

# **Learn Primary**

LEARN PRIMARY PTY LTD ABN 19 613 684 665

## **TERMS OF SERVICE**

## INTRODUCTION

The Company provides the Learn Primary online application that provides a personalised learning experience for children from kindergarten to year 6, aligned with the Australian Curriculum. Use of Learn Primary is subject to these Terms of Service.

## DEFINITIONS

The following terms are used regularly throughout these Terms of Service and have a particular meaning:

- (a) **ABN** means Australian Business Number.
- (b) **Agreement** means the agreement formed between the Users and the Company under, and on the terms of, these Terms of Service.
- (c) **Assessment** means a recorded assessment of a Student's learning outcomes within Learn Primary.
- (d) **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.
- (e) **Company** means Learn Primary Pty Ltd ABN 19 613 684 665.
- (f) **Fee** means a fee charged by the Company for use of Learn Primary.
- (g) **GST** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (h) **Intellectual Property** means all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, registered or unregistered trademarks, brand names, business names, domain names and other forms of intellectual property.
- (i) **Learning Tools** means any of the tools made available to a Student as part of a learning process in Learn Primary, and includes (without limitation):
  - i Lesson;
  - ii Practice; and
  - iii Assessments.
- (j) **Learn Primary** means:
  - i The Learn Primary digital platform accessible from <https://app.learnprimary.com.au>; and/or
  - ii Any Learn Primary mobile application.
- (k) **Material** means educational information provided to a Student including, animation, video, games, text or other media.

- (l) **Parent** means a registered user of Learn Primary that uses the features associated with a Parent account, and generally refers to the parent or legal guardian of a Student.
- (m) **Partner** means a third-party business from whom Reward may be redeemed for a discount, good or service.
- (n) **Practice** means an unrecorded test of a Student's learning outcomes within Learn Primary.
- (o) **Privacy Act** means the *Privacy Act 1988* (Cth).
- (p) **Privacy Policy** means the Company's privacy policy as updated from time-to-time, which can be found at [www.learnprimary.com.au/privacy](http://www.learnprimary.com.au/privacy).
- (q) **Reward** means any form of in-app reward for performance made available within Learn Primary, and generally refers to "Gems" and "Coins" as they are referred to in Learn Primary.
- (r) **Subscription Fee** means a Fee charged by the Company for use of Learn Primary on a periodical basis.
- (s) **Tax Invoice** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (t) **Student** means a registered user of Learn Primary that uses the features associated with a Student account.
- (u) **Terms of Service** means the terms and conditions of using Learn Primary, as updated from time-to-time, which can be found at [www.learnprimary.com.au/terms](http://www.learnprimary.com.au/terms).
- (v) **TPS** means an online third-party service provider with whom a User holds an account.
- (w) **User** means any registered Parent or Student that uses Learn Primary.
- (x) **User Content** means images, information, documents or other data that is uploaded or input into Learn Primary by the User or that forms part of the User's Intellectual Property.

## 1 USING LEARN PRIMARY

### 1.1 General

- (a) To use Learn Primary, the User must log into Learn Primary and have set up their account.
- (b) The User agrees that all use of Learn Primary is subject to these Terms of Service.
- (c) A User must be over 18 years of age to use Learn Primary as Parent. Persons under the age of 18 must not use Learn Primary without their parent or legal guardian's consent.
- (d) The Parent shall be responsible for:
  - i Paying the Fees for using Learn Primary; and

- ii Each Student's use of Learn Primary that the Parent authorises.
- (e) The Company may suspend the account or restrict the access of any User that breaches the terms of this Agreement.

## 1.2 Features

- (a) Learn Primary may allow a Parent to:
  - i Create and manage a Parent account;
  - ii Create and manage Student accounts under their Parent account;
  - iii Monitor Student progress, including reviewing Assessments;
  - iv Use such other features of Learn Primary, as the Company may make available from time-to-time.
- (b) Learn Primary may allow a Student to:
  - i Use the Learning Tools;
  - ii Receive Rewards;
  - iii Redeem Rewards; and
  - iv Use such other features of Learn Primary, as the Company may make available from time-to-time.

## 1.3 Learning Tools

- (a) The Company has designed Learning Tools to gamify the learning process and align them with the Australian Curriculum for Students attending kindergarten up to year 6.
- (b) The Learning Tools made available to Students adapt based on the Student's year level and performance.
- (c) Learn Primary may also provide the Parent with some level of customization of the Learning Tools a Student has access to. Such customization may be used (without limitation) in order to align the Learning Tools with the Student's homework.
- (d) Individual results of Students may vary.
- (e) The Company does not guarantee that a Student will achieve any particular outcomes.

