

End-User License Agreement

August 2023

This End-User License Agreement (**EULA**) is a legal agreement between user of the AndroLytics Learning Record Store (LRS) and Androgogic Pty Limited (ABN 25 114 683 797) (**Androgogic**) for the use of the Androlytics xAPI Learning Record Store (LRS) software product that accompanies this EULA, which may include associated media, printed materials, online or electronic documentation, and internet-based services, and any Updates and New Releases provided by Androgogic (collectively, the **Software**).

1 Definitions

- 1.1 **Acceptable Use Policy** means the acceptable use policy published by Androgogic from time to time relating to the proper and acceptable use of the Software. The Acceptable Use Policy may be obtained at <https://androgogic.com/services/hosting/androgogic-hosting-fair-use-policy>
- 1.2 **Confidential Information** means any information in respect of the business, operations, products or services of Androgogic that is not in the public domain, including the unpublished content and methodology of the Software.
- 1.3 **Documentation** means any documentation, whether in electronic or hard copy format, provided by Androgogic relating to the Software and Services, including all documentation provided with the Software, and on any website owned or operated by Androgogic.
- 1.4 **Intellectual Property Rights** means copyright, trademarks, designs, patents, circuit layout rights, rights in respect of trade secrets and other confidential information and all other rights generally falling within the scope of this term, whether registered or unregistered and whether registrable or not.
- 1.5 **Licence Fee** means the fees charged by Androgogic for the use of the Software
- 1.6 **New Release** means a new version or new release of the Software which is made generally available from time to time by Androgogic to its licensees and resellers, which provides significant new functionality compared with the existing version of the Software.
- 1.7 **Services** means any support, training, maintenance and/or hosting services supplied by Androgogic to a Subscription User under clause 11 of this EULA.
- 1.8 **Subscription Period** means an annual licence period commencing on the Subscription Start Date and thence on its annual anniversary date.
- 1.9 **Subscription Start Date** means the date the Subscription Period commences
- 1.10 **Subscription User** means an individual who is employed by you and is authorised by you to use the Software, regardless of whether the individual is actively using the Software at any time.
- 1.11 **Updates** means any minor updates, fixes and patches released by Androgogic from time to time to its licensees and resellers produced primarily to overcome defects or issues in the Software or to provide minor improvements to the performance or functionality, but excludes a New Release.

2 Grant of licence

- 2.1 *General Licence Grant.* In consideration for your payment of any applicable Licence Fee for the Software and/or Services, Androgogic grants you a non-exclusive, non-transferable licence to use the Software and Documentation during the Subscription Period solely for the intended business operations and conditional on compliance with all the terms and conditions of this EULA.
- 1.1 *Licence Metric.* You must use the Software within the licence metrics for which you are licensed.
- 2.2 *Documentation.* You may use and reproduce the Documentation solely for the purposes of using the Software for its permitted purpose. You may make such copies of the Documentation as are reasonably required for this purpose, but you must reproduce all copyright notices in the copies.
- 2.3 *Fair Use Policy.* You must use the Software in accordance with the Fair Use Policy.
- 2.4 *Licence restrictions.* Except as expressly permitted under this EULA, you must not, and must not allow any other person to:
- (1) modify, vary, improve, translate or adapt the Software or the Documentation;
 - (2) sub-license, disclose, sell, distribute, publish, transmit or otherwise make available to any third party any part of the Software or Documentation;
 - (3) permit or allow any other person access (directly or indirectly) to the Software or Documentation, except for Subscription Users;
 - (4) reverse engineer, disassemble, decompile or otherwise reduce the Software into any human-readable form, except to the extent authorised by any applicable law;
 - (5) transmit any viruses, worms, defects, malware, trojan horses, or any items of a destructive nature; or
 - (6) use the Software for hire or rental, timesharing, service bureau or in any other way where a third party may derive benefit from the use of the Software.

3 Intellectual property

- 3.1 Androgogic retains ownership of all Intellectual Property Rights in the Software and the Documentation. You have no rights in, or to, the Software and Documentation other than the right to use it in accordance to the terms of this EULA.
- 3.2 You acknowledge and agree that the Intellectual Property Rights to any modification, improvement, enhancement, update or adaptation of the Software or Documentation (whether made by Androgogic, you, a Subscription User or any other person) will vest in Androgogic upon creation. You assign all right, title and interest in any such modification, improvement, enhancement, update or adaptation of the Software or Documentation to Androgogic immediately upon creation.
- 3.3 To the extent you or a Subscription User provides Androgogic with any feedback relating to the Software, Documentation or Services (including feedback related to usability,

performance, interactivity, bug reports and test results) (**Feedback**), Androgogic owns all right, title and interest in and to such Feedback.

- 3.4 You must promptly notify Androgogic of any third-party claim served on you relating to the Intellectual Property Rights in the Software, Services or the Documentation.
- 3.5 You must not remove any notices regarding the ownership of Intellectual Property Rights in the Software or the Documentation.

4 Upgrades

- 4.1 Androgogic may from time to time provide you with Updates to the Software. You acknowledge that Updates may be provided on an ad-hoc basis as determined by Androgogic.
- 4.2 Upgrades will include minor and major version releases. Minor version release will include bug fixes and/or security patches and/or new features and will occur periodically. Major version releases include predominantly new features and will depend on the development cycle of the LRS product and will occur every few years.

