



## Terms and Conditions

For subscriptions to e-lr Services and use of this website  
(Effective Date: 23 October 2019)

### Important - please read carefully.

The following terms and conditions apply to your use of this website and set out the basis upon which we permit authorised subscribers and users to access and use the e-lr Services on and through this website.

These updated terms and conditions apply to all new e-lr Services Subscription Agreements entered into on or after 23 October 2019.

For those with current Subscription Agreements that were entered into with us before 23 October 2019 the superseded Terms and Conditions which apply to your agreement may be found [here](#).

### 1. Use of this website

- 1.1 When you access our website or download information from it, you acknowledge that you have read these Terms and Conditions and agree to be bound by them. If you do not agree to abide by these Terms and Conditions you must not use this website or download anything from it.

### 2. Definitions and Interpretation

- 2.1 In this document, unless the context requires otherwise or a contrary intention appears:

- (a) **“Authorised Users”** means any secondary classroom music teachers employed by the Subscriber and their students/pupils and trainee secondary classroom music teachers working with those teachers or students/pupils;
- (b) **“Authorised Representative”** means a teacher or other employee of the Subscriber who is authorised to request a Trial Evaluation and/or enter into a Subscription Agreement on behalf of the Subscriber;
- (c) **“Content”** means all media, information, data, materials, design, features, software or other content including videos, photographs, images, graphics, animations, sounds, text and music hosted, streamed, played or otherwise made available or accessible on or through our website;
- (d) **“Copyright Act”** means the *Copyright Act 1968 (Cth)*;
- (e) **“Copyright Laws”** means any laws (including international treaties and agreements) which govern rights and obligations in respect of copyright that are applicable to the Content owned by us and our third party licensors, including laws of countries other than Australia;
- (f) **“copyright protected Content”** means this website and all Content protected by Copyright Laws;
- (g) **“e-learning resources”, “we”, “us” or “our”** means Melville/Myers Pty Ltd ACN 106 068 562, an Australian company trading as e-learning resources ABN 14 792 830 059;
- (h) **“e-lr Services”** means the cloud-based secondary classroom music teaching and learning resources and all associated Content supplied and made available by e-learning resources on, from or through our website to authorised subscribers and users for the Permitted Use;
- (i) **“Licence”** means the licence granted under clause 5 or clause 6, as the case may be;
- (j) **“Moral Rights”** means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature anywhere in the world;
- (k) **“Permitted Use”** means use of the e-lr Services for non-commercial secondary classroom music education purposes including teaching, learning, private study, tutoring and research;
- (l) **“Subscriber”, “you” or “your”** means the school, college or similar educational institution which has been granted a Trial Evaluation and/or entered into a e-lr Subscription Agreement to access and use the e-lr Services in accordance with these Terms and Conditions;
- (m) **“Subscription Agreement”** means a legally binding agreement between the Subscriber and us for access to and use of the e-lr Services for the Permitted Use for the Term in accordance with these Terms and Conditions;
- (n) **“Subscription Fee”** means the fee payable for a 12 month subscription to the e-lr Services at the rate in effect when you subscribed or renewed your subscription;
- (o) **“Term”** means a period of 12 months (unless the Subscription Agreement is terminated earlier under these Terms and Conditions) commencing on the date we provide your Subscriber and Authorised Users e-lr Services login details to access the e-lr Services;
- (p) **“Terms and Conditions”** means the terms and conditions contained in this document;
- (q) **“Trial Evaluation”** means access to and use of the e-lr Services for a free trial for a one-off period of 14 days in accordance with these Terms and Conditions;
- (r) where the context permits, **“you”** and **“your”** also includes your Authorised Users and any other person who accesses this website in accordance with a Subscription Agreement or otherwise;
- (s) words in the singular include the plural and vice versa;
- (t) the words **“include”** and **“including”** and similar expressions will not be construed as words of limitation;
- (u) a reference to a **“right”** includes a legal, equitable, contractual, statutory and any other right, title, interest, power, authority, benefit, privilege, remedy, discretion or cause of action;
- (v) a reference to an **“obligation”** includes any legal, equitable, contractual, and statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability as described in these Terms and Conditions;
- (w) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning; and



- (x) a reference to any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them.

### 3. Warranty of Authority

- 3.1 When you request a 14 day Trial Evaluation or apply for a 12 month subscription to the e-Ir Services, you and your Authorised Representative each represent and warrant that the Authorised Representative has the right and authority to request the Trial Evaluation and enter into a Subscription Agreement for and on your behalf.

