

B ONLINE LEARNING TERMS AND CONDITIONS

These terms and conditions apply to your use of the Birch Learning Platform and services provided to you by B Online Learning Ltd, please read them carefully.

1. ORDER FORMS

These terms will apply to all the Customer's dealings with B Online Learning, including being incorporated in all agreements, quotations or orders under which B Online Learning is to provide services to the Customer (each an **Order Form**) together with any additional terms included in such Order Form (provided such additional terms are recorded in writing).

In the event of any inconsistency between these terms and conditions and any Order Form the clauses of these terms and conditions will prevail to the extent of such inconsistency, except that any "Special Conditions" (being terms set out and described as such in an Order Form) will prevail over the other terms of this agreement to the extent of any inconsistency.

2. THE SOLUTION

2.1 SCOPE OF SOLUTION

- (a) The Solution includes the Software, Services and Support set out in an Order Form (**Solution**).
- (b) B Online Learning may from time to time in its absolute discretion install enhancements to the Solution, where enhancements means any upgraded, improved, modified or new versions of the Solution.
- (c) B Online Learning will provide the Solution in accordance with:
 - (i) the Customer's reasonable directions; and
 - (ii) all applicable Laws and industry standards.
- (d) Unless otherwise agreed, B Online Learning may, in its absolute discretion:
 - (i) not provide any part of the Solution until the Customer has paid any fees or deposit payable in respect of such Services; and
 - (ii) withhold delivery of any part of or all of the Solution until the Customer has paid the invoice in respect of the Solution.

2.2 SOFTWARE LICENCE

During the Term, B Online Learning grants to the Customer a non-exclusive, non-transferable licence to use the Solution and Documentation to provide access to the Solution and Documentation to the number of Active Users set out in an Order Form.

2.3 HOSTING

- (a) B Online Learning will create an Instance of the "Solution" for the Customer and will provide to the Customer login details for the "Solution" upon the completion of the Implementation Services.
- (b) B Online Learning hereby grants to the Customer a worldwide, non-exclusive licence to use the "Solution" by means of a Supported Web Browser for the business purposes of the Customer in accordance with the Documentation during the Term.
- (c) The licence granted by B Online Learning to the Customer under Clause 2.3 (b) is subject to the following limitations:

- (i) the Hosted Services may only be used by the officers, employees, agents and subcontractors of either the Customer or an Affiliate of the Customer;
 - (ii) the Hosted Services may only be used by the Users identified in Schedule 1 (Hosted Services particulars) and
 - (iii) the Customer at all times can maintain Active and Non-Active Users.
- (d) **(hosting location)** The hosting location will be based on the Customer's geographical location.
- (e) **(security)** B Online Learning maintains an Information Security Policy. B Online Learning will use its best efforts to ensure that Customer Data is stored securely, however B Online Learning does not accept responsibility or liability for any unauthorised use, destruction, loss, damage or alteration to the Customer Data, including due to hacking, malware, ransomware, viruses, malicious computer code or other forms of interference.
- (f) **(backups & disaster recovery)** B Online Learning maintains an internal Disaster and Recovery Plan. B Online Learning will use its best efforts to create scheduled daily backups of Customer Data stored by B Online Learning. In the event that Customer Data is lost due to a system failure (e.g. a database or webserver crash), B Online Learning will attempt to restore the Customer Data from the latest available backup, but cannot guarantee that this backup will be free from errors or defects.

2.4 AVAILABILITY

- (a) B Online Learning will guarantee a system operation time of 99.95% based on an assessment of the previous 12 months. B Online Learning shall be permitted from time to time to interrupt the "Solution" in order to provide maintenance to the "Solution".
- (b) B Online Learning will advise the Customer with seventy two (72) hours' notice of such interruptions. Such interruptions shall occur outside the hours of 8:00 a.m. and 8:00 pm, Australian Eastern Standard Time, whenever possible and shall not exceed one hour.

