

## **E2 PLATFORM ACCESS TERMS**

These E2 Platform Access Terms are effective on and from 1 November 2022.

These E2 Platform Access Terms apply to all of our customers who make use of the E2 Platform. They operate in conjunction with an Order Form provided to you, which sets out the key details of your subscription to the E2 Platform. Together, the Order Form (including any Special Terms set out in the Order Form) and these E2 Platform Access Terms form a legally binding agreement between the customer specified in the Order Form (**you, your**) and E2 Platform Pty Ltd (ACN 624 621 487) (**we, us, our** or **E2**) (**Agreement**).

We may change these E2 Platform Access Terms from time to time. If we do this, we will update the effective date above and will notify you of any changes that, in our reasonable opinion, could result in a material detriment to you, at least 30 days prior to the change taking effect. If you do not accept the change, your sole option is to terminate the Agreement and end your subscription during this 30 day notice period.

Defined terms are explained at clause 19 of these E2 Platform Access Terms.

### **BACKGROUND**

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- (a) E2 is a cloud-based education services provider. E2 operates the E2 Platform, through which you and students may access study and course materials and other content provided by us.
- (b) The E2 Platform also allows you to upload your own content.
- (c) You wish to access, and allow your students and other authorised users to access, the E2 Platform. These E2 Platform Access Terms, and your agreed Order Form, govern the provision of your and Users' access to the E2 Platform.

### **1. SUBSCRIPTION PERIOD**

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- (a) The Agreement starts on the Start Date and will remain in force until the expiry of your Subscription Period, unless terminated earlier in accordance with clause 14 (**Term**).
- (b) Your Subscription Period will be automatically renewed as set out in the Order Form, unless either of us gives the other at least 60 days' notice prior to the end of the current Subscription Period that it does not wish to renew (in which case, the Agreement will end on expiry of the current Subscription Period).

### **2. E2 PLATFORM & E2 CONTENT**

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#### **2.1 Access to E2 Platform**

- (a) Subject to your compliance with these terms (including payment of Fees), we will grant you and Users access to the E2 Platform and E2 Content during the Subscription Period.
- (b) Such access to the E2 Platform and E2 Content is granted during the Subscription Period:
  - (i) on a non-exclusive, non-transferable and non-sublicensable (except as set out in these terms) basis; and
  - (ii) solely for the Purpose.
- (c) You must, and must use reasonable endeavours to procure that Users, comply with any terms of use notified to you in connection with access to and use of the E2 Platform and E2 Content, including the EULA.
- (d) Where we issue you or Users with login credentials to access the E2 Platform and E2 Content, you must protect such credentials against misuse and notify us of the need to suspend or change such credentials promptly after becoming aware of that need.

- (e) We may suspend or limit your and Users' right of access to the E2 Platform and E2 Content if:
  - (i) you or Users fail to comply with these terms;
  - (ii) you or Users fail to comply with any terms of use or directions notified to you, including the EULA;
  - (iii) reasonably necessary to update, modify or maintain the E2 Platform or Content; or
  - (iv) we consider it appropriate to protect the integrity and use of the E2 Platform and E2 Content for all customers.

## **2.2 Availability of E2 Platform**

- (a) The E2 Platform is provided on an "as is" and "as available" basis. While we will use reasonable endeavours to provide the E2 Platform to you and your Users, you acknowledge that:
  - (i) it may not be continuous or fault-free and may not be available at all times;
  - (ii) events which are outside our reasonable control may affect performance or availability of the E2 Platform; and
  - (iii) the E2 Platform may contain bugs, errors or inaccuracies that could cause failures, corruption or loss of data and/or information (including from any device of yours or Users, and any peripherals).
- (b) You are responsible for all costs associated with your use and the use by your Users of the E2 Platform, including any internet access fees, and data and roaming charges. In addition, unless set out otherwise in the Order Form, we are not obliged to, and may not, provide you with any maintenance, technical or other support for the E2 Platform or Content.
- (c) You assume all risk in relation to your receipt and use of the E2 Platform, including your reliance on any Content.

## **3. YOUR OBLIGATIONS**

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### **3.1 Use of E2 Platform**

Without limiting your other obligations under these terms, you must:

- (a) evaluate the adequacy of the E2 Platform and Content for your particular purposes and needs;
- (b) provide us with such information, cooperation and assistance that we reasonably request from time to time in order for us to properly perform our obligations under these terms;
- (c) comply with, and ensure that your personnel and Users comply with, these terms and our directions and restrictions regarding access to and use of the E2 Platform and Content;
- (d) make every reasonable effort to prevent unauthorised access to the E2 Platform;
- (e) ensure that your network and systems comply with any specifications or operating requirements notified by us from time to time;
- (f) ensure that all information provided to us by or on behalf of you or Users, including Your Data, is and remains true and correct;
- (g) ensure that you have obtained and maintain all relevant licences, permissions, authorisations, permits, consents and approvals, and complied with all applicable Laws, in order to obtain, receive, access and use the E2 Platform, or provide Your Data (including Personal Information) to us; and
- (h) promptly notify us of any issue, concern or dispute regarding the E2 Platform or E2 Content.

