

## 1. Application of Terms

1.1 These Terms apply to your use of the Services. By indicating your acceptance to these Terms by signature of a product contract, or by continuing to access and use the Services, you acknowledge that:

- a) you agree to these Terms; and
- b) where your access and use is on behalf of another person (such as a company or business) you confirm that you are authorised to, and do in fact, agree to these Terms on that person's behalf and that, by agreeing to these Terms on that person's behalf, that person is bound by these Terms.

1.2 If you do not agree to these Terms, you are not authorised to access and use the Services, and you must immediately cease doing so.

## 2. Changes to these Terms

2.1 We may change these Terms at any time by notifying you of the change by email or by posting a notice on the Website. Unless stated otherwise, any change takes effect from the date set out in the notice. You are responsible for ensuring you are familiar with the latest Terms. By continuing to access and uses the Services from the date on which the Terms are changed, you agree to be bound by the changed Terms.

2.2 These Terms were last updated on 13 November 2024.

## 3. Definitions

**Confidential Information** means any information in any form or medium disclosed to the Client or to which the Client gains access that is identified as confidential at time of disclosure, that would, of its nature, be considered confidential by a reasonable person or that is disclosed under circumstances that would reasonably indicate confidential treatment, including without limitation, any information that relates to the Services, the Users or the Provider's business in any way (including Provider technology, strategies, employees, suppliers or customers and the terms of this Agreement).

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

**Digital Credential**, also known as a digital badge, this means a digital assertion that a person can claim and share that confirms that the person has satisfied the requirements of a particular achievement. This includes digital certificates, licences, etc. This will be referred to as Digital Credentials hereinafter.

**Fees** means the applicable fees set out in your invoice.

**Force Majeure** means an event that is beyond the reasonable control of a Party, excluding:

- a) an event to the extent that it could have been avoided by a Party taking reasonable steps or reasonable care; or
- b) a lack of funds for any reason.

**GST means** goods and services tax under the GST Act.

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time and any word or expression defined in the GST Act has the same meaning when used in these Terms.

**Insolvency Event** means, in relation to a Party:

- a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property;
- c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, in each case, other than to carry out a reconstruction or amalgamation while solvent;
- d) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act;
- e) it is otherwise unable to pay its debts when they fall due; or
- f) something having a substantially similar effect to any of sub-paragraphs (a) to (d) above happens in connection with that Party under the law of any jurisdiction.

**Intellectual Property Rights** includes copyright and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. **Intellectual Property** has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

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

**Party** means you and us and our permitted assigns.

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

**Privacy Policy** means Learning Vault's privacy policy as updated from time to time, which can be found on the Website.

**Product Support hours** means 9am – 5pm in the client's relevant time zone.

**Services** means provision of access to any Learning Vault proprietary product including vocational education and training content, micro credentials, or digital credentials (including digital certificates, licences, etc.).

**Start Date** means the date that you first access or use the Services.

**Subscription Term** means, in respect of a paid user, the initial subscription term specified in your invoice and any extension of that term.

**Terms** means these terms and conditions of use.

**Underlying Systems** means all IT solutions, systems and networks (including software and hardware) used to provide the Services, including any third-party solutions, systems and networks.

**We, us or our** means Learning Vault Pty Ltd (ABN 616 553 078).

**Website** means the internet sites at [www.learningvault.com](http://www.learningvault.com) or such other site notified to you by us.

**You or Your** means the person named as the customer on the invoice (in the case of paid users) or on the product contract submitted to Learning Vault when you signed up for the Services

## 4. Provision of Services

4.1 We agree to provide the Services to you:

- a) in accordance with these Terms
- b) in compliance with the law, relevant professional standards, and Learning Vault's privacy and data protection policies.

4.2 We will use reasonable efforts to ensure that the Services are available on a 24/7 basis. However, it is possible that on occasion the Services may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure.