### 4. Subscription Agreement

- 4.1 For those applying for a subscription to access and use the e-Ir Services after 23 October 2019 you acknowledge and agree that:

- (a) you have read and agree to be bound by these Terms and Conditions;
- (b) you must ensure that you obtain necessary consents and permissions (if any) required by law from students, their parents and guardians to access and use the e-Ir Services as Authorised Users;
- (c) your application for the subscription constitutes your offer to enter into a Subscription Agreement upon and subject to these Terms and Conditions;
- (d) a legally binding Subscription Agreement will become effective on and from the date you receive your Subscriber and Authorised Users e-Ir Services login and password details from us, which is deemed to constitute our acceptance of your offer; and
- (e) you must pay the Subscription Fee within 14 days from the date of our tax invoice.

### 5. Licence - Trial Evaluation

- 5.1 Upon our acceptance of your request for a Trial Evaluation, you are granted a non-exclusive, non-transferable licence to permit your Authorised Representative to access and use the e-Ir Services only for the purpose of evaluating the features and suitability of the e-Ir Services. The Licence for the Trial Evaluation is subject to these Terms and Conditions. After the expiry of the 14 day Trial Evaluation period, you may not access or use the e-Ir Services in any way unless you enter into a Subscription Agreement.

### 6. Licence - Subscription Agreement

- 6.1 Upon our acceptance of your application for a subscription to the e-Ir Services, you are granted a non-exclusive, non-transferable licence to access and use, and to permit Authorised Users to access and use the e-Ir Services only for the Permitted Use during the Term and in accordance with these Terms and Conditions.
- 6.2 The grant of the Licence does not impose any obligations upon us (such as requiring the provision of enhancements or upgrades to the e-Ir Services) other than those obligations expressly provided under these Terms and Conditions.
- 6.3 You must ensure that each person having access to the e-Ir Services:
  - (a) is an Authorised User;
  - (b) is informed of and agrees to these Terms and Conditions; and

- (c) accesses and uses the e-Ir Services only in accordance with these Terms and Conditions.

- 6.4 You are responsible for use of the e-Ir Services by Authorised Users and acknowledge that any failure by an Authorised User to comply with these Terms and Conditions will be deemed to be a breach of the Subscription Agreement by you as if such failure was your act or omission.

- 6.5 You:

- (a) may not assign any of your rights under a Subscription Agreement;
- (b) must promptly provide us with full details of all Authorised Users upon request;
- (c) must not disclose the e-Ir Services login and password details to any person who is not an Authorised User and must ensure that Authorised Users do not disclose their login and password details to any other person;
- (d) are responsible for keeping all login and password details confidential and must notify us immediately of any unauthorised use of the e-Ir Services login and password details; and
- (e) acknowledge that we reserve the right to alter or update the e-Ir Services login and password details of the Subscriber and Authorised Users at any time during the Term.

### 7. Ownership, Copyright and other Intellectual Property

- 7.1 Unless indicated otherwise in these Terms and Conditions, we and, as applicable, our third party licensors, own all right, title and interest in and to the intellectual property, including copyright, of our website and all Content on, of, and available through the website and the e-Ir Services. For the avoidance of doubt, this includes the interface and source code of the e-Ir Services and the website.
- 7.2 We have made all reasonable efforts to clearly label copyright protected Content where the copyright in the Content is owned by a third party and to ensure that the copyright owner has consented to that Content being made available on this website.
- 7.3 The Licence does not affect the title, ownership or intellectual property rights in the e-Ir Services, our website or the Content, and except as expressly provided under these Terms and Conditions, we and our third party licensors retain all such rights.
- 7.4 The e-learning resources logo, design, interface and source code Content of this website must not be used or reproduced for any purpose other than as reasonably necessary to access and/or use the website.
- 7.5 Nothing in these Terms and Conditions excludes or limits any rights under the applicable Copyright Laws (such as fair dealing) where, and to the extent that, such exclusions or limitations are not permitted by or effective at law.
- 7.6 Except as otherwise expressly permitted under these Terms and Conditions, you must not, and you must ensure that Authorised Users do not, directly or indirectly:
  - (a) use this website or any of the copyright protected Content for any purpose which is unlawful or prohibited under these Terms and Conditions;
  - (b) use any copyright protected Content in any manner which is not expressly permitted under these Terms and Conditions, without obtaining express written