### **3.2 Restrictions**

- 1 You must not and must ensure that Users do not:
  - (a) use the E2 Platform for any purpose other than the Purpose;
  - (b) use the E2 Platform in any territory other than the Permitted Territory;
  - (c) make the E2 Platform available to any person, other than a User authorised by you;
  - (d) use or operate the E2 Platform with a browser that is not supported by the E2 Platform (as is published on the E2 website or otherwise notified to you);
  - (e) access or attempt to access source code of the E2 Platform, or any data other than Content which you are authorised to access;
  - (f) copy, modify, merge or combine with other products, reverse engineer or decompile, create derivative works or build a competitive product or service based on, the whole or any part of the E2 Platform, including any software comprising the E2 Platform;
  - (g) without our prior written permission, share, resell, or otherwise provide in exchange for any compensation, the E2 Platform to any person who is not a User;
  - (h) use the E2 Platform to store or transmit libellous, or otherwise unlawful or tortious material, or to store or transmit material in violation of applicable Laws or third party rights (for example privacy or intellectual property);
  - (i) use the E2 Platform to send unsolicited electronic messages to anyone, make fraudulent or speculative enquiries or other similar activities;
  - (j) knowingly, recklessly, or negligently transmit any content (such as a virus) that is designed to or may damage or disrupt any computer network or device;
  - (k) dispute our right to refuse a User access to the E2 Platform, and you must comply with any request given by us in that regard; or
  - (l) attempt any of the above acts or permit another person to do any of the above acts.

### **1.2 Legal compliance**

- (a) You must take any action that is reasonably required by us to ensure compliance with any relevant Laws.
- (b) You must not use or permit the use by any other person of the E2 Platform:
  - (i) in breach of any applicable Law;
  - (ii) to infringe the Intellectual Property Rights of any person;
  - (iii) to cause harm to or breach the legal rights of any person;
  - (iv) in a way that results in, or is likely to result in, damage to any person or property; or
  - (v) in a way that is likely to bring us, our Related Bodies Corporate or any of our or their personnel, customers or suppliers into disrepute.
- (b) Despite anything else in these terms, if we are legally compelled to comply with a directive from an authorised law enforcement agency or national security agency, then:
  - (i) our obligation to comply with such directive overrides any rights of you under these terms; and
  - (ii) you indemnify us in respect of anything that we have to do to comply with any such directive, including reimbursing us our standard fees and charges in complying with such a request.

- (c) We may refuse any request from you if, in our reasonable view, compliance with that request may constitute a breach of applicable Law.

## **1.2 Users**

You agree that:

- (a) any act or omission by a User is deemed to be an act or omission of you; and
- (b) you must ensure that that each User does not do, or omit to do, anything that would cause you to breach these terms,

and you acknowledge that it is a condition of use of the E2 Platform and Content that each User accepts the EULA and our privacy policy.

## **1.3 Customers**

You acknowledge and agree that:

- (a) you may not provide access to the E2 Platform to any of your Customers;
- (b) before entering into any agreement with any Customer you must procure that the Customer obtains a direct licence from us for the use by that Customer (and its authorised users) of the E2 Platform; and
- (c) we are under no obligation to grant a licence of the E2 Platform to any Customer.

## **2. CONTENT**

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- (a) You are solely responsible for any Content that you make available to Users through the E2 Platform. You acknowledge and agree that, to the extent permitted by law, we are not liable for any Content, including any errors or omissions in any such Content, or for any loss or damage suffered or incurred by you as a result of any person's use of or reliance on any Content accessed via the E2 Platform.
- (b) You agree that any of Your Content and/or Your Data that you upload to the E2 Platform and the manner in which you and your Users use the E2 Platform will be available to us to:
  - (i) use in the course of providing you and your Users with access the E2 Platform;
  - (ii) fix any error in the E2 Platform;
  - (iii) upgrade, develop or improve the E2 Platform;
  - (iv) fix, upgrade, develop or improve our other products or services; or
  - (v) otherwise use at our discretion in connection with our business, subject to clause 13 for analytics purposes.
- (c) The E2 Platform and any services or Content provided through the E2 Platform may contain links to other websites or apps. Those links are provided for convenience only and may not remain current or be maintained. We are not responsible for the content or privacy practices associated with third party service providers, websites or apps.

## **3. THIRD PARTY SERVICES**

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### **3.1 Third Party Services**

- (a) You acknowledge and agree that the ongoing operation of the E2 Platform is dependent on Third Party Services, such as:
  - (i) hosting services;
  - (ii) videoconferencing services;

- (iii) email services; and
  - (iv) analytics services.
- (b) In addition, certain components or features of the E2 Platform and E2 Content may include Third Party Services.
- (c) You acknowledge and agree that we:
  - (i) are not responsible for your subscription to the E2 Platform, including any use (whether by you or your Users) or maintenance of your subscription;
  - (ii) are not responsible for the availability of any Third Party Service;
  - (iii) do not endorse or warrant the accuracy of any Third Party Service; and
  - (iv) are in no way liable for any loss or damage you incur or suffer, or allege to have incurred or suffered, either directly or indirectly, as a result of your use and/or reliance upon any Third Party Service.

### **3.2 Licensing arrangements**

- (a) We may require you, at your expense, to obtain any licence from a Third Party Provider directly. In this case, you will enter into a direct contractual relationship with the Third Party Provider and we are not a party to that relationship.
- (b) Where we require you to obtain a licence under clause 5.2(a), you agree that you will be solely responsible for:
  - (i) ensuring that you have read and understood, and accept, any Third Party Provider licence terms; and
  - (ii) any and all direct or indirect costs associated with any Third Party Provider licence or services.
- (c) A failure by you to obtain any Third Party Provider licence, software or product will not constitute a breach of these terms, however it may affect our ability to properly provide the E2 Platform and Content, and may result in us suspending or terminating your subscription.
- (d) In some cases, we may sublicense to you software provided to us by a Third Party Provider. In such case, any such software is provided subject to certain limitations and you agree to comply with all reasonable directions given by us in respect of the use of the software, including compliance with the Third Party Provider's terms of use or end-user licence agreement (if applicable).

