

Velpic Online Services Terms

1. Terms

Damstra Technology Pty. Ltd. (ABN 29 086 218 742) ("Velpic", "we", "our" and "us") provides:

- (a) its users; and
- (b) where the context permits, its end user customers who receive the benefit of the Velpic Services, (each, an "End User"),

(together, "you" and "your") with a variety of products, services, applications, tools and other resources (including our website at www.velpic.com and such other sites as we may offer from time to time (the "Sites")) (all together, the "Velpic Services") to enable you to collect information from visitors and End Users and to help you create, manage, deliver and track online courses. References to Velpic include any of its subsidiaries through which it carries on business. Velpic may provide you the Velpic Services through a third party reseller organisation, including Technology One Ltd ("Reseller").

The Velpic Services are provided subject to these terms and conditions, which also incorporate our Privacy Policy as set out on our Site, and any other terms, guidelines, rules or operating policies that or the Reseller provide you from time to time (collectively the "Agreement").

This Agreement operates in addition to the agreement you have with the Reseller, and the terms of this Agreement shall take priority over the terms of the agreement you have with the Reseller as they apply to the Velpic Services (only) to the extent of any inconsistency or conflict and to the maximum extent permitted by law.

Please read this Agreement carefully before proceeding with any use of the Velpic Services. By completing and submitting the signup form that refers to this Agreement or by logging into the Velpic Service for the first time, you accept and agree to be bound by this Agreement.

If you do not accept the terms and conditions of this Agreement, please exit the Sites and cease using the Velpic Services immediately.

2. Amendments

Velpic or the Reseller may modify the terms of this Agreement (as applicable to the Velpic Services only) from time to time by giving you notice of the new terms. By continuing to use the Velpic Services, you agree that your use of the

Velpic Services following the then current term will be governed by the updated terms of this Agreement.

From time to time, for various reasons including but not limited to the optimisation of the Velpic Services, Velpic may add, make changes to or remove altogether features or functionality of the Velpic Services. If you are using a mobile application, you may need to install a new or updated version before you can receive the benefit of those changes. Velpic will use all reasonable efforts to inform you of any changes to the Velpic System.

In certain scenarios, Velpic may decide to stop providing all or some of the Velpic Services at any time. Nothing in this Agreement is to be taken as a guarantee that the Velpic Services will always be available, either in its current form or at all, or that we will support, maintain or continue to offer the Velpic Services or any version of them. We will not remove functionality from the Velpic Services which constitutes minimum specifications for the service you have contracted for during the then applicable current term.

3. Account Information

You must be 18 years or older in order to access and use the Velpic Services. By logging in to the Velpic Services, you are representing to us that you (and your end users) are at least 18 years old.

You agree to provide true, accurate, current and complete account information, and to maintain and promptly update your account information in order to ensure that it remains true, accurate, current and complete. Velpic reserves the right to refuse registration of users, or cancel accounts, which do not meet the terms of the Agreement.

Subject to our confidentiality and privacy obligations under the Agreement, Velpic may use this information and any technical information about your use of the Velpic Services to tailor your and other users' user experience of, facilitate the use of the Velpic Services for you, or to communicate with you.

Velpic will not use any of your information, or any End User information, for any other purposes than those related to the provision of the Velpic Services to you and otherwise to the extent that we have your consent to use the relevant information.

4. Cancellation of Accounts

You are entitled to cancel your Velpic Service via the Reseller according to the terms of the contract between you and the Reseller.

Velpic may cancel or suspend your Velpic Services at any time if, in our sole discretion, you have committed a material or persistent breach of this Agreement or any other terms applying to your use of the Velpic Services. Cancellation or suspension of your account will be considered a final resort, and will follow a period of efforts to consult with you.

If your Velpic Services account is cancelled your account will be deactivated or deleted and your data may be deleted from our systems 30 days after the date of cancellation. You may not recover your content after that 30 day period after your account is cancelled. You should frequently and regularly back up and copy your data on the Velpic Services during your use of the Velpic Services. Any statutory retention requirements with respect to your data or information remain your responsibility. In our sole discretion, upon application, Velpic may be able to provide you with your data if you request it within 30 days of cancellation, for an additional fee (to be agreed between the parties at the time).

All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, ownership, warranties, disclaimers and limitations of liability.

If you do not log into your Velpic Services account for more than 700 days, your account may be suspended at Velpic's sole discretion and Velpic will flag (with you and the Reseller) that suspended account as being suspended. If your account is flagged as suspended, you will have 30 days from the date that the suspension is flagged to you to log in to your account again otherwise your account and its data, including End User signups, may be closed and permanently removed from Velpic's database.