## 5. Your Use of the Services

5.1 You and your personnel must:

- a) use the Services solely in accordance with these Terms and applicable law;
- b) not resell or make the Services available to any third party without prior written consent from Learning Vault;
- c) not copy, reproduce, translate, adapt, vary or modify the Services;
- d) not disassemble, decompile or reverse engineer the Services;
- e) not circumvent, disable, fraudulently engage with, or otherwise interfere with any part of the Services including any security-related features or features that limit the use of the Services or Content; and
- f) comply with all relevant laws.

## 6. Contribution of Content

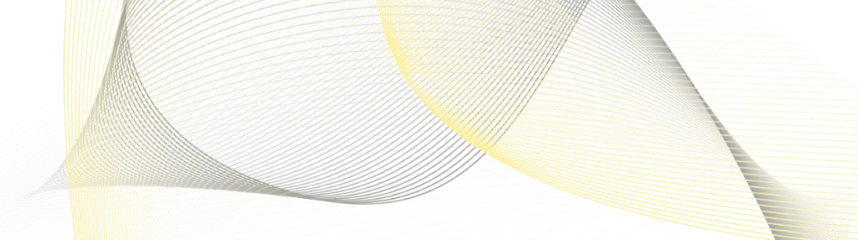
6.1 As it pertains to the creation of metadata to support Digital Credential issuance, you may upload content to the approved templates.

6.2 You retain ownership of all Intellectual Property Rights in any Content that you upload to your Digital Credential templates.

6.3 You are legally responsible for your Content. You warrant that your Content will:

- a) be accurate, correct, complete and up to date;
- b) not contain viruses or similar that may cause damage to our property or the property of other individuals or otherwise violate the security of the Digital Credentialing platform;
- c) not contain any unauthorised material, which includes but is not limited to material that we believe would be likely to cause annoyance or harm, or which is intimidating, threatening, racist, defamatory, pornographic, or which is or may be detrimental to our systems or a third party's systems or network security; and
- d) not infringe the Intellectual Property Rights of any third party.

You agree to indemnify us and our affiliates, officers, directors, employees and agent against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by our solicitors) and loss of any kind arising from any actual or alleged claim by a third party that any Content infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Content is incorrect or misleading.



## 7. Fees

7.1 If you have purchased a paid subscription for the Services then you must pay us the Fees.

7.2 We will provide you with a valid GST tax invoice for the Fees on the Start Date and on each anniversary of the Start Date thereafter during your Subscription Term. The Fees exclude GST, which you must pay on taxable supplies.

7.3 You must pay the Fees:

- a) within 7 days of the date of the invoice; and
- b) electronically in cleared funds without any set off or deduction.

7.4 We may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annualised rate of 15%.

7.5 The Fees will be adjusted on each anniversary of the Start Date to reflect the correct usage tier as assessed by Learning Vault and the user. Learning Vault will notify you of any change in Fees at least 45 days in advance of each anniversary of the Start Date.

## 8. Privacy

8.1 To the extent that we collect any Personal Information in connection with the provision of the Services, we agree that we will comply, and ensure our personnel comply, with the Privacy Act, the Privacy Policy and all other applicable laws and regulations in relation to the collection, use, disclosure and protection of that Personal Information.

8.2 You agree that we may store data containing Personal Information in secure servers in Australia and other jurisdictions for disaster recovery purposes. We will utilise Australian-based third party data storage services wherever available on reasonable terms.

## 9. Intellectual Property

9.1 Subject to clause 6.2, all Intellectual Property Rights of the Services and the Underlying Systems, including the trademarks, logos, service marks and trade names displayed on or in connection with the Services, remains our property (or that of our third party licensors). You must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.

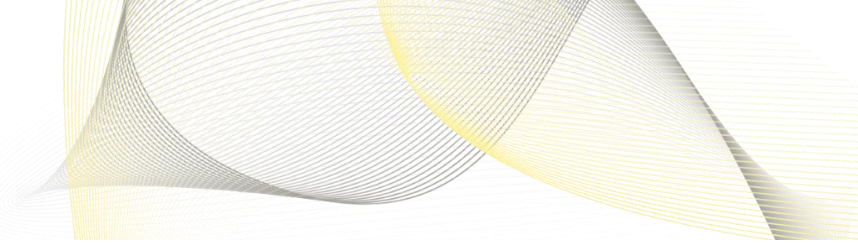
9.2 If you provide us with ideas, comments or suggestions relating to the Services (together **Feedback**):

- a) all Intellectual Property Rights in that Feedback, and anything created as a result of that Feedback (including new material, enhancements, modifications or derivative works), are owned solely by us (or our third party licensors); and
- b) we may use or disclose the Feedback for any purpose.