### **3.3 No warranties**

- (a) Subject to clause 5.3(b), the products, software and services of a Third Party Provider are supplied or recommended by us strictly on an "as is" basis, and we will not be liable for any error, failure, delay or interruption in the supply of any such software or services, or any resulting loss.
- (b) You acknowledge that provision of Third Party Services requires reliance on persons over whom we have limited or no control.

### **3.4 Indemnity**

- (a) You indemnify us against any Loss that we are liable to pay a Third Party Provider to the extent arising from:
  - (i) your breach of these terms; or
  - (ii) your breach of a requirement of a Third Party Provider notified to you or that you ought reasonably have known.

- (b) Our sole obligation to you in relation to any failure, defect, or error in a Third Party Service is to assist you in obtaining support from the Third Party Provider for that failure, defect, or error.

## **4. FEES**

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### **4.1 Fees**

In consideration for access to the E2 Platform as set out in the Order Form, you must pay the Fees to us.

### **4.2 Adjustment to Fees**

- (a) You agree that we may increase the Fees:
  - (i) where our input costs change (for example, due to changes in costs imposed on us by a third party in connection with the E2 Platform and/or the E2 Content (such as hosting costs)); and
  - (ii) otherwise, at any time in our discretion (unless specified otherwise in the Order Form)by providing you with at least 30 days' prior written notice (**Fee Adjustment Notice**).
- (b) Unless you notify us within 10 days of a Fee Adjustment Notice that you do not accept the adjusted Fees, you will be deemed to have accepted the adjusted Fees.
- (c) If you do not accept the adjusted Fees then you may terminate your subscription in accordance with clause 14 within the 10 day notice period.

### **4.3 Payment terms**

- (a) You must pay the Fees (without withholding, deduction or set off of any kind) in accordance with the payment terms set out in the Order Form. If the Order Form does not specify payment terms, you must pay all invoices (without withholding, deduction or set off of any kind) within 14 days of the date of the invoice.
- (b) We may charge interest on any Fees which are due and payable to us but remain outstanding at the date which they were due. Such interest will be charged at the Default Rate calculated daily against the entire amount of Fees which remaining outstanding.

### **4.4 GST**

- (a) Terms used in this clause 6.4 have the same meanings given to them in the GST Act.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this Agreement, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this Agreement.
- (d) If this Agreement requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (**reimbursable expense**) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense plus any GST payable by the other party.

## **5. CHANGES**

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### **5.1 General**

- (a) We may at any time make changes to the E2 Platform and/or E2 Content that:

- (i) we deem necessary to comply with any applicable Law or any safety or accessibility requirements; or
- (ii) do not materially adversely affect the nature or quality of the E2 Platform or E2 Content,

and where practicable we will (but are not obliged to) notify you of such changes.

- (b) We may, but are not obliged to, provide you with modifications or customisations to the E2 Platform and/or E2 Content. This is subject to us first agreeing in writing upon the scope, pricing, timing and other terms of such modification or customisation. We will not provide a modification or customisation until a document detailing the modification is signed by each of us.

## **5.2 Beta Features**

- (a) From time to time, we may, in our sole discretion, include new and/or updated beta features (**Beta Features**) in the E2 Platform for your trial and use (fees may apply), and for which you may provide feedback to us.
- (b) You understand and agree that:
  - (i) your use of any Beta Features is voluntary and we are not obliged to provide you with any Beta Features;
  - (ii) once you use the Beta Features, you may be unable to revert back to the earlier non-beta version of the same or similar feature; and
  - (iii) if such reversion is possible, you may not be able to return or restore data created within the Beta Feature back to the earlier non-beta version.
- (c) The Beta Features are provided on an 'as is' basis and may contain errors or inaccuracies that could cause failures, corruption or loss of data and/or information from any connected device. You acknowledge and agree that all use of the Beta Features is at your sole risk.

## **6. SUPPORT SERVICES**

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### **6.1 Support Services**

We will provide you with the Support Services as set out in the Order Form.

### **6.2 Planned Outages**

- (a) We (or a Third Party Provider) may, from time to time, schedule Planned Outages, which may interrupt the delivery of the E2 Platform.
- (b) If a Planned Outage will result in the E2 Platform being unavailable, we will:
  - (i) provide you with reasonable notice in the circumstances (and where advance notice is not practicable, then as soon as practicable after we become aware of the Planned Outage); and
  - (ii) use reasonable endeavours to schedule the Planned Outage outside Business Hours.
- (c) Despite clauses 8.2(a) and 8.2(b), if we (or a Third Party Provider) needs to schedule a Planned Outage more urgently, the notice and timing of the Planned Outage may be adjusted and you agree to make no claim for loss of any kind as a result.