- permission from us and/or our relevant third party licensors;
- (c) remove, alter or obscure any copyright notice or mark appearing on any copyright protected Content;
  - (d) commercialise any copyright protected Content; or
  - (e) copy, modify, duplicate, create derivative works from, frame, mirror, republish, reverse engineer, disassemble, reverse compile, download, transmit or distribute all or any portion of the copyright protected Content (including any photographs, images, videos and sound recordings) in any form or media or by any means, without obtaining express written permission from us and/or our relevant third party licensors.
- 7.7 You acknowledge that the copyright protected Content is the subject of Moral Rights and you must not at any time do, permit or authorise any act that infringes the Moral Rights of the author or performer of copyright protected Content.
- 7.8 This website may contain links to third party websites and some videos may be hosted on external platforms such as YouTube over which we have no control. You acknowledge and agree that:
- (a) we are not responsible for the content and terms of use, including licence terms, set out on the third party's website; and
  - (b) the links do not constitute endorsement or recommendation by us of any material on those sites, or any associated organisation, product or service.
- 7.9 The provisions of this clause will survive the expiry or termination of your Subscription Agreement.
- ## 8. Warranties and Guarantees
- 8.1 In this clause, "Australian Consumer Law" means Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*.
- 8.2 Nothing in these Terms and Conditions excludes, restricts or modifies the application of any legislation which by the law of any jurisdiction cannot be excluded, restricted or modified.
- 8.3 If you are a "consumer" for the purposes of the Australian Consumer Law, certain guarantees, rights and remedies may be conferred on you in respect of services supplied or offered by e-learning resources which cannot be excluded, restricted or modified. If so, then to the maximum extent permitted by law, our liability to you is limited at our option to resupply of those services or payment of the cost of resupplying those services.
- 8.4 We represent and warrant that we have the right and authority to make the e-Ir Services available pursuant to a Subscription Agreement with you.
- 8.5 Subject to clauses 8.3 and 8.4 and to the maximum extent permitted by law, the e-Ir Services are provided on an "as is", "as available" basis and, unless expressly stated to the contrary in these Terms and Conditions, we exclude all representations, warranties or guarantees, whether express or implied, by statute, trade or otherwise.
- 8.6 You acknowledge and agree that:
- (a) the e-Ir Services cannot be and are not guaranteed to be error free and further acknowledge that the existence of any such errors will not constitute a breach of our obligations under these Terms and Conditions;
- (b) the e-Ir Services forms part only of a complete secondary classroom music education and training program; and
  - (c) you have an opportunity to use the e-Ir Services for a free Trial Evaluation and will examine and satisfy yourself regarding the features and operation of the e-Ir Services and its suitability for your particular purpose prior to entering into a Subscription Agreement
- 8.7 We do not warrant or guarantee:
- (a) that you will be able to use the website at any time;
  - (b) that your use of the website and e-Ir Services will be continuous, uninterrupted, secure or error-free; or
  - (c) that the Content is accurate, current or complete.
- ## 9. Limitations
- 9.1 Unless expressly stated to the contrary in these Terms and Conditions, subject to clause 8.3 and to the maximum extent permitted by law, a Covered Party (as defined below) will not be liable for any loss, injury, claim, liability, or damage of any kind resulting in any way from:
- (a) any errors in or omissions from the e-Ir Services;
  - (b) the unavailability or interruption to the supply of the e-Ir Services or any Content;
  - (c) your use or misuse of the e-Ir Services;
  - (d) any delay or failure in performance beyond the reasonable control of a Covered Party; or
  - (e) any negligence of a Covered Party or its employees, contractors or agents in connection with the performance of our obligations under these Terms and Conditions.
- 9.2 "Covered Party" means us, and any officer, director, employee, subcontractor, agent, successor, or assignee of us.
- 9.3 Our liability to you for loss or damage of any kind (including loss or damage caused by negligence) is reduced to the extent that you caused or contributed to that loss or damage.
- 9.4 Subject to clause 8.3 and to the maximum extent permitted by law, the aggregate liability of the Covered Parties whether for breach of these Terms and Conditions or in tort (including negligence) or for any other common law or statutory cause of action will not exceed the lesser of your actual direct damages or the Subscription Fee paid for the e-Ir Services in the twelve month period immediately preceding the date the claim arose.
- 9.5 Subject to clause 8.3 the Covered Parties will not be liable for any special, indirect, incidental, or consequential damages of any kind whatsoever (including, without limitation, legal fees and loss of profits, contracts, business, revenue, goodwill, anticipated savings, business information or data) in any way due to, resulting from, or arising in connection with the e-Ir Services, or the failure of any Covered Party to perform its obligations, regardless of any negligence of any Covered Party.
- ## 10. Termination
- 10.1 We may terminate your Subscription Agreement if you or any Authorised Users fail to comply with or observe any of the provisions of these Terms and Conditions and where





that failure is capable of remedy and you fail to remedy such a failure within seven (7) days of notice specifying the failure and requiring it to be remedied.