## 10. Confidentiality

10.1 Each Party must, unless it has the prior written consent of the other Party:

- a) keep confidential at all times the Confidential Information of the other Party;
- b) effect and maintain adequate security measures to safeguard the other Party's Confidential Information from unauthorised access or use; and
- c) disclose the other Party's Confidential Information to its personnel or professional advisors on a need to know basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other Party's Confidential Information is aware of, and complies with, the provisions of clauses 10.1(a) and 10.1(b).
- d) keep confidential at all times the Confidential Information of the other Party;
- e) effect and maintain adequate security measures to safeguard the other Party's Confidential Information from unauthorised access or use; and
- f) disclose the other Party's Confidential Information to its personnel or professional advisors on a need to know basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other Party's Confidential Information is aware of, and complies with, the provisions of clauses 10.1(a) and 10.1(b).
- g) required by law (including under the rules of any stock exchange);
- h) which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
- i) which was rightfully received by a Party from a third party without restriction and without breach of any obligation of confidentiality; or
- j) by us if required as part of a bona fide sale of our business (assets or shares, whether in whole or in part) to a third party, provided that we enter into a confidentiality agreement with the third party on terms no less restrictive than this clause 10.



## 11. Warranties

11.1 Each Party warrants that it has full power and authority to enter into and perform its obligations under these Terms.

11.2 To the maximum extent permitted by law:

- a) our warranties are limited to those set out in clause 11.1, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise are expressly excluded to the extent permitted by law; and
- b) the Services are provided "as is" and we make no representation concerning the quality of the Services or any Content made available through the Services and do not promise that:
  - (i) the Services and any Content will meet your requirements or be suitable for a particular purpose;
  - (ii) the Services will be secure, free of viruses or other harmful code, uninterrupted or error free; and
  - (iii) any Content will be accurate, correct, complete, up to date and accessible.

11.3 Where legislation or rule of law implies into these Terms a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in these Terms. However, our liability for any breach of that condition or warranty is limited, at our option, to:

- a) supplying the Services again; and/or
- b) paying the costs of having the Services supplied again.

## 12. Liability

12.1 Our maximum aggregate liability for all proven losses, damages and claims arising under or in connection with these Terms or relating to the Services, including liability for breach of contract, in negligence or in tort or for any other common law or statutory action, is limited to the total amount of the Fees paid by you for the Services within the preceding 12 months (as at the date the relevant loss, claim or damage arises).

12.2 Neither Party is liable to the other under these Terms or in connection with the Services for any:

- a) loss of profit, revenue, savings, business, use, data, and/or goodwill; or
  - b) consequential, indirect, incidental or special damage or loss of any kind.
- 12.3 Clauses 12.1 and 12.2 do not apply to limit our liability under these Terms or in connection with the Services for:
- (i) personal injury or death;
  - (ii) fraud or wilful misconduct; or
  - (iii) a breach of clause 10.

12.4 Clause 12.2 does not apply to limit your liability:

- a) to pay the Fees;
- b) under the indemnity in clause 6.3; or
- c) for those matters stated in clause 12.3.

12.5 Each Party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other Party under these Terms or in connection with the Services.

## 13. Indemnity

13.1 You agree to indemnify us and our affiliates, officers, directors, employees and agent against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by our solicitors) and loss of any kind arising from:

- a) your use of and access to the Services;
- b) your contribution of Content to the Services;
- c) any claim that your Content caused damage to a third party; and
- d) your violation of these Terms.