## 1.4 Rewards

1.5 Learn Primary incentivises the Student to achieve learning outcomes by providing Rewards.

1.6 Rewards generally take the form of in-app currency referred to as 'Gems' and 'Coins'.

- 1.7** Rewards are provided as a courtesy only, and the Company is under no obligation to exchange a reward for cash or anything else of value.
- 1.8** Rewards are not redeemable for cash, however in some instances may be redeemed for:
- (a)** Access to additional content (including games) within Learn Primary; or
  - (b)** Offers from third-party partners (**Partners**).
- 1.9** The User acknowledges that where the User elects to redeem a Reward with a Partner:
- (a)** The User redeems a Reward with a Partner completely at their own risk;
  - (b)** The Company makes no representation that the Partner will honour a Reward or is capable of fulfilling a request to redeem a Reward;
  - (c)** The Partner remains responsible in relation to any discount, good or service that the Partner agrees to provide the User by honouring a request to redeem a Reward
  - (d)** In no event will the Company be liable to the User with regard to the redemption (or failure to redeem) a Reward, or any goods or services the User acquires by redeeming a Reward.

## **2 FEES, PAYMENTS & REFUNDS**

### **2.1 Fees**

- (a)** The primary Fee to use Learn Primary shall be the Subscription Fee, which is payable in advance (after any free trial period has expired).
- (b)** Each Fee applies in accordance with the number of registered Students associated with a Parent's account and/or the level of features and/or services subscribed for. The pricing for each Fee shall be as described on the Site, or as otherwise agreed with the Company.
- (c)** The Parent agrees to make payment in advance for all Fees due on a monthly or annual basis, or on such dates as the Parent has subscribed for.
- (d)** All payments shall be made via the online payment gateway within Learn Primary, or in such other manner as the Company may direct from time-to-time. The Parent agrees that it has no right to access Learn Primary if it fails to make payments when due.
- (e)** The Parent may elect to provide a credit card or direct debit authority to the Company, which will be charged in advance for all Fees due. Without provision of a valid credit card or direct debit authority, the Parent agrees that the Company may terminate the Parent's access to Learn Primary.
- (f)** The Company reserves the right to introduce or change any Fees from time-to-time by giving the User no less than 14 days' written notice. Any new or changed Fees will apply at the next billing period after the Parent has been given such notice.

- (g) If a Parent does not accept a change to any Fees, then it can simply terminate its Account.

## **2.2 Currency.**

All Fees are quoted in Australian dollars, however transactions may be processed in an equivalent foreign currency (such as US dollars or British pounds).

## **2.3 GST.**

For Users in Australia, GST is applicable to any Fees charged by the Company to the User. Unless expressed otherwise, all Fees shall be deemed inclusive of GST. The Company will provide the Parent with a Tax Invoice for any payments.

## **2.4 Refunds.**

No refunds of Fees are offered other than as required by law.

## **2.5 Late Payment.**

- (a) If the Parent does not pay the full Fees as required, the Company may suspend all User access to Learn Primary for that Account.
- (b) If Fees are not brought out of arrears within 28 days of becoming overdue, the Company may terminate the Parent's Account in Learn Primary without notice and end this Agreement.
- (c) The User agrees that the Company shall not be responsible or liable in any way for:
  - i Interruptions to the availability of Learn Primary or User Content in the event of (a);
  - ii Loss of User Content in the event of (b).

## **3 THIRD PARTY LOGIN AND INTEGRATION**

### **3.1 Registration & Login.**

- (a) A User may be able to register as a User, access Learn Primary and use integrated features by connecting their account with certain third party services (TPS) (e.g., Facebook, Twitter etc.).
- (b) As part of the functionality of Learn Primary the User may connect their profile with a TPS by:
  - i Providing their TPS login information to the Company through Learn Primary; or
  - ii Allowing the Company to access their TPS in accordance with its terms & conditions of service.
- (c) When connecting to Learn Primary using a TPS the User warrants that they are not in breach any of the TPS' terms & conditions of service.

### **3.2 Ongoing Availability.**

- (a) The User agrees that User access to Learn Primary may be unavailable if the TPS becomes unavailable, and that the User may lose functionality or content that is shared between the TPS and Learn Primary.
- (b) The User may disconnect the connection between Learn Primary and the TPS at any time.
- (c) The Company has no relationship with any TPS and cannot guarantee the efficacy of any TPS connection.

### **3.3 Data from TPS.**

Where a User connects and or registers their account using a TPS, the User authorises the Company to use data from that TPS to create the User's profile within Learn Primary.

## **4 GENERAL CONDITIONS**

### **4.1 Licence**

- (a) By accepting the terms and conditions of this Agreement, the User is granted a limited, non-exclusive and revocable licence to access and use Learn Primary for the duration of this Agreement, in accordance with the terms and conditions of this Agreement.
- (b) The Company may issue the licence to the User on the further terms or limitations (including the number of users or volume of use or transactions) as it sees fit.
- (c) The Company may revoke or suspend the User's licence(s) in its absolute discretion for any reason that it sees fit, including for breach of the terms and conditions in this Agreement by the User.