5. Fees and taxes

All fees and taxes ("Fees") for your use of the Velpic Services shall be paid by you direct to the Reseller.

To the extent permitted by law, all fees are non-refundable in any circumstances, including if you only use part of a month or year's subscription for the Velpic Services.

If your account has fees overdue by more than 30 days, you will be notified (via email or in writing otherwise) and Velpic reserves the right to suspend your access to and/or use of the Velpic Services until you are current on your payments of the relevant Fees.

If you are carrying out a free trial of the Velpic Services, the free trial will begin on the day that your account is opened and end 14 days later. If you wish to

continue using the Velpic Services at the end of the free trial period, you will need to contract for the full service and pay the relevant Fees. If you do not contract for the full service, your trial service will be terminated at the end of the 14 day trial period (unless the parties specifically agree otherwise in writing at the time).

6. Upgrading or downgrading your account

You may upgrade or downgrade your account at any time by contacting the Reseller who will arrange the upgrade or downgrade for your account.

If you downgrade your account, no refunds will be paid in respect of any unused portion of any higher account offering and your fees will remain the same for the remainder of the initial term.

If you upgrade your account, any Fees that you have paid in advance will be credited to your new upgraded account plus you will be liable to pay and increase in fees applicable as a result of your account upgrade.

Downgrading your account may cause the loss of content, or features or capacity of your account, and therefore adversely affect your use (including functionality) of the Velpic Services. If you choose to downgrade your account, neither Velpic nor the Reseller will accept any liability for the resulting loss of data, content, features or capacity.

7. Velpic Services are provided "as is"

The Velpic Services are provided on an "as is" and "as available" basis, and your use of them is at your sole risk. Velpic will try to promptly address (during normal business hours) all errors and technical issues that arise in connection with the Velpic Services.

Neither Velpic nor the Reseller warrant that: (a) the Velpic Services will meet your specific requirements; (b) the Velpic Services will be uninterrupted, timely, secure, or errorfree; (c) the Velpic Services will be accurate or reliable; (d) the quality of any products, services, information, or other material purchased or obtained by you through the Velpic Services will meet your expectations; or (e) any errors in the Velpic Services will be corrected.

You acknowledge that Velpic may use third party suppliers to provide some of the hardware, software, networking, connectivity, storage and other technology in order to provide the Velpic Services and that the Velpic Services may be subject to limitations, delays and other problems inherent in the use of such services provided by third party suppliers which may be beyond the control of

Velpic and the Reseller. Delays, problems, acts and omissions of those third party suppliers may be outside of Velpic's control, and Velpic does not accept any liability for any loss or damage suffered as a result of any delay, problem, act or omission of any such third party supplier.

On behalf of itself, the Reseller and such third party suppliers, Velpic excludes any other warranties that may be implied or otherwise apply under statute or other applicable law, to the maximum extent permitted by law.

8. System Requirements

You acknowledge that in order to use the Velpic Services, you require a modern browser, such as the latest or last version of Internet Explorer, Firefox, Safari or Google Chrome and a stable connection to the Internet. The Velpic Services may work in a limited manner on other web browsers (such as earlier versions of the previously mentioned browsers), but the Velpic Services were not designed for use on web browsers other than those recommended above.

9. Usage Limits

Both the number of online courses you create, manage, deliver and track and the number of kilobytes of data transferred when creating, managing, delivering and tracking courses are metered by Velpic.

If you have a limited subscription version of the Velpic Services, you must adhere to the usage limits for your service as advised by the Reseller. You are responsible for reviewing your service usage and for remaining within your usage limits for the Velpic Services. If you have reached your usage limit for the associated subscription period, Velpic or the Reseller will use reasonable endeavours to contact you and request you to upgrade your paid subscription to the next level. If you exceed your subscription limits your access to the relevant Velpic Services may be suspended until you have upgraded to the next subscription level or until the start of the next subscription period, whichever comes first.

10. Website and Velpic Services availability

You acknowledge that the operation and availability of the system used for accessing the Velpic Services can be unpredictable and that down-time of the Velpic Services themselves, either scheduled or unscheduled, may occur from time to time. Velpic will take reasonable steps to ensure this amount of downtime is limited. Neither Velpic nor the Reseller will be held liable for the consequences of any downtime of the Velpic Services (including your data held therein).

Despite our use of industry standard anti-virus software and other related security precautions, Velpic cannot guarantee that any file or program available for download and/or execution from or via the Velpic Services is free from viruses or other harmful conditions which could damage or interfere with data, hardware or software with which it might be used, and neither Velpic nor the Reseller will be liable for any loss or damage caused by any such viruses or harmful conditions. You acknowledge that you assume all risk of use of all programs and files associated with the Velpic Services but not provided by Velpic (and its suppliers), and you will not hold Velpic responsible for any consequences of its use.

