agreement of the parties about its subject matter and supersedes all other representations, arrangements or agreements. Other than as expressly set out in this Agreement, no party has relied on any representation made by or on behalf of the other.
- h) No agency or partnership: Nothing in this Agreement creates any relationship of partnership or agency between the parties.

- i) Amendment: Except as expressly provided in this Agreement, this Agreement may only be amended by a document signed by all parties.

Definitions

14) Definitions

In this Agreement, the following terms have the following meanings:

Background Materials and Services means all Intellectual Property Rights owned by eCreators including but not limited Intellectual Property Rights in respect of the software, LMS Hosting Services, Development Tool Kit, course design, graphic artwork, animations, augmented reality and/or voice-over services that was owned by eCreators prior to the Commencement Date or was created or developed by eCreators outside of the scope of your Quote.

Commencement Date means the date on which the parties sign the Quote.

Confidential Information all information which is supplied in connection with, or arises out of the performance of this Agreement or the Quote, but excludes information that:

- a) *is or becomes lawfully available in the public domain;*
- b) *is or becomes available to a party from a third party lawfully in possession of such information and who has the lawful power to disclose such information without an obligation of confidentiality;*
- c) *is rightfully known by a party prior to the date of disclosure to it or creation by it in accordance with this Agreement; or*
- d) *which is required to be disclosed pursuant to any legal or regulatory requirement.*

Content Development Services means the services described in the Quote and may include course design, graphic design, animation, voice-over and augmented reality features.

Customer means the party specified as the customer (“Customer” and “you” and “your”) in a Quote issued by eCreators.

Development Tool Kit means scripts, techniques, code, plug-ins, add-ons, tool, schema, protocol, text, images, designs, logos, video files and audio files and which forms part of eCreator’s Background Materials and Services for future projects.

Fees means the fees payable by the Customer as specified in a Quote.

Force Majeure means an act, omission or circumstance over which either party could not have reasonably exercised control including telecommunication failures.

Intellectual Property Rights means copyrights, patents, trademarks, trade names, logos, software, designs, trade secrets and other proprietary information as may be applicable.

Interest Rate means the rate of 10% per annum calculated monthly in arrears and added to the outstanding sum.

LMS Hosting Services means eCreators’ applications, infrastructure and functional services for the administration, documentation, tracking, reporting and delivery of Your Course via a web host.

Quote means a quote issued by eCreators.

Related Entity has the same meaning as “related entity” under section 9 of the *Corporations Act 2001* (Cth).

Taxes includes taxes, duties and government charges, fees, levies, any penalty for not paying the same and any liability for same.

Timeframe means the timeframe (if any) set out in a Quote.

Your Content means any material such as audio files, video files, electronic documents, images, photographs, texts that you provide to eCreators in accordance with this Agreement or the Quote.

Your Course refers to the course or courses that we develop for you as part of our Content Services and as described in our Quote or the course or course you provide to us to host on our LMS Hosting Services.

Interpretation

15) Interpretation

In this Agreement, unless inconsistent with the context:

- a) Words denoting a person shall include corporations, statutory corporations, partnerships, joint ventures, associations, boards, governments or semi-government agencies or authorities.
- b) Words denoting the singular number shall include the plural number and vice versa.
- c) Words denoting any gender shall include all other genders.
- d) A reference to a statute or a regulation also refers to any statute or regulation amending or consolidating or re-enacting same.
- e) Money references are references to Australian currency.
- f) A reference to “includes”, “including” or “inclusive” is to be construed as being a reference to “includes, without limitation”, “including, without limitation”, and “inclusive, without limitation” respectively.
- g) Headings used in this Agreement are for convenience and ease of reference only and are not part of this Agreement and shall not be relevant or affect the meaning or interpretation of this Agreement.
- h) Every obligation express or implied into this Agreement and entered into by more than one party shall bind them jointly and severally.
- i) Every right express or implied into this Agreement granted in favour of more than one party shall be for the benefit of each of them jointly and severally.

- j)** A provision of this Agreement shall not be construed adversely to the party that drafted it.
- k)** If any provision or part-provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement shall remain otherwise in full force apart from such provision or part-provision which shall be deemed deleted.
- l)** These terms form part of the Agreement and shall be read in the following order of precedence: these terms and conditions and then the Quote.
- m)** No right or remedy granted to eCreators pursuant to this Agreement excludes or shall be deemed to exclude or modify any other right or remedy which would otherwise be available to eCreators and all such granted rights and remedies are cumulative.