### **4.2 Modification of Terms**

- (a) The terms of this Agreement may be updated by the Company from time-to-time.
- (b) Where the Company modifies the terms, it will provide the User with written notice, and the User will be required to accept the modified terms in order to continue using Learn Primary.

### **4.3 Software-as-a-Service**

- (a) The User agrees and accepts that Learn Primary is:
  - i Hosted by the Company and shall only be installed, accessed and maintained by the Company, accessed using the internet or other connection to the Company servers and is not available 'locally' from the User's systems; and
  - ii Managed and supported exclusively by the Company from the Company servers and that no 'back-end' access to Learn Primary is available to the User unless expressly agreed in writing.

- (b) As a hosted and managed service, the Company reserves the right to upgrade, maintain, tune, backup, amend, add or remove features, redesign, improve or otherwise alter Learn Primary.

#### 4.4 Support

- (a) The Company provides user support for Learn Primary via the email address [info@learnprimary.com.au](mailto:info@learnprimary.com.au).
- (b) The Company shall endeavour to respond to all support requests within 1 Business Day.

#### 4.5 Use & Availability

- (a) The User agrees that it shall only use Learn Primary for legal purposes and shall not use it to engage in any conduct that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable by the Company in its discretion.
- (b) The User is solely responsible for the security of its username and password for access to Learn Primary. The User shall notify the Company as soon as it becomes aware of any unauthorised access of its Learn Primary account.
- (c) The User agrees that the Company shall provide access to Learn Primary to the best of its abilities, however:
  - i Access to Learn Primary may be prevented by issues outside of its control; and
  - ii It accepts no responsibility for ongoing access to Learn Primary.

#### 4.6 Privacy

- (a) The Company maintains the Privacy Policy in compliance with the provisions of the Privacy Act for data that it collects about the User and other customers.
- (b) The Privacy Policy does not apply to how the Partner handles personal information. If necessary under the Privacy Act, it is the Partner's responsibility to meet the obligations of the Privacy Act by implementing a privacy policy in accordance with law.
- (c) Learn Primary may use cookies (a small electronic tracking code) to improve a User's experience while browsing, while also sending browsing information back to the Company. The User may manage how it handles cookies in its own browser settings.

#### 4.7 Data

- (a) **Security.** The Company takes the security of Learn Primary and the privacy of its Users very seriously. The User agrees that the User shall not do anything to prejudice the security or privacy of the Company's systems or the information on them.
- (b) **Transmission.** The Company shall do all things reasonable to ensure that the transmission of data occurs according to accepted industry standards. It is up to the User to ensure that any transmission standards meet the User's operating and legal requirements.

- (c) **Storage.** The Company stores data on servers based in the USA according to accepted industry standards. If the User requires its User Data to be stored in a different location, the Company may charge the User a fee to do so.
- (d) **Backup.** The Company shall perform backups of its entire systems in as reasonable manner at such times and intervals as is reasonable for its business purposes. The Company does not warrant that it is able to backup or recover specific User Data from any period of time unless so stated in writing by the Company.

#### 4.8 Intellectual Property

- (a) **Trademarks.** The Company has moral & registered rights in its trade marks and the User shall not copy, alter, use or otherwise deal in the marks without the prior written consent of the Company.
- (b) **Proprietary Information.** The Company may use software and other proprietary systems and Intellectual Property for which the Company has appropriate authority to use, and the User agrees that such is protected by copyright, trademarks, patents, proprietary rights and other laws, both domestically and internationally. The User warrants that it shall not infringe on any third-party rights through the use of Learn Primary.
- (c) **The Learn Primary Application.** The User agrees and accepts that Learn Primary is the Intellectual Property of the Company and the User further warrants that by using Learn Primary the User will not:
  - i Copy Learn Primary or the services that it provides for the User's own commercial purposes; and
  - ii Directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, algorithms contained in Learn Primary or any documentation associated with it.
- (d) **Content.** Notwithstanding User Content, all content submitted to the Company, whether via Learn Primary or directly by other means, becomes and remains the Intellectual Property of the Company, including (without limitation) any source code, analytics, insights, ideas, enhancements, feature requests, suggestions or other information provided by the User or any other party with respect to Learn Primary.

#### 4.9 Disclaimer of Third Party Services & Information

- (a) The User acknowledges that Learn Primary is dependent on third-party services, including but not limited to:
  - i Banks, credit card providers and merchant gateway providers;
  - ii Telecommunications services;
  - iii Hosting services;
  - iv Email services; and
  - v Analytics services.

- (b) The User agrees that the Company shall not be responsible or liable in any way for:
  - i Interruptions to the availability of Learn Primary due to third-party services; or
  - ii Information contained on any linked third party website.