2.5 SUPPORT SERVICES

- (a) In consideration for the payment by the Customer to B Online Learning of the Fees, B Online Learning must provide the Support to the Customer during the Term.
- (b) This standard support package provides Customers with access to authorised support during normal operating hours (9:00 – 17:00AEST), five days a week (excluding public holidays). The authorised support representative is available to help on those infrequent occasions when the "Solution" or one of its components is failing. The Customer has a dedicated web help desk which enables tracking of ticket progress.
- (c) The "Solution" Support Services program is designed to provide technical support services throughout the entire life of your "Solution" application. The intent of the Support Services Program is to provide Customers with the quality software support and services that they need to successfully use and manage the "Solution" application.
- (d) B Online Learning will use its best endeavours to provide the Support in accordance with the Service Levels in Table 1 (**Service Levels**).

Table 1: Service Levels

Priority	*Response Target	*Resolution Target
Critical	1 business hour	24 hours
High	4 business hours	120 hours
Medium	8 business hours	As appropriate
Low	24 business hours	As appropriate

**Response Target and Resolution Target Time shall be calculated on a 24x5 (business days) basis*

- (e) The severity and priority of calls are classified as follows:
- (i) **Critical** - the Customer’s Production site is down. Customer’s Production site not working in a global way and there is no work around solution
 - (ii) **High** – Solution issues affecting multiple users and issues affecting business operation, which prevents a small group of users from accessing the Solution or where the module functionality is restricted but a feasible workaround exists
 - (iii) **Medium** – notification of image/data capture issues/trends; non-critical general, operation and technical enquiries. Errors do not impact learning activities
 - (iv) **Low** – Issue will not result in an interruption to learning activities and impacts minimal number of users. Workaround exists.
- (f) “**Response Target**” refers to the targeted response time by which B Online Learning will communicate (by email, support portal or telephone) with the Client in respect of the reported problem. It does not refer to the time in which the reported problem will be resolved by B Online Learning.
- (g) “**Resolution Target**” refers to the time frame in which B Online Learning shall aim, using commercially reasonable endeavours, to rectify the reported problem. Until the necessary information, data and documents are provided to B Online Learning to enable it to reasonably assess and/or replicate the error, and/or having the Client demonstrate the error by showing B Online Learning the error occurring on its systems, the Resolution Target Time shall not commence
- (h) B Online Learning will use its best endeavours to provide the Customer with 72 hours prior notice of any downtime. Where downtime occurs without prior notice to the Customer (**Unscheduled Downtime**), the Customer will be credited with the lost service time by reducing the fees in accordance with Table 2.

Table 2: Unscheduled Downtime Credits

Unscheduled Downtime	Credit
Less than 4 hours	Nil
Between 4 and 24 hours	2.5% of one twelfth of the Annual Fee
More than 24 hours	5% of one twelfth of the Annual Fee

2.6 MAINTENANCE

- (a) B Online Learning works under a continuous deployment model. Changes will be provided to the Customer often and should not present any downtime to the end users. These changes will include:

- (i) corrections of any defects; and
 - (ii) in B Online Learning's absolute discretion, enhancements to the Solution.
- (b) What's New Alerts will be enabled to relevant users as new functionality is produced. This is intended to help users make the most of their experience with the Solution.

3. CUSTOMER'S OBLIGATIONS

3.1 USE OF SOLUTION

- (a) The Customer must ensure that all Users, comply with this agreement at all times. The Customer acknowledges and agrees that B Online Learning will have no liability for any act of a User for damage, loss or expense suffered by a User in connection with the use of the Solution and will indemnify B Online Learning for any such damage, loss or expense.
- (b) The Customer will use reasonable endeavours, including reasonable security measures relating to Account access details, to ensure that no unauthorised person may gain access to the Hosted Services using the Solution.
- (c) For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the "Solution", either during or after the Term.
- (d) The Customer must not, and must not encourage or permit any User or any third party to, without B Online Learning's prior written approval:
 - (i) make copies of the Documentation or the Solution;
 - (ii) adapt, modify or tamper in any way with the Solution;
 - (iii) remove or alter any copyright, trade mark or other notice on or forming part of the Solution or Documentation;
 - (iv) create derivative works from or translate the Solution or Documentation;
 - (v) publish or otherwise communicate the Solution or Documentation to the public, including by making it available online or sharing it with third parties;
 - (vi) sell, loan, transfer, sub-licence, hire or otherwise dispose of the Solution or Documentation to any third party;
 - (vii) decompile or reverse engineer the Solution or any part of it, or otherwise attempt to derive its source code;
 - (viii) attempt to circumvent any technological protection mechanism or other security feature of the Solution; or
 - (ix) permit any person other than Active Users to use or access the Solution or Documentation.