## **7. INTELLECTUAL PROPERTY**

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### **7.1 Ownership principles**

- (a) Each of us acknowledges and agrees that, subject to clause 9.2:

- (i) we or our licensors own all Intellectual Property Rights in and to the E2 Platform and any data, information, materials or background technology used to provide the E2 Platform, together with all modifications and/or Updates of the same (**Platform IP**);
  - (ii) we or our licensors own all Intellectual Property Rights in and to the E2 Content (**E2 Content IP**), together with all developments, updates or modifications of the E2 Content;
  - (iii) you or your licensors own the Intellectual Property Rights in and to Your Content (**Your Content IP**); and
  - (iv) you hereby assign to us any and all Intellectual Property Rights which you have, or may have, in respect of the Platform IP or E2 Content IP.
- (b) Except as expressly set out in these terms, nothing in these terms transfers ownership of a party's Intellectual Property Rights.

## 7.2 Background IP

Each of us retains ownership of our respective Intellectual Property Rights existing prior to the Start Date or developed independently of the Agreement (**Background IP**), and any developments, updates or modifications to Background IP, and nothing in these terms assigns such Intellectual Property Rights to the other party.

## 7.3 Developed IP

- (a) Immediately upon creation:
- (i) all rights, title and interest to the Developed IP will be owned by us; and
  - (ii) you hereby assign to us any and all Intellectual Property Rights which you may have in respect of the Developed IP.
- (b) We grant you a royalty-free, non-exclusive licence to use the Developed IP for the Subscription Period, but only to the extent necessary for you to obtain the intended benefit of the E2 Platform and for the Purpose.
- (c) For clarity, we will own the Developed IP irrespective of whether you have engaged us to provide a service (whether for a fee or otherwise), or the Developed IP is on the basis of Feedback as described in clause 9.6.

## 7.4 Third Party IP

- (a) All rights, title and interest to Third Party IP will be owned by the relevant third party licensor.
- (b) Your right to use Third Party IP will be subject to the terms of any licence granted by the relevant third party licensor. You must at all times comply with such licence terms and a breach of those terms will be deemed to be a breach of these terms.

## 7.5 Licence from you

- (a) During the Subscription Period, you grant us an irrevocable, worldwide, royalty free licence to use:
- (i) your Background IP; and
  - (ii) Your Content IP,

to the extent reasonably required to fulfil our obligations under this Agreement.

- (b) You grant us a non-exclusive licence to store and otherwise use, copy or modify any data or material provided by you (including any Background IP, Your Content IP and Your Data) to provide and enable you to access the E2 Platform.

## 7.6 Feedback

You may choose or we may invite you to submit feedback, suggestions, or ideas about the E2 Platform and related services, including in relation to future modifications of the E2 Platform or E2 Content, other products or services, which includes any suggestions for improvements submitted through the E2 Platform (**Feedback**). To the extent permitted by law, by providing any Feedback to us, you:

- (a) agree that we may use such Feedback for our business and commercial purposes without any compensation to you, including for development and improvement of the E2 Platform; and
- (b) grant us a perpetual, worldwide, fully transferable, sub-licensable, irrevocable, royalty-free license to store, host, use, copy and modify the Feedback (including Intellectual Property Rights in the Feedback).

## **7.7 General**

- (a) Notwithstanding any other provision of these terms, you agree that we may use Your Content or Your Data on an anonymised and aggregated basis, for the purpose of creating or providing to third parties statistical or analytic-based information about the E2 Platform or our other products or services, our business, or the activities of our customers.
- (b) You must do all acts and things necessary to give effect to this clause 9.

## **8. LIABILITY**

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### **8.1 Warranties**

- (a) To the maximum extent permitted by Law, and except as otherwise expressly set out in these terms, all express or implied guarantees, warranties or representations relating to these terms or its subject matter are excluded.
- (b) If any guarantee, warranty or representation is implied into these terms and cannot be excluded at Law but can be limited, our liability for breach of such guarantee, warranty or representation is limited to (at our option):
  - (i) supplying the E2 Platform and/or relevant services again; or
  - (ii) the payment of the cost of supplying the E2 Platform and/or relevant services again.
- (c) We do not warrant that the E2 Platform or any associated services:
  - (i) will be error free, free from viruses, operate without delay or interruption (including as a result of interference or prevention of access to the E2 Platform as a result of the operation of telecommunications networks, computer networks and/or the internet); or
  - (ii) will meet your business needs.
- (d) To the maximum extent permitted by Law, the E2 Platform is provided “as is”.

### **8.2 Indirect Loss**

- 1 Neither of us is liable to the other for any indirect or consequential loss, including:
- (a) any loss not arising naturally (that is, according to the usual course of things) as a result of a breach of these terms or other event giving rise to the relevant Claim; and
  - (b) loss of business revenue, business opportunity or business profits, loss or reduction of goodwill, damage to reputation, loss, destruction or corruption of data (including Your Data), pure economic loss, loss of value of equipment, expectation loss and wasted overheads.

### **1.2 Limitation of liability**

Subject to clauses 10.2, 10.4 and 10.5 a party's liability to the other party (whether under statute, in contract or in tort (including for negligence) or otherwise) for any Loss suffered or incurred by the other party in connection with this Agreement is limited to an amount equal to the Fees paid by you to us in the 12 month period prior to the Loss arising.

### **1.3 Exceptions**

Nothing in these terms operates to limit or exclude liability of a party:

- (a) that cannot be limited or excluded by Law;
- (b) for acts or omissions of fraud;
- (c) for personal injury or death or damage to or loss of real property caused or contributed to by the negligence or wilful misconduct of a party or its personnel (or, in your case, any User); or
- (d) in your case:
  - (i) in the circumstances described in the indemnities in clauses 10.6(a), 10.6(c) or 10.6(d); or
  - (ii) where you are in breach of clauses 3.2, 3.3, 12 or 13.