- 10.2 Upon expiration or termination of a Subscription Agreement for any reason, all rights, obligations and Licences of the Subscriber and Authorised Users will immediately cease, except that all obligations that accrued prior to the effective date of expiration or termination and remedies for breach of these Terms and Conditions will survive.

## 11. Accessibility

11.1 You acknowledge that access to the e-lr Services or particular Content provided through this website may from time to time be unavailable due to:

- (a) scheduled system back-up or other on-going maintenance as required and scheduled in advance; or
- (b) circumstances beyond our control including internet service provider or communication network failures and Force Majeure events,

in which case, to the maximum extent permitted by law, we will not be liable for any loss or damage sustained by you caused by the unavailability of the e-lr Services or particular Content.

## 12. Force Majeure

12.1 We will not be responsible to you for any failure to perform or for delay in performing an obligation under a Subscription Agreement in the event and to the extent that such failure or delay is caused by force majeure.

12.2 For the purposes of a Subscription Agreement, force majeure will mean any circumstance which is beyond our reasonable control and for which we are not responsible including to flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions, computer virus, malware resulting in Denial of Service Attacks or ransomware.

12.3 We will give you notice of a force majeure event as soon as practicable after the occurrence of such an event.

## 13. Security and disclaimer

13.1 We will take reasonable technical and organisational precautions to prevent the loss, misuse or alteration of your personal information. It should be noted that data transmission over the internet is inherently insecure, and we cannot guarantee the security of data sent over the internet.

13.2 You and Authorised Users are solely responsible for the security of your computer equipment or other device (including any data stored on your computer equipment or other device) and for using appropriate and up-to-date software on your computer equipment or other device to detect and manage the threat posed by viruses and other harmful code.

13.3 We do not warrant or guarantee the security of this website, and accept no responsibility, and will not be liable for any damage to or viruses that may infect your computer equipment, systems or other property as a result of your access to, use of, or browsing in this website, or your downloading of any materials, data, text, images, video, or audio from this website. You and all Authorised Users assume all risks associated with the use of this website including:

- (a) risk of your computer equipment or other device, software or data being damaged by any virus or

other harmful code, however described, which might be transmitted or activated via this website or your access and use of linked websites; and

- (b) risk that the Content on this website and material on linked websites may not comply with the laws, regulations, rules and other such legislative instruments in force in Australia or any country outside of Australia.

## 14. Miscellaneous

14.1 We reserve the right to amend these Terms and Conditions from time to time including for compliance with any new laws. Amendments will take effect 7 days after we give you notice of the amendments. However, if you consider any amendments to be detrimental to you, you may give us notice to that effect in which case those amendments will not apply to your Subscription Agreement current at the date of our notice.

14.2 These Terms and Conditions are governed by and are to be construed and enforced in accordance with the laws in force in the State of Queensland, Australia (without regard to conflict of law principles which may direct the application of another jurisdiction's laws). You irrevocably and unconditionally agree to submit to the exclusive jurisdiction of the courts of the State of Queensland for the purpose of hearing and determining any suit, action or proceedings and/or to settle any disputes arising out of or in any way relating to these Terms and Conditions. If you access and/or use the e-lr Services from a location outside of Australia, you do so of your own initiative and are responsible for compliance with all applicable local laws.

14.3 The failure of us or any of our third party licensors of copyright protected Content to enforce any provision of these Terms and Conditions will not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time.

14.4 These Terms and Conditions will be enforced to the fullest extent permitted by applicable law. If anything in these Terms and Conditions is unenforceable, illegal or void then it is severed and the rest of these Terms and Conditions remain in force.

14.5 Except as otherwise provided in these Terms and Conditions, all notices and other communications to you will be in writing or displayed electronically in this website by us. Notices to you will be deemed to have been properly given on the date mailed, emailed or displayed in the website, as applicable; or on the date received, if delivered in any other manner. Notices to us should be sent by email to [support@e-lr.com.au](mailto:support@e-lr.com.au). Notices to you, if sent by email or by post, will be sent to the postal address or email address we have on record.

## 14.6 PRIVACY STATEMENT

Important privacy considerations including the collection and use of personal information by us in the course of providing the e-lr Services are contained in our [Privacy Statement](#).