4. THIRD PARTY TERMS & CONDITIONS

- (a) The Customer acknowledges and agrees that third party terms & conditions (**Third Party Terms**) may apply, including but not limited to:
 - (i) Amazon Web Services, which provides the hosting services, managed by B Online Learning for the Customer; and
- (b) The Customer agrees to any Third Party Terms applicable to any third party goods and services that are used in providing the Solution, including as stated in clause 4(a)(i), and B

Online Learning will not be liable for any loss or damage suffered by the Customer in connection with such Third Party Terms.

5. PAYMENT

5.1 FEES

- (a) The Customer must pay to B Online Learning fees in the amounts and at the times set out in an Order Form, or as otherwise agreed in writing (**Fees**).
- (b) All Fees are paid in advance and non-refundable.
- (c) Annual Renewal Fees will be invoiced 30 Days in advance of annual commencement date and due by next commencement date.

5.2 TIME FOR PAYMENT

- (a) Unless otherwise agreed in writing:
 - (i) B Online Learning will send invoices to the Customer's address specified in an Order Form;
 - (ii) if B Online Learning issues an invoice to the Customer, payment must be made by the time(s) specified on such invoice; and
 - (iii) in all other circumstances, the Customer must pay for all goods and services within 30 days of date on invoice for amounts payable.
- (b) If the Customer fails to pay the Fees by the time specified on such invoice or otherwise comply with clause 5.2(a)(iii), the Customer must pay interest to B Online Learning at the rate of [2% per month].
- (c) If it becomes necessary to recover the Fees by debt collection, the Customer acknowledges and agrees that it will be liable to pay B Online Learning an additional 20% to cover administrative expenses.

5.3 GST AND OTHER TAXES

- (a) Unless otherwise indicated, the Fees do not include GST. In relation to any GST payable for a taxable supply by B Online Learning, the Customer must pay the GST subject to B Online Learning providing a tax invoice.
- (b) If the rate of any applicable tax changes, or if a new tax is introduced during the term of this Agreement, such rate or such new tax becomes applicable, and the total price shall be adjusted accordingly.

6. CARD SURCHARGES

B Online Learning reserves the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard, American Express or Diners Club).

7. INTELLECTUAL PROPERTY

7.1 CUSTOMER CONTENT

The Customer grants to B Online Learning (and its Personnel) a non-exclusive, royalty free, non-transferable, worldwide and irrevocable licence to use the Customer Content to the extent reasonably required to provide the Solution.

The Customer:

- (a) warrants that B Online Learning's use of Customer Content as contemplated by an Order Form will not infringe any third-party Intellectual Property Rights; and
- (b) will indemnify B Online Learning from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of such infringement.

7.2 B ONLINE LEARNING INTELLECTUAL PROPERTY

Unless otherwise expressly agreed in an Order Form, the Customer will not under these terms or any Order Form acquire Intellectual Property Rights in any B Online Learning IP. Any Developed IP will be solely and exclusively owned by B Online Learning.

B Online Learning grants to the Customer a non-exclusive, royalty free, non-transferable, worldwide and revocable licence to use B Online Learning IP and any Developed IP to the extent required for the Customer to use, enjoy the benefit of or exploit the Solution.

7.3 DEFINITIONS

For the purposes of this clause 6:

- (a) **"Customer Content"** means all data, works and materials: uploaded to or stored on the "Solution" by the Customer; transmitted by the "Solution" at the instigation of the Customer; supplied by the Customer to B Online Learning for uploading to, transmission by or storage on the "Solution"; or generated by the "Solution" as a result of the use of the Hosted Services by the Customer, including any Intellectual Property Rights attaching to those material's.
- (b) **"Developed IP"** means any materials produced by B Online Learning in the course of providing the Solution including software, documentation, reports, data, designs, concepts, know-how, information, advice, opinions, emails, notes whether in draft or final form, in writing, provided orally, either alone or in conjunction with the Customer or others, and any Intellectual Property Rights attaching to those materials.
- (c) **"B Online Learning IP"** means all materials owned or licensed by B Online Learning that is not Developed IP and any Intellectual Property Rights attaching to those materials.
- (d) **"Intellectual Property Rights"** means any and all present and future intellectual and industrial property rights throughout the world, including copyright, trade marks, designs, patents or other proprietary rights, Confidential Information and the right to have information kept confidential, or any rights to registration of such rights whether created before or after the date of this agreement, whether registered or unregistered.