### **1.4 Data loss**

Despite anything else in these terms, we are not liable to you for any loss, destruction or corruption of any records, data or systems (including Your Data and Your Content).

### **1.5 Indemnity**

You agree to indemnify us and keep us indemnified for any Loss that we suffer or incur arising directly or indirectly from:

- (a) any malicious act, negligence or wilful default by you or a User;
- (b) any breach by you or a User of these terms or any applicable Laws;
- (c) any act or omission by you that infringes our Intellectual Property Rights or any third party rights (including Intellectual Property Rights); or
- (d) Your Data or Your Content infringing the Intellectual Property Rights of a third party,

except to the extent caused or contributed by our wilful, unlawful or negligent act or omission.

## **2. RISK FROM VIRUSES, MALWARE, AND HACKING**

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1 We will take all reasonable steps in accordance with industry standards to protect against computer viruses and malware entering your computer systems through access to the E2 Platform. However, you acknowledge that we cannot guarantee this. Accordingly, you agree that:

- (a) we are not liable for any loss of any kind in connection with:
  - (i) any computer virus or malware; or
  - (ii) any data or security breach by any person other than us, or by any person engaged directly or indirectly by you;
- (b) you are responsible for the backup and recovery of your data (including Your Data and Your Content) and systems; and
- (c) the presence of a computer virus or malware on your computer systems, or the suspicion or detection of a computer security breach of your computer systems, does not constitute:
  - (i) a breach by us of these terms; or
  - (ii) grounds for claiming a failure of the E2 Platform.

## **2. CONFIDENTIAL INFORMATION**

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### **2.1 Confidentiality obligations**

Each of us must only use or copy the other party's Confidential Information for the purposes of these terms and must take all steps reasonably necessary to:

- (a) maintain the confidentiality of the other party's Confidential Information;
- (b) protect the other party's Confidential Information from unauthorised access, use, copying or disclosure; and
- (c) ensure that any person who has access to the other party's Confidential Information does not use, copy or disclose that Confidential Information other than in accordance with these terms.

## **2.2 Permitted disclosure**

A Recipient must not disclose a Discloser's Confidential Information to any person except:

- (a) where we are the Recipient, to fix any error in the E2 Platform, or update or improve the E2 Platform or other services (and in such case we may disclose to third parties);
- (b) to its personnel on a 'need to know' basis, provided those persons first agree to observe the confidentiality of the information; and
- (c) if required by Law or any stock exchange (in which case it must notify the other party prior to the disclosure).

## **2.3 Remedies for breach**

Each of us acknowledges that:

- (a) the value of the other's Confidential Information is such that an award of damages or an account of profits may not be adequate compensation for breach of this clause 12; and
- (b) without compromising its right to seek damages or receive any other form of relief in the event of a breach of this clause 12, a party may seek and obtain an ex-parte interlocutory injunction or final injunction to prohibit or restrain the other party or its Personnel from any breach or threatened breach of this clause 12.

## **2.4 Return and destruction**

- (a) Subject to clause 12.4(c), a Recipient must, if requested by the Discloser, on termination or expiration of this Agreement, at its own expense:
  - (i) return the Discloser's Confidential Information which is in the Recipient's power, possession or control (or, if directed by the Discloser, destroy such Confidential Information); and
  - (ii) provide written confirmation to the Discloser that it has complied with clause 12.4(a)(i).
- (b) The return or destruction of Confidential Information does not release a party from its obligations of confidence under this clause 12.
- (c) Despite clause 12.4(a), a Recipient may retain a copy of the Discloser's Confidential Information to the extent required by Law, or for the Recipient's own reasonable internal credit, risk, insurance, taxation or record keeping purposes, provided that the Recipient must comply with this clause 12 (other than clause 12.4(a)) in respect of such information retained.

## **2.5 Publicity**

Neither of us may make any public statements or issue any press release concerning or relating to this Agreement or its relationship with the other party unless it has first obtained the written consent of the other party, provided however that we may publicly and privately refer to you as a client as well as generally describe the services we provide to you.

## **3. PRIVACY**

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- 3.1 Each of us must comply at all times with the Privacy Laws.

- 3.2 We maintain a privacy policy in relation to any Personal Information that we collect about you and other users (including Users). If you do not agree to our collection, processing and use of Personal Information as set out in our privacy policy, then you must not submit or facilitate the submission of Personal Information to the E2 Platform or us, or alternatively you must cease use of the E2 Platform.
- 3.3 Without limiting clause 13.1, you must:
- (a) to the extent Your Content or Your Data contains Personal Information, comply with the Privacy Act and any other law that applies to it that relates to privacy or to the collection, use, disclosure or handling of Personal Information;
  - (b) not do anything that would cause us to fail to comply with the Privacy Act;
  - (c) co-operate with us, and comply with any requests or directions from us, in relation to individual access, correction, deletion and marketing opt-out requests;
  - (d) notify us immediately upon becoming aware of:
    - (i) a breach or possible breach of any of its obligations under this clause 13; or
    - (ii) a complaint or request made by an individual in relation to Personal Information;
  - (e) ensure you have obtained all necessary consents from individuals whose Personal Information may be submitted to the E2 Platform or to us, prior to submitting that Personal Information; and
  - (f) comply with any reasonable data privacy and security policies notified by us that are applicable to your use of the E2 Platform.

