

Terms and Conditions of Use the eLr Website and eLr-Offline

ELR Software Pty Ltd (ELR) ABN 67 090 738 702

(A subscriber's ongoing usage of the eLr Website and/or eLr-Offline is taken as acceptance of these Terms and Conditions)

1. Interpretative Provisions

1. Definitions

- a) "Access Fee" means the Fee calculated according to the fees as specified on the Registration Form at the due date for payment of the subscription that are applicable to the Selected Services;
- b) "Customer" means the person or entity who accepts these terms and conditions by completing and returning to ELR the Registration Form;
- c) "Effective Date" means the date upon which the Customer completes and returns to ELR the Registration Form;
- d) "eLr Website" refers to the Webpages maintained by ELR on the World Wide Web at the URL <http://www.elr.com.au/elr.htm> which provides access to remedial, interactive, speech and language resource activities;
- e) "eLr-Offline" refers to "eLr-Pro Offline" and "eLr-Guest Offline" which are Progressive Web Applications containing eLr content installable from the eLr Website to the Customers computer or tablet computer;
- f) "eLr" refers to the eLr Website and eLr-Offline in any of its forms;
- g) "Family" means a family who are all domiciled at the same premises;
- h) "Guest" means current clients of a "Registered User";
- i) "Institution" includes reference to a school, college, hospital or other recognised educational or health care institution;
- j) "Internet" means the public network of computer networks known by that name which enables the transmission of electronic information between users or between a user and a place on the network;
- k) "Multi-User" means that multiple Registered Users up to the number in the agreed Selected Service, may simultaneously use the Services on multiple computers or workstations owned by or under control of the Customer;
- l) "Professional" means a person of suitable qualifications working primarily in the special needs profession;
- m) "Registered User" means the Customer or staff if the Customer is an Institution;
- n) "Registration Form" refers to the Webpage in eLr so designated or other printed copy of such form that must be completed and returned to ELR by the Customer;
- o) "Selected Services" means the Services chosen by the Customer by so marking them on the Registration Form;
- p) "Services" means the services comprising access to eLr and use of the exercises and materials supplied by means of the eLr Website, eLr-Offline and eLr-Guest;
- q) "Single-User" means that at any given time only one copy of the Services may be used by the Registered User, on a single computer or workstation owned by or under control of the Customer (although, for the convenience of the Registered User, the Services may be installed on more than one computer or workstation);
- r) "URL" means Uniform Resource Locator;
- s) "Webpage" means the display of electronic information contained within one browser window accessible on the World Wide Web by use of a single URL;
- t) "World Wide Web" means the network of electronic information accessible on the Internet using Hyper-text Transfer Protocol;
- u) "Progressive Web Application" is a website that looks and behaves as if it is a mobile app;

2. Interpretation

In this agreement:

- a) all monetary references are in Australian Currency at the conversion rates applicable at the time of payment, as reasonably determined by ELR;
- b) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings when capitalised;
- c) a reference to a person includes a reference to a body corporate, unincorporated association and partnership; and
- d) words denoting the singular include, unless the context otherwise requires, the plural and visa-versa.

2. Services and Licence

1. Provision of Services

- a) ELR will provide a facility for global access to the Selected Services for the duration of this Agreement.
- b) ELR will use reasonable endeavours to ensure that the eLr Website is available for access to users of the Internet.
- c) ELR will provide technical support, in English, for eLr by means of telephone and e-mail communications, through the ELR help desk during normal business hours in Victoria, Australia.
- d) ELR may charge the Customer at reasonable commercial rates for any support provided to the Customer where the cause of the problem was not a fault in eLr .

2. Licence

- a) Subject to this sub-clause 2.2, the Customer is licensed as a Single-User or Multi-User to use the Webpages contained within eLr including related descriptive documentation:
 1. where the Customer has paid for a Professional subscription, by clients of the Professional from the offices of the Professional or to perform specified tasks as a Guest from the client's home or Institution;
 2. where the Customer has paid for a Family subscription, by any member of the Customer's immediate family operating on a single computer from the Customer's home;
 3. where the Customer has paid for an Institutional subscription, by its students, staff or clients operating on machines owned by and located on the Institution's premises or to perform specified tasks as a Guest from the student's or client's home or Institution.
- b) The Customer may print copies of the Webpages contained within eLr for its own use only and in relation to a Professional or Institutional Subscription, by the clients or students of the Customer.
- c) The licence granted by this sub-clause 2.2 is granted to the Customer. Neither the licence nor any part of the rights

- granted under this agreement may be assigned, transferred or sub-licensed without the prior written consent of ELR.
- d) Except as expressly permitted by this sub-clause 2.2 the Customer must not:
1. copy, reproduce, translate, adapt vary or modify the data contained within eLr without the express written consent of ELR;
 2. reverse engineer, decompile or disassemble eLr , or any programs comprising eLr except as permitted by applicable legislation;
 3. make eLr available in any form to any person other than as expressly permitted by this agreement; and
 4. permit his/her/its students or clients to:
 - A. fail to comply with this sub-clause 2.2; or
 - B. otherwise breach any of the terms of this agreement.