8. CONFIDENTIALITY & RESTRAINT

8.1 CONFIDENTIALITY

Except as contemplated by this agreement, a party must not and must not permit any of its officers, employees, agents, contractors or related companies to use or to disclose to any person any Confidential Information disclosed to it by the other party without its prior written consent.

This clause does not apply to:

- (a) information which is generally available to the public (other than as a result of a breach of these terms or another obligation of confidence);
- (b) information required to be disclosed by any law; or
- (c) information disclosed by B Online Learning to its subcontractors, employees or agents for the purposes of providing the Solution or its obligations under this agreement.

8.2 RESTRAINT

For the duration of this agreement, the Customer must not employ or engage (or be knowingly involved in another employing or engaging) any officers or employees of B Online Learning with which the Customer had contact during the course of an Order Form.

9. PRIVACY

The Customer agrees to B Online Learning's Privacy Policy, located on its website which is incorporated into this agreement by reference. Please read the Privacy Policy carefully as it governs B Online Learning's collection, use, and disclosure of personal information.

10. CUSTOMER DATA

B Online Learning will:

- (a) establish, maintain, enforce and continuously improve safety and security procedures and safeguards against the unauthorised use, destruction, loss or alteration of Customer Data;
- (b) not make any undocumented, unreported or authorised configuration changes to B Online Learning's systems or to the information security controls that secure Customer Data, if those changes would materially decrease the protections afforded to Customer Data;
- (c) notify and keep the Customer notified at all times of B Online Learning's current safety and security procedures and safeguards that are made from time to time.

11. SECURITY BREACH

B Online Learning will use commercially reasonable efforts to prevent unauthorised access to Customer Data, and B Online Learning will notify the Customer of any known material security breaches or holes. The Customer acknowledges that the Software-as-a-Service Solution and data transmitted to the Solution are provided via the internet, a publicly-available computer network, and that such networks are susceptible to failure, attack and hacking.

- (a) B Online Learning will notify the Customer promptly after B Online Learning learns of any potential, actual or suspected loss, misappropriation or unauthorised access to, or disclosure or use of Confidential Information or Personal Information or other compromise of the security, confidentiality, or integrity of Confidential Information or Personal Information (collectively, **Security Breaches**);
- (b) B Online Learning will promptly investigate each potential, actual or suspected Security Breach and assist the Customer and its personnel in connection with any investigation that the Customer may desire to conduct with respect to the Security Breach; and
- (c) B Online Learning will take all steps requested by the Customer to limit, stop or otherwise remedy any potential, actual or suspected Security Breach.

12. WARRANTIES

12.1 B ONLINE LEARNING'S WARRANTIES

- (a) B Online Learning warrants that:
 - (i) during the Term, the Solution will perform substantially in accordance with the intended purpose;
 - (ii) to its knowledge, the use of the Solution and the Documentation in accordance with this agreement will not infringe the Intellectual Property Rights of any third party; and
 - (iii) the support services will be fit for purpose and provided by personnel who have expertise in the provision of those support services.

12.2 CORRECTION OF DEFECTS

- (a) B Online Learning will correct any errors, bugs or defects in the Solution which arise during the Term and which are notified to B Online Learning by the Customer unless the errors, bugs or defects:

- (i) result from the interaction of the Solution with any other solution or any computer hardware or services not approved in writing by B Online Learning;
 - (ii) result from any misuse of the Solution; or
 - (iii) result from the use of the Solution by the Customer other than in accordance with this agreement or the Documentation.
- (b) The Customer agrees to provide B Online Learning and its Personnel reasonable access to the Solution to assist B Online Learning in correcting any defects in the Solution.