## 14. Term and Termination

14.1 These Terms and your right to access and use the Services starts on the Start Date and continues until terminated in accordance with this clause 14.

14.2 If you are a paid user, then subject to clause 14.6, your Subscription Term will automatically be extended for successive periods of 12 months unless written notice to terminate is provided by one party to the other no less than one month before the end of the then current Subscription Term.

14.3 You may terminate these Terms and your right to access and use the Services without cause at any time by written notice to the Company or in such other manner as the Company may direct from time to time.

14.4 Learning Vault may by notice in writing to you immediately terminate these Terms and your right to access and use the Services if:

- a) you breach any material provision of these Terms and fail to remedy the breach within thirty (30) days after receiving notice from Learning Vault requiring you to do so;
- b) you are the subject of an Insolvency Event; or
- c) clause 15.2 applies.

14.5 Termination or expiry of these Terms does not affect either Party's rights and obligations that accrued before that termination or expiry. For the avoidance of doubt, if you are a paid user and the Services are terminated under clause 14.3 or 14.4 you must pay the Fees for the entire Subscription Term and will not be eligible for a pro-rata refund on any unused time.

14.6 If at the end of the Subscription Term you do not pay the Fees required to extend your Subscription Term then your access to the services will be terminated.

14.7 At the other Party's request following termination of these Terms a Party must promptly return to the other Party or destroy all Confidential Information of the other Party that is in its possession or control.

14.8 We may restrict or suspend your use of the Services in the event that we consider that you or any of your personnel have:

- a) undermined, or attempted to undermine, the security or integrity of the Services or any Underlying Systems;
- b) used, or attempted to use, the Services:
  - (i) for improper purposes; or
  - (ii) in a manner, other than for normal operational purposes, that materially reduces the operational performance of the Services; or
- c) otherwise materially breached these Terms.

## 15. Force Majeure

15.1 Neither Party is liable to the other for any failure to perform its obligations under these Terms to the extent caused by Force Majeure, provided that the affected Party:

- a) immediately notifies the other Party and provides full information about the Force Majeure;
- b) uses best efforts to overcome the Force Majeure; and
- c) continues to perform its obligations to the extent practicable.

15.2 If a delay or failure by a Party to perform its obligations due to Force Majeure exceeds sixty (60) days, either Party may immediately terminate these Terms and your right to access and use the Services on providing notice in writing to the other Party.

## 16. General

16.1 No person other than you and us has any right to a benefit under, or to enforce, these Terms.

16.2 For us to waive a right under these Terms, that waiver must be in writing and signed by us.

16.3 We are your independent contractor, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under these Terms.

16.4 If we need to contact you, we may do so by email or by posting a notice on the Website. You agree that this satisfies all legal requirements in relation to written communications. You may give notice to us under or in connection with these Terms by emailing [info@learningvault.com](mailto:info@learningvault.com).

16.5 These Terms, and any dispute relating to these Terms or the Services, are governed by and must be interpreted in accordance with the laws of the State of Victoria, Australia. Each Party submits to the non-exclusive jurisdiction of the courts of the State of Victoria in relation to any dispute connected with these Terms or the Services.

16.6 Clauses which, by their nature, are intended to survive termination of these Terms, including clauses 9, 10, 12, 13 and 14.5 to 14.7, continue in force.

16.7 If any part or provision of these Terms is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, unenforceability or invalidity. If modification is not possible, the part or provision must be treated for all purposes as severed from these Terms. The remainder of these Terms will be binding on you.

16.8 Subject to clauses 2.1 and 7.5, any variation to these Terms must be in writing and signed by both Parties.

16.9 These Terms set out everything agreed by the Parties relating to the Services, and supersede and cancel anything discussed, exchanged or agreed prior to the Start Date. The Parties have not relied on any representation, warranty or

agreement relating to the Services that is not expressly set out in these Terms, and no such representation, warranty or agreement has any effect from the Start Date.

16.10 You may not assign, novate, subcontract or transfer any right or obligation under these Terms without our prior written consent. You remain liable for your obligations under these Terms despite any approved assignment, subcontracting or transfer.