3. Term

- a) This agreement commences on the date that the first payment is made for the Services and remains in force for the duration of 12 months, unless terminated earlier.
- b) This agreement will be automatically extended at the expiration of the period referred to in sub-clause 3(a) upon payment of the Access Fee for successive further 12 month periods, unless terminated earlier.

4. Termination

- a) This agreement will automatically terminate immediately, if an Access Fee is not paid prior to the expiration of any period referred to in clause 3.
- b) This agreement may be terminated by ELR on the expiration of any period referred to in clause 3, by the giving of at least 4 weeks prior notice to the Customer.
- c) ELR may terminate this agreement at any time for a breach by the Customer of its obligations under this agreement, which breach has not been remedied after the giving by ELR of 14 days notice to the Customer.
- d) Termination of this agreement does not prejudice any remedies that ELR may have against the Customer.
- e) Upon Termination of this agreement, the Customer will not be entitled to any refund of any fees paid under this agreement.
- f) Upon Termination of this agreement, ELR will be relieved of any further obligations after the date of Termination.

5. Customer's Additional Obligations

- a) The Customer must, at all times, maintain the confidentiality of the password issued by ELR and notify ELR immediately the Customer becomes aware of any unauthorised use of the Customer's logon and password or any breach of the security of ELR's computer system.
- b) The Customer acknowledges that it receives no interest in the copyright of eLr of the materials that comprise eLr other than those rights expressly specified in sub-clause 2.2. To the extent necessary to achieve this objective, the Customer assigns all rights in any such material to ELR.

6. Limit of Liability

- a) ELR will not be under any liability to the Customer in respect of any loss or damage (including direct or consequential loss or damage) that may be suffered or incurred by the Customer in respect of the use by the Customer of the ELR computer system or in respect of the compliance of ELR with any obligation under this agreement.
- b) Any warranties or conditions that may be implied by law are expressly excluded from this agreement to the full extent that such warranties may lawfully be excluded.
- c) The Customer agrees that ELR has not made any representation either orally, by conduct, in writing or otherwise that has not been specifically incorporated in this agreement. In particular the Customer agrees that eLr cannot be guaranteed free from error and acknowledges that any error in the information contained within eLr will not constitute a breach of this agreement.
- d) The Customer agrees to make an assessment of the validity and applicability of any information in eLr and does not consider the availability of such information as a representation of the validity or applicability of that information. The Customer further agrees to seek advice at all relevant times where appropriate as to applicability in individual circumstances.
- e) If ELR becomes liable to the Customer under this agreement in any manner whatsoever, the liability of ELR will be limited solely to any fees paid by the Customer pursuant to this agreement or the re-supply of the Selected Services, at ELR's discretion.

7. Indemnity

The Customer at all times indemnifies, and keeps indemnified, ELR against any loss or liability, including direct, indirect, consequential or incidental damages:

- a) suffered by ELR in connection with or as a result of ELR's compliance with this agreement.
- b) incurred by it in enforcing this Agreement.
- c) suffered by ELR as a result of any breach of sub-clause 5(a) by any person using the Customer's logon and password.

8. Governing Law & Jurisdiction

- a) This agreement is governed by the law in force in the State of Victoria, Australia and the parties irrevocably submit to the jurisdiction of the courts of that State.
- b) Any clause or part of a clause that is ineffective in any jurisdiction is only ineffective in that jurisdiction and only to the extent that it is ineffective. That clause or part of the clause may be severed without affecting any other part of this agreement.

9. Notices

Any notice sent to a party under this Agreement must be sent in one of the following methods and will be deemed to have been received:

- a) When hand delivered before 4:30pm (local time), on the day of delivery;
- b) When hand delivered after 4:30pm (local time), on the following day;
- c) When sent by pre-paid intra-State or inter-State mail, 2 days of posting;
- d) When sent by pre-paid air-mail, 5 days after posting;
- e) When sent by facsimile or e-mail over the Internet, the day after sending.