12.3 EXCLUSION OF OTHER WARRANTIES

- (a) To the maximum extent permitted by applicable law, all express or implied representations and warranties (whether relating to fitness for purpose or performance, or otherwise) not expressly stated in this agreement are excluded.
- (b) Where any law (including the *Competition and Consumer Act 2010* (Cth)) implies a condition, warranty or guarantee which may not lawfully be excluded, then, to the maximum extent permitted by applicable law, B Online Learning's liability for breach of that non-excludable condition, warranty or guarantee will, at B Online Learning's option, be limited to:
- (i) in the case of goods, their replacement or the supply of equivalent goods or their repair; and
 - (ii) in the case of services, the supply of the services again, or the payment of the cost of having them supplied again.

13. LIMITATION OF LIABILITY

B Online Learning's liability for all claims in aggregate (whether those claims be for breach of contract, negligence or otherwise, and whether those claims be only for economic loss, or for personal injury or other damage) arising under or in connection with this agreement or a Order Form:

- (a) is totally excluded, to the extent it concerns liability for indirect, special and consequential damages, and damages (whether direct or indirect) reflecting loss of revenue, loss of profits and loss of goodwill; and
- (b) is limited, insofar as concerns other liability, to the total money paid to B Online Learning under this agreement as at the date the event giving rise to the relevant liability occurred (or, where there are multiple events, the date of the first such event).

14. INDEMNITY

The Customer indemnifies B Online Learning from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of:

- (a) any breach of this agreement by the Customer; or
- (b) any negligent, fraudulent or criminal act or omission of the Customer or its Personnel.

15. TERMINATION

15.1 TERMINATION BY B ONLINE LEARNING

B Online Learning may terminate these terms or any Order Form in whole or in part immediately by written notice to the Customer if:

- (a) the Customer is in breach of any term of these terms or any part of an Order Form; or
- (b) the Customer becomes subject to any form of insolvency or bankruptcy administration.

15.2 TERMINATION BY CUSTOMER

The Customer may terminate this agreement if:

- (a) B Online Learning has committed a material breach of this agreement or Order Form and has failed to remedy the breach within 30 days written notice by the Customer; or
- (b) B Online Learning becomes subject to any form of insolvency or bankruptcy administration.

15.3 EFFECT OF TERMINATION

Upon termination of this agreement, the Fees will be non-refundable and the Customer must promptly pay:

- (a) the remainder of the Fees applicable for the Term as if the agreement had not been terminated;
- (b) B Online Learning's expenses to date; and
- (c) payments required by B Online Learning's suppliers to discontinue their work.

15.4 SURVIVAL

Any provision of these terms (including in an Order Form) which, by its nature, would reasonably be expected to be performed after the termination, shall survive and be enforceable after such termination.

16. DISPUTE RESOLUTION

- (a) The parties shall endeavour to settle any dispute arising out of or relating to this agreement, including with regard to its existence, validity or termination, by mediation administered by the Australian Disputes Centre (**ADC**) before having recourse to arbitration or litigation.
- (b) The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC (**Guidelines**).
- (c) The terms of the Guidelines are hereby deemed incorporated into this agreement.
- (d) If the parties are unable to settle the dispute by mediation, either party may institute arbitration.
- (e) The parties will use their best endeavours to not proceed to litigation.

17. NOTICES

17.1 FORM OF NOTICE

Notices are to be given in accordance with the details on page 1 of this agreement. A notice or other communication to a party under this agreement must be:

- (a) in writing and in English; and
- (b) addressed to that party to:
 - (i) the postal address of that party; or
 - (ii) the email address of that party that has been regularly used by the parties to correspond during the term of this agreement (unless such email address is known to be inactive by the party giving notice).

17.2 HOW NOTICE MUST BE GIVEN

A notice must be given by one of the methods set out in the table below and is regarded as given and received at the time set out in the table below.

Method	When Notice is regarded as given and received
By hand	On delivery
By pre paid post in the same country	On the third Business Day after the date of posting
By pre paid post in another country	On the fifth Business Day after the date of posting by airmail
By email to the nominated email address	Unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address, 24 hours after the email was sent.