11. Your Overseas Access

The Velpic Services may be accessed by you and your end users throughout Australia, New Zealand and overseas. However, unless specifically set out in your Agreement terms, Velpic makes no representations that the Velpic Services comply with the laws (including intellectual property laws) or requirements of any country outside Australia and New Zealand. If you access the Velpic Services from outside Australia or New Zealand, you do so at your own risk and are responsible for complying with the laws in the place where you access the site. Velpic and the Reseller shall not be liable for any failure of the Velpic Services to comply with any laws or requirements in any country outside Australia and New Zealand.

12. Limited Liability

Notwithstanding any other provisions in the Agreement, to the maximum extent permitted by law, except for liability for breach of applicable Australian or New Zealand legislation, under no circumstances shall Velpic or the Reseller or any of their respective officers, staff or agents, be liable to you or any other person for any loss or damage (including but not limited to direct, indirect exemplary, special, incidental, cover, reliance or consequential damages, loss of profits or revenue, business interruption, loss of data, or failure to realise anticipated savings or benefits or business opportunities), or for any claim by any other party.

The above limitation of liability applies whether the claim is in contract, tort (including without limitation, negligence) or equity and even if Velpic or the Reseller has been notified of the possibility of such loss or damage.

If, despite the foregoing paragraphs, Velpic or the Reseller is found to be liable to you for any loss or damage, then Velpic's and the Reseller's maximum aggregate liability for any loss or damage under or in connection with this Agreement or related to your use of the Velpic Services is limited to the amount

of Fees paid by you to the Reseller for the Velpic Services (only) in the 12 months prior to the date upon which your claim arose. You agree that Velpic's and the Reseller's liability to you at law will be reduced by the extent, if any, to which you contributed to the loss.

13. Restrictions

This is an Agreement for the Velpic Services, and you are not granted a licence to any software under this Agreement. Except solely to the extent that applicable laws prevent Velpic from doing so, you will not, directly or indirectly: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of, or found at or through the Velpic Services or any software, documentation, or data related to the Velpic Services (the "Software"); (ii) remove any proprietary notices or labels from the Velpic Services or any Software; (iii) reproduce or copy the Software or the Velpic Services or any part thereof; (iv) modify, translate, or create derivative works based on the Velpic Services or any Software; or (v) copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the Velpic Services or any Software.

The Velpic Services shall be used for your internal business (which includes civic or charitable) purposes only and you shall not use the Velpic Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party. The above prohibition against modifying, translating, reverse engineering, decompiling, disassembling or creating derivative works based on the Velpic Services or the Software does not affect your rights under any applicable country-specific legislation which prohibits or restricts such prohibitions.

You may not publish or use Velpic's brand, branding or logos without the prior written consent of Velpic. Your use of the Velpic Services confers no title or ownership in the Velpic Services, and is not a sale of any rights in the Velpic Services. All ownership rights remain in Velpic or its third party suppliers, as applicable.

14. Responsibilities

You are responsible for all activity that results from use of the Velpic Services through your account.

You are responsible for maintaining the security of your account, username, passwords, and files and for all uses of your account and of the Velpic Services in your name. Velpic and the Reseller will not be liable for any loss or damage that may result from any failure to keep usernames and passwords secure.

You are solely responsible and liable for all content, materials, and information that you upload and/or transmit using or relating to the Velpic Services.

You acknowledge and agree that: (a) through your use of the Velpic Services you may be exposed to content from a variety of sources, and to content that is inaccurate, offensive or objectionable; (b) Velpic is not responsible for the usefulness or accuracy of such content; and (c) notwithstanding anything to the contrary in this Agreement, Velpic does not assume any liability, and to the maximum extent permitted by law, will not be liable, for any content uploaded to, accessed via, and/or sold or made available through, the Velpic Services, whether by Velpic or any third party.

You are responsible for making sure that all End Users that access the Velpic Services through your account comply with all terms of this Agreement that apply to them. You acknowledge that you are solely responsible for your End Users' actions while using the Velpic Services and agree to indemnify and defend Velpic and the Reseller from any claims, demands or lawsuits of any kind arising from your End Users' breach of this Agreement, and for any claim brought against Velpic or the Reseller by your End Users for any reason whatsoever.