## 4. TERMINATION

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### 4.1 End of Subscription Period

- (a) This Agreement will terminate at the end of a current Subscription Period if either of us gives notice to the other as described in clause 1(b).
- (b) In addition, your Subscription Period will end, and this Agreement will terminate, in any of the circumstances described in these terms where you have an option to terminate your subscription and you exercise such option.

### 4.2 Termination for cause

- (a) A party (**terminating party**) may terminate these terms by notice to the other party (**defaulting party**), if the defaulting party:
  - (i) commits a material breach of these terms and:
    - A. the breach is not capable of remedy; or
    - B. the breach is capable of remedy but the defaulting party fails to remedy the breach within 10 Business Days of receiving notice requiring it to do so;
  - (ii) ceases to carry on its business or threatens to cease trading in a normal manner;
  - (iii) suffers an Insolvency Event; or
  - (i) assigns or novates its obligations under these terms (or purports to do so) otherwise than in accordance with these terms.

*Example of a material breach: A material breach would occur where a student of yours attempts to maliciously attack the source code of the E2 Platform and you do not stop the student by doing this (through terminating your relationship with that student). This is an example of a material breach only and there could be other instances of a material breach.*

- (b) Without limiting clause 14.2(a), if an invoice remains unpaid for 20 days after its due date, then:

- (i) we may suspend or terminate this Agreement and your (and Users') access to the E2 Platform;
- (ii) the balance of all outstanding amounts (whether invoiced or not) will be immediately due; and
- (iii) we have no further obligations to provide the E2 Platform to you or meet our obligations under these terms.

## 1.2 Suspension

- (a) We may, in our absolute discretion, suspend access to the E2 Platform if and for so long as:
  - (i) we consider suspension necessary for safety reasons or to prevent or abate an emergency situation or hazard;
  - (ii) you have failed to pay any amount owing to us by the due date;
  - (iii) a Force Majeure Event exists; or
  - (iv) a technical issue or fault occurs (including any error or malfunction in any telecommunications carriage service) that impacts the operation of the E2 Platform.
- (b) You will not be entitled to any refund of Fees in the event of suspension.

## 1.3 Effect of termination

- (a) Upon termination or expiry of these terms:
  - (i) your right and the right of Users to use, access and/or receive the E2 Platform and/or the E2 Content will cease;
  - (ii) each party is released from its obligations to further perform this Agreement;
  - (iii) each party retains its accrued rights and remedies;
  - (iv) you must promptly return to us (or our nominee) all of our property in your possession or control (and if not returned in a timely manner, permit us to enter your premises to recover that property); and
  - (v) you must pay the Fees for the E2 Platform and any services provided up to the date of termination (and you will not be entitled to any refund of Fees paid prior to the date of termination, except as described in clause **Error! Reference source not found.**).
- (b) Within three months of the termination or expiry of this Agreement, you may request that an electronic copy of Your Content and Your Data be made available to you. Your Content and Your Data will be provided to you in the form held by us at the date of the request (regardless of whether that form reflects the form in which it was provided to us). For clarity, we will not be required to convert or otherwise reformat Your Content or Your Date prior to providing it to you in response to a request received under this clause 14.4(b).
- (c) We may permanently delete Your Data and Your Content after three months has elapsed from termination or expiry of the Agreement (or sooner by your request or agreement with you). You may request us to (but we are not obliged to) continue to host Your Data and Your Content after termination or expiry of the Agreement. Hosting Fees will continue to apply for any period that we host Your Data and Your Content on and from termination or expiry of the Agreement.

## 1.4 Survival

- 1 Clauses 3.2, 9, 10, 11, 13, 14.4, 14.5, 15 and 17 survive termination, as well as any other clause of these terms that by its nature is intended to survive termination.

## 2. DISPUTE RESOLUTION

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### 2.1 Parties to meet

1 If a dispute arises in connection with this Agreement (**Dispute**) which is not able to be resolved by the parties' contact persons (as specified in the Order Form) within 10 Business Days of such Dispute arising, the nominated senior executive officer of each party will meet and discuss the Dispute in good faith with a view to resolving the Dispute within a further 10 Business Days (or such longer period agreed in writing by the parties).

## **2.2 Mediation**

- (a) If any Dispute is unable to be resolved in accordance with the timeframe in clause 15.1, the parties will in good faith seek to settle the Dispute by mediation administered by the Resolution Institute before having recourse to arbitration or litigation.
- (b) The mediation will be conducted in accordance with the Mediation and Conciliation Rules of the Resolution Institute (**Rules**) which set out the procedures to be adopted, the process of selecting the mediator and the costs involved, and the terms of those Rules are taken to be incorporated into these terms.

## **2.3 Performance during Dispute**

1 The parties to a Dispute will continue to perform their respective obligations under these terms pending the resolution of the Dispute under this clause 15.

## **2.4 Interlocutory relief**

Nothing in this clause 15 is to be taken as preventing any party to a Dispute from seeking interlocutory relief in respect of such a Dispute.

## **2.5 Costs**

1 Unless otherwise agreed between the parties, each party will bear its own costs under this clause 15.

## **3. FORCE MAJEURE EVENT**

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- 3.1 If and for so long as a Force Majeure Event subsists, the party affected is not liable for any failure or delay in performing its obligations under these terms (other than a payment obligation) to the extent caused by the Force Majeure Event.
- 3.2 If a Force Majeure Event continues for more than 60 days, either party may terminate this Agreement by giving written notice to the other party.