#### 4.10 Liability & Indemnity

- (a) The User agrees that it uses Learn Primary at its own risk.
- (b) The User acknowledges that the Company is not responsible for the conduct or activities of any User and that the Company is not liable for such under any circumstances.
- (c) The User agrees to indemnify the Company for any loss, damage, cost or expense that the Company may suffer or incur as a result of or in connection with the User's use of or conduct in connection with Learn Primary, including any breach by the User of these Terms of Service.
- (d) In no circumstances will the Company be liable for any direct, incidental, consequential or indirect damages, damage to property, loss of property, loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss of anticipated savings or any other similar or analogous loss resulting from the User's access to, or use of, or inability to use Learn Primary, whether based on warranty, contract, tort, negligence, in equity or any other legal theory, and whether or not the Company knew or should have known of the possibility of such damage, or business interruption of any type, whether in tort, contract or otherwise.
- (e) Certain rights and remedies may be available under the *Competition and Consumer Act 2010* (Cth) or similar legislation of other States or Territories and may not be permitted to be excluded, restricted or modified. Apart from those that cannot be excluded, the Company and the Company's related entities exclude all conditions and warranties that may be implied by law. To the extent permitted by law, the Company's liability for breach of any implied warranty or condition that cannot be excluded is restricted, at the Company's option to:
  - i The re-supply of services or payment of the cost of re-supply of services; or
  - ii The replacement or repair of goods or payment of the cost of replacement or repair.

#### 4.11 Termination

- (a) Either party may terminate this Agreement by giving the other party written notice.
- (b) Termination of this agreement is without prejudice to and does not affect the accrued rights or remedies of any of the parties arising in any way out of this agreement up to the date of expiry or termination.
- (c) Termination does not affect any of the rights accrued by a party prior to termination, and the rights and obligations under clauses 4.5, 4.6, 4.7, 4.8 4.9, 4.10, 4.12, 4.13 and 4.14 survive termination of this Agreement.

#### 4.12 Dispute Resolution

- (a) If any dispute arises between the parties in connection with this Agreement (**Dispute**), then either party may notify the other of the Dispute with a notice (**Dispute Notice**) which:
  - i Includes or is accompanied by full and detailed particulars of the Dispute; and
  - ii Is delivered within 10 Business Days of the circumstances giving rise to the Dispute first occurring.
- (b) Within 10 Business Days after a Dispute Notice is given, a representative of each party with the authority to resolve the dispute, must meet (virtually or otherwise) and seek to resolve the Dispute.
- (c) Subject to clause (d), a party must not bring court proceedings in respect of any Dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause.
- (d) Nothing in this clause prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.
- (e) Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this document and any related agreements.

#### 4.13 Electronic Communication, Amendment & Assignment

- (a) The words in this clause that are defined in the *Electronic Transactions Act 1999 (Cth)* have the same meaning.
- (b) The User can direct notices, enquiries, complaints and so forth to the Company as set out in this Agreement. The Company will notify the User of a change of details from time-to-time.
- (c) The Company will send the User notices and other correspondence to the details that the User submits to the Company, or that the User notifies the Company of from time-to-time. It is the User's responsibility to update its contact details as they change.
- (d) 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.
- (e) Notices must be sent to the parties' most recent known contact details.
- (f) The User may not assign or otherwise create an interest in this Agreement.
- (g) The Company may assign or otherwise create an interest in its rights under this Agreement by giving written notice to the User.

#### 4.14 General

- (a) **Special Conditions.** The parties may agree to any Special Conditions to this Agreement in writing.

- (b) **Prevalence.** To the extent this Agreement is in conflict with, or inconsistent with any Special Conditions made under this Agreement, the terms of those Special Conditions shall prevail.
- (c) **Disclaimer.** Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.
- (d) **Relationship.** The relationship of the parties to this Agreement does not form a joint venture or partnership.
- (e) **Waiver.** No clause of this Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.
- (f) **Further Assurances.** Each party must do anything necessary (including executing agreements and documents) to give full effect to this Agreement and the transaction facilitated by it.
- (g) **Governing Law.** This Agreement is governed by the laws of New South Wales, Australia. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there.
- (h) **Severability.** Any clause of this Agreement, which is invalid or unenforceable, is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this Agreement.
- (i) **Interpretation.** The following rules apply unless the context requires otherwise:
  - i Headings are only for convenience and do not affect interpretation.
  - ii The singular includes the plural and the opposite also applies.
  - iii If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
  - iv A reference to a clause refers to clauses in this Agreement.
  - v A reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
  - vi Mentioning anything after *includes*, *including*, or similar expressions, does not limit anything else that might be included.
  - vii A reference to a *party* to this Agreement or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).
  - viii A reference to a *person, corporation, trust, partnership, unincorporated body* or other entity includes any of them.
  - ix A reference to *information* is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.