18. FORCE MAJEURE

- (a) If a party becomes unable, wholly or in part, to carry out an obligation under this agreement (other than an obligation to pay money) due to an event beyond its reasonable control (**Force Majeure**), that party must give to the other party prompt written notice of:
 - (i) reasonable details of the Force Majeure; and
 - (ii) so far as is known, the probable extent to which that party will be unable to perform or be delayed in performing its obligation.
- (b) Subject to compliance with clause (a), the relevant obligation will be suspended during the Force Majeure to the extent that it is affected by the Force Majeure.
- (c) The affected party must use its best endeavours to overcome or remove the Force Majeure as quickly as possible.

19. GENERAL

19.1 GOVERNING LAW AND JURISDICTION

Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

19.2 COMPLIANCE WITH LAWS

Each party is responsible for complying with all applicable laws in connection with the Solution. Neither party shall be responsible to the other party for that other party's breach of an applicable law.

19.3 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior consent of each other party (such consent not to be unreasonably withheld).

19.4 AMENDMENTS

This agreement may only be amended by a document signed by each party.

19.5 WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

19.6 SEVERANCE

If any part of this agreement is or becomes invalid, that part is severed from this agreement and that severance does not limit or otherwise affect the remaining provisions of this agreement.

19.7 FURTHER ACTS AND DOCUMENTS

Each party must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by another party to give effect to this agreement.

19.8 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

20. DEFINITIONS AND INTERPRETATION

(a) In this agreement, the following rules of interpretation apply:

- (i) **(singular and plural)** words in the singular includes the plural (and vice versa),
- (ii) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (iii) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (iv) **(person)** a reference to “person” includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (v) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (vi) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement;
- (vii) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (viii) **(currency)** a reference to “\$” or “dollar” is to Australian currency;
- (ix) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (x) **(includes)** the word “includes” and similar words in any form is not a word of limitation; and
- (xi) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision.

(b) In this agreement, capitalised terms have the meaning given to them in an Order Form, and the following phrases have the meaning set out in Table 1.

Table 1: Definitions

Term	Definition
Active User	means a unique user within the “Solution” with a unique profile ID with the Status property set to “Active”, which is granted by the Customer. An Active user will have the ability to login or be provided a unique experience with the Solution in accordance with clause 2.2.
Affiliate	means an entity that Controls, is Controlled by, or is under common Control with the relevant entity
Business Day	means any weekday other than a bank or public holiday in New South Wales
Business Hour	means the hours of 09:00 to 17:00 AEST on a Business Day
Confidential Information	means information of or provided by a party that is by its nature is confidential information, is designated by that party as confidential, or that the other party knows or ought to know is confidential, but does not include information which is or becomes, without a breach of confidentiality, public knowledge.
Customer Content	means all data, works and materials: uploaded to or stored on the “Solution” by the Customer; transmitted by the “Solution” at the instigation of the Customer; supplied by the Customer to B Online Learning for uploading to, transmission by or storage on the “Solution”; or generated by the “Solution” as a result of the use of the Hosted Services by the Customer, including any Intellectual Property Rights attaching to those material’s.
Customer Data	means the information, data and content input into or used in the Software-as-a-Service by the Customer or Users;
Documentation	means the documented use of the Solution for the client, which is created during implementation phase. These documents supplied by B Online Learning to the Customer relating to the Solution, whether in electronic or hardcopy form.
Fees	has the meaning given in clause 5.1(a) and includes the Setup Fee and Annual Fee set out in an Order Form.
Force Majeure Event	means an event, or a series of related events, that is outside the reasonable control of the party affected (including, failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, failures of any third party to comply with its obligations to a party in this Agreement which affects that party to perform its obligations under this Agreement, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars)
Order Form	has meaning given in clause 1.

Term	Definition
Personnel	means, in respect of a party, its officers, employees, contractors (including subcontractors) and agents.
Personal Information	Has the meaning given to it in the <i>Privacy Act 1988</i> (Cth)
Solution	has the meaning given in clause 2.
User	means the Customer's Active Users, its Personnel, and any other third party who are granted access to the Software or Documentation by the Customer, its Active Users or its Personnel.