You acknowledge that the Velpic Services may contain materials produced or provided by third parties or links to other websites, over which (by nature of the services provided) Velpic may have limited or no control over the content for, and Velpic does not accept any liability for any loss or damage suffered as a result of any delay, problem, act or omission of any such third party materials. You also acknowledge that Velpic is entitled to require you to remove any link from another website to the Velpic Services which you install without obtaining Velpic's or the Reseller's prior written consent.

You indemnify Velpic against all forms of liability, actions, proceedings, demands, costs, charges and expenses which Velpic may incur or suffer as a result of the misuse of the Velpic Services through your account or as a result of your failure to comply with the terms of this Agreement.

15.No malicious or illegal use

You will not violate or attempt to violate the security of our website or the Velpic Services. You will not hack into the Velpic website(s), Velpic's computer systems or the computer systems of other users of the Velpic Services. Hacking means unauthorised access, malicious damage and/or interference and includes, without limitation, mail bombing, propagating viruses, worms or other types of malicious programs, deliberate attempts to overload a computer system,

broadcast attacks or any other method designed to damage or interfere with the operation of a computer system or website.

You must not use the Velpic Services to store, distribute or publish racist, abusive, discriminatory, defamatory or sexual content, content glorifying violence or other illegal content in violation of any applicable laws, content that we deem inappropriate in our sole discretion, or content that infringes the intellectual property rights or other rights of any third party.

Velpic and the Reseller reserves the right, but has no obligation, to monitor any and all content and your use of our Velpic Services. Velpic may, in our sole discretion (in consultation with the Reseller), remove any content and/or suspend your use of the Velpic Services for any breach of the terms of this Agreement or where required to do so by law (including court order etc.), in which case you are not entitled to any refund or credit relating to such removal or suspension. Removal of content or suspension of your use of the Velpic Services will follow a period of efforts to consult with you about the issue, unless prohibited by legal requirements.

16. Intellectual Property

Velpic owns or has the right to use all property in the Velpic Services, including all copyright, trademarks, design rights, moral rights, service marks, trade names, know-how, confidential information, patents, licences, inventions and other intellectual property rights in the Velpic Services (our "IP"). You may not reproduce any of the content on our Sites without getting our permission in writing. You do not have any rights to our IP except granted under this Agreement or any other agreement you have with us. You agree not to challenge or do anything inconsistent with such ownership.

You own, or warrant that you are authorised to use, the intellectual property rights in any data you submit to the Velpic Services.

All information relating to the Velpic Services that could reasonably be considered by its nature to be confidential will be treated by you as confidential unless we give our permission for you to use the information, or the information is in the public domain otherwise than by a breach of this Agreement.

You agree to notify us immediately if you become aware that any person may have unauthorised knowledge, access to or use of the Velpic Services.

Your obligations under this clause will survive termination of this Agreement.

17. Termination

If you (or your end users) commit a material breach of this Agreement and fail to remedy that breach within 30 days of receiving notice requiring you to do so, or commit a material breach incapable of remedy, then Velpic or the Reseller may terminate this Agreement (and thereby your access to the Velpic Services, including any data therein) by written notice, effective immediately.

Velpic or the Reseller may terminate this Agreement immediately by notice if you (or your end users) breach clause 15 or 16 of this Agreement, or otherwise use the Velpic Services in a way which breaches any applicable law.

18. Overseas Access to Personal Information

You acknowledge that while the Velpic services will be entirely hosted in Australia, some Velpic personnel physically located in New Zealand, Philippines and the United States of America will provide support services for the Velpic Services and thereby they will have access your (and your End Users') Velpic Services related data. You hereby consent to such overseas access to your data and that of your End Users. Velpic will ensure that access to all data will be controlled and accessed according to privacy rules of at least the same standard as would apply to such data inside Australia, and that your data will not be stored outside Australia.

19. General

If any provision of the Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

No delay or omission by either party in exercising any right or remedy under this Agreement or existing at law or equity shall be considered a waiver of such right or remedy.

No agency, partnership, joint venture, or employment is created as a result of the Agreement, and you do not have any authority of any kind to bind Velpic or the Reseller in any respect whatsoever.

In any action or proceeding to enforce rights under the Agreement, the prevailing party will be entitled to recover its costs and legal fees.

The Agreement shall be governed by the laws of the State of Western Australia without regard to its choice of law or conflict of law provisions. All legal actions in connection with the Agreement shall be brought in the state or federal courts located in Perth, Western Australia, Australia.

20. Force Majeure

Velpic and the Reseller will not be liable by reason of the failure in the performance of Velpic Services or the obligations under this Agreement by reason of strikes, riots, fire, explosions, acts of God, war, governmental action, epidemic, or any other cause which is beyond Velpic's and the Reseller's reasonable control.