## **4. TRIAL PERIOD**

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- (a) We may grant you (at no cost to you) a limited licence to access the E2 Platform and E2 Content for a trial period nominated by us (**Trial Period**) as set out in the Order Form. You may decide to purchase a subscription within the Trial Period.
- (b) The Trial Period will terminate on the earlier of:
  - (i) the nominated expiry of the Trial Period; or
  - (ii) either of us providing written notice to the other.
- (c) These terms will apply to your use of the E2 Platform and Content during the Trial Period, provided that you agree that, to the maximum extent permitted by Law and notwithstanding anything else in this Agreement, we are not liable to you or Users in any way whatsoever during and in respect of the Trial Period.

## **5. GENERAL**

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### **5.1 Relationship of parties**

Nothing in these terms is to be construed as establishing a contract of employment between the parties or creating a partnership, joint venture or other relationship between the parties. Neither party has the right, power or authority to bind the other party in any manner.

## **5.2 Use of subcontractors**

We may contract with third parties for the performance of our obligations under these terms, provided that we remain liable for the performance of our obligations under these terms.

## **5.3 Entire agreement**

These terms (and the Order Form) constitute the entire agreement between us with respect to its subject matter, and supersede all earlier agreements or understandings between us.

## **5.4 Further assurance**

1 Each party must do anything necessary or desirable (including executing agreements and documents) to give full effect to these terms and the transactions contemplated by it.

## **5.5 Waiver**

1 A failure to exercise or a delay in exercising any right, power or remedy under these terms does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

## **5.6 Changes**

- (a) These terms may be amended by us as set out at the beginning of these terms.
- (b) Any changes to the Order Form will only be effective by written agreement between us.
- (c) Any amendment to the Agreement proposed by you will only be effective if it is in writing and signed or otherwise expressly accepted in writing by us.

## **5.7 Assignment**

- (a) You must not assign, novate or otherwise transfer your rights and/or obligations under this Agreement without our prior written consent.
- (b) We may assign, transfer or novate its rights and/or obligations under this Agreement by prior written notice to you (and, if required, you will do all things reasonably required to give effect to such notice).

## **5.8 Governing Law and jurisdiction**

- (a) This Agreement is governed by and is to be construed in accordance with the Laws applicable in Victoria, Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria, Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts on any ground.

## **5.9 Electronic execution and communication**

- (a) The words in this clause 18.9 that are defined in the *Electronic Transactions Act 1999* (Cth) have the same meaning.
- (b) The parties agree that this Agreement may be executed by way of the parties signing the Order Form electronically and that any signature required directly or incidental to this Agreement or Order Form may be made electronically except where required to be physically made under law.

- (c) You can send notices, enquiries, complaints and other communications to us using the details set out in the Order Form. We will notify you if any of these details change.
- (d) We will send notices and other communications to you using the details set out in the Order Form. You must update your contact details if they change.
- (e) A consent, notice or communication under this Agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law. An electronic communication will be deemed to have been received 24 hours after the communication was sent, unless the sender receives an automated message that the electronic communication was not received by the recipient.
- (f) Notices must be sent to the contact details as specified in the Order Form with respect to each party.

#### **5.10 Counterparts**

The Order Form may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

#### **5.11 Severance**

1 Any provision of these terms that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of these terms nor affect the validity or enforceability of that provision in any other jurisdiction.

#### **5.12 No merger**

1 The rights and obligations of the parties will not merge on the completion of any transaction contemplated by these terms. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

#### **5.13 Costs and expenses**

Each party will pay that party's own costs and expenses in respect of the negotiation, preparation, execution, delivery and stamping of these terms, and any documents entered into pursuant to or in respect of these terms.

#### **5.14 Contra Proferentem**

No rule of contract interpretation can be applied in the interpretation of these terms to the disadvantage of us on the basis that we prepared or put forward these terms, or any document relating to these terms.

### **6. DEFINITIONS AND INTERPRETATION**

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#### **1.1 Definitions**

1 In these terms, these terms have the following meanings:

2 **Agreement** has the meaning at the beginning of these terms.

3 **Background IP** has the meaning given in clause 9.2.

4 **Business Day** means a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria.

5 **Business Hours** means 9am to 5pm on a Business Day.

6 **Claim** means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

**Confidential Information** means, in relation to a party, all information or knowledge which:

- (a) is by its nature confidential (including the terms of these terms);

- (b) is designated by a Discloser as confidential; or
- (c) the Recipient ought reasonably know is confidential,

but does not include:

- (d) information or knowledge that is in the public domain otherwise than as a result of a breach of these terms or any other obligation of confidence;
- (e) information or knowledge that is independently developed by the Recipient or rightfully obtained from a third party; or
- (f) information or knowledge that is already known by the Recipient, independently of its involvement in these terms or its interaction with the other party and free of any obligation of confidence.

1 **Content** means the E2 Content and Your Content.

2 **Corporations Act** means the *Corporations Act 2001* (Cth).

3 **Customer** means one of your business customers who wishes to obtain a licence from you to provide Your Content to its own customers.

4 **Default Rate** means the rate fixed from time to time under the *Penalty Interest Rate Act 1983* (Vic).

5 **Developed IP** means any Intellectual Property Rights created, written or brought into existence by us or on our behalf in connection with or for the purposes of providing the E2 Platform, but excluding a party's Background IP.

6 **Discloser** means a party that discloses Confidential Information to a Recipient.

7 **E2 Content** means any information, courses, guides and other learning and test material that we make available to you or Users through the E2 Platform, but excluding Your Content.

8 **E2 Platform** means the online platform managed by E2 for the provision of study courses and related content and services.

9 **EULA** means our End User Licence Agreement as updated from time to time, and which Users must accept as a condition of access to the E2 Platform.

10 **Fees** means the fees payable by you for the E2 Platform and Content, as set out in the Order Form.

**Force Majeure Event** means any act, event or cause, other than lack of funds, affecting a party that is outside that party's reasonable control, and includes any outage, interference or disturbance to our IT system, fire, flood, earthquake or acts of God, strikes, industrial disputes, acts of war, terrorism, riots, civil disorders, rebellions or revolution, pandemics, quarantines, embargos and other similar governmental action.

**GST** has the meaning given in the GST Act.

11 **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

12 **Insolvency Event** in relation to a party means:

- (a) an administrator, receiver, receiver and manager, provisional liquidator, liquidator or other officer of the court has been appointed over the party or any part of the assets of the party;
- (b) the party is in liquidation or proceedings have been brought for the purpose of winding up the party (and not dismissed within 10 Business Days of the proceedings being brought);
- (c) the party has entered into or taken steps or proposes to enter into, an arrangement (including a scheme or arrangement or deed of company arrangement), compromise or composition with or

assignment for the benefit of all or any class of its creditors or a moratorium involving any of them; or

- (d) the party is (or is taken under applicable legislation to be) unable to pay its debts, other than a debt or claim the subject of a good faith dispute, and has not stopped or suspended or threatened to stop or suspend, the payment of all or a class of its debts; or
- (e) the occurrence of any event that has a substantially similar effect to any of the above events.

1 **Intellectual Property Rights** includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, confidential information (including trade secrets and know how), registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

2 **Laws** means:

- (a) any statute, regulation or subordinate legislation of any applicable jurisdiction in which any act or obligation in connection with these terms is, or is to be, carried out or regulated;
- (b) any other applicable law, whether of a legislative, common law or equitable nature; and
- (c) relevant industry codes and standards.

1 **Loss** means all liabilities, losses, damages, costs and expenses suffered or incurred by any person whether arising in contract or tort (including negligence) or under any statute or under any other cause of action.

2 **Order Form** means the order form which each of us has agreed to (as evidenced by written signature or valid electronic acceptance) and which details the key terms of your subscription to the E2 Platform.

3 **Personal Information** has the meaning given in the Privacy Act.

4 **Planned Outage** means a scheduled interruption to the E2 Platform, generally to facilitate equipment upgrades or preventative maintenance, that is required in our discretion.

5 **Permitted Territory** means the territory specified the Order Form.

6 **Personal Information** has the meaning given in the Privacy Act.

7 **Privacy Act** means the *Privacy Act 1988* (Cth).

8 **Privacy Laws** means all legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to Personal Information and includes the Privacy Act.

9 **Purpose** has the meaning given in the Order Form.

10 **Recipient** means a party that receives Confidential Information of the Discloser.

11 **Related Body Corporate** has the meaning given in the Corporations Act.

12 **Special Terms** means the special terms (if applicable) as set out in the Order Form.

13 **Start Date** means the start date of your subscription, as specified in the Order Form.

**Subscription Period** means the period during which you are subscribed to the E2 Platform, as set out in the Order Form.

**Support Services** means the support services set out in the Order Form.

**Third Party IP** means all Intellectual Property Rights in and to materials provided or made available to you that are owned by a third party, together with any modifications and enhancements to such materials.

**Third Party Provider** means a third party who is a provider of a Third Party Service.

**Third Party Service** means products, services, or r software provided by a Third Party Provider.

**Update** means any new version, new release or update to the E2 Platform or related services provided by E2.

14 **User** means any person authorised by you to use the E2 Platform.

**Your Content** means any information, courses, guides and other learning and test material that you or persons on your behalf upload to the E2 Platform.

**Your Data** means all information and data relating to you, your business or your operations that is provided or made available to us and/or the E2 Platform in connection with the E2 Platform or Services.

## 1.2 Interpretation

1 In these terms, unless expressed to the contrary:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) 'includes', 'such as' or similar expressions are not words of limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iv) a right includes a benefit, remedy, discretion or power;
  - (v) time is to local time in Melbourne;
  - (vi) '\$' or 'dollars' is a reference to Australian currency;
  - (vii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties; and
  - (viii) a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure of these terms; and
- (g) headings are for convenience and do not affect interpretation;
- (h) if the date on or by which any act must be done under these terms is not a Business Day, the act must be done on or by the next Business Day;
- (i) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;
- (j) an obligation to use reasonable endeavours does not require a party to incur a substantial commercial detriment or payment obligation;
- (k) an obligation of two or more persons binds them jointly and severally unless these terms expressly provides otherwise; and
- (l) if the doing of any act, matter or thing under these terms is dependent on the consent or approval of a party or is within the discretion of a party, such consent or approval may be given

or such discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion (unless these terms specifies otherwise).

## **1.2 Inconsistency with Order Form**

1 If there is an inconsistency between these terms and the Order Form, the Order Form prevails to the extent of the inconsistency.