5 Personal information

- 5.1 Androgogic will process any personal information (if any) in accordance with its privacy policy published at <https://androgogic.com/androgogic-privacy-policy.pdf>

6 Confidential Information

- 6.1 You must keep confidential all Confidential Information disclosed to you in accordance with this EULA, except in respect of any information which:
 - (1) is independently developed by you without reference to the Confidential Information;
 - (2) has become generally available to the public without breach of this EULA;
 - (3) at the time of disclosure was previously known to you free of restriction; or
 - (4) is required to be disclosed by law.

7 Suspension and termination

- 7.1 Androgogic may immediately suspend your access to the Software, Documentation or Services for such period as Androgogic deems necessary if, in Androgogic's reasonable opinion, you have breached the terms and conditions of this EULA.
- 7.2 Without prejudice to any other rights under this EULA, Androgogic may terminate this EULA if, in Androgogic's reasonable opinion, you have breached the terms and conditions of this EULA.
- 7.3 Upon termination of this EULA for any reason, your right to use and receive the Software, Documentation and Services ceases, and you must securely and permanently destroy all copies of the Software and Documentation.

8 Liability

- 8.1 Limited warranty. Androgogic warrants to you that the Software will perform substantially in accordance with the accompanying Documentation (if any) for a period of 90 days from the date Androgogic gives you access to the Software. You must promptly notify Androgogic of any alleged breach of this warranty, in which case Androgogic will investigate the matter and, if applicable, use all reasonable efforts to correct the relevant non-compliance or provide a workaround. To the extent permitted by law, this clause states the entire liability of Androgogic for any breach of the warranty.
- 8.2 Androgogic does not have any obligation or liability under this clause in respect of any failure or defect of the Software caused by:
- (1) operator error or improper use, installation, alteration or modification of the Software;
 - (2) the failure to apply or install an Update or New Release; or
 - (3) use of the Software in combination with software or hardware that is not approved or authorised by Androgogic.
- 8.3 To the extent permitted by law and subject to the rest of this clause, Androgogic disclaims and excludes:
- (1) any warranty, representation or undertaking that is not expressed in this EULA; and
 - (2) all statutory or implied conditions, guarantees and warranties.
- 8.4 To the extent permitted by law, where liability under any condition, guarantee or warranty cannot legally be excluded but can be validly limited, such liability is limited to:
- (1) in the case of goods, the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; and
 - (2) in the case of the services, supplying the services again; or paying the cost of having the services supplied again.
- 8.5 To the extent permitted by law, Androgogic are not liable to you under contract, tort or otherwise in any circumstances for any indirect, economic, incidental or consequential loss or damage, or in any event for any loss of revenue, loss of production, loss of use, loss of profit, loss of anticipated savings or loss of data.
- 8.6 Subject to clause 9.3 and any laws the application of which may not be lawfully excluded, the aggregate liability of Androgogic to you on any basis and in any circumstances (including liability for negligence) arising out of or in connection with this EULA in respect of all events that give rise to liability in a calendar year, will not exceed, and is expressly limited to, the total amount paid by you in that calendar year.
- 8.7 You indemnify Androgogic in respect of all liability, damages, losses, claims and expenses caused by any breach of this EULA by you or your Subscription Users, or the use by you or your Subscription Users of the Software or Documentation, including any third party claims made in connection with the use of the Software or Documentation.

- 8.8 You agree to keep the Software protected at all times from access, use or misuse, damage, loss or destruction, by any person not authorised to use the Software.

9 General

- 9.1 *Governing law and jurisdiction.* This EULA is governed by and is to be construed in accordance with the laws in force in New South Wales, Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.
- 9.2 *Assignment or novation.* You must not assign, transfer, sub-licence or novate any of your rights or obligations under this EULA, without the prior written consent of Androgogic.
- 9.3 *Entire agreement.* This EULA (including any addendum or amendment to this EULA which is included with the Software) is the entire agreement between you and Androgogic relating to the Software, the Documentation and the Services (if any) and supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software, the Documentation and the Services or any other subject matter covered by this EULA.
- 9.4 *Severance.* If any provision of this EULA is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.
- 9.5 *Waiver.* A waiver of any right under this EULA is only effective if it is in writing.

10 Technical support

10.1 Definitions

- (1) **Annual Support** means a pre-paid support package, provided to you upon licensing of the Software.
- (2) **Defect** means a material failure of the Software to operate substantially in accordance with the applicable user guides and reference manuals, other than any failure resulting from modifications made by you (whether authorised or not), or any unauthorised acts or omissions of you.

1.2 Technical support

During the Annual Support period Androgogic permits you to:

- (1) report Defects in the Software and obtain corrections as described in this clause 11; and
- (2) Have the Software As A Service installation of the Software patched for bug fix and security purposes when required

1.3 Defect correction

- (1) Upon a suspected Defect in the Software being reported to Androgogic, Androgogic will use the provided information to seek to reproduce the Defect. If confirmed, Androgogic will use reasonable efforts to provide an Update.

- 10.2 Androgogic will include corrections in the most recent release of Software only. Software versions that are superseded by a New Release will continue to be corrected for a period of 12 months following the date of the New Release but will then not be supported any further.
- (2) Your responsibility is to install any Update released by Androgogic as a correction to the Defect reported by you.
 - (1) Limitations
- 10.3 Androgogic will not provide technical support relating to problems, errors or malfunctions caused by:
- (1) malfunction of the computer system and communications network which you or your users are using to access the Software;
 - (2) any use of the Software in disregard of any known adverse consequences, including any failure of a user to make appropriate backups, warning messages, and other written instructions;
 - (3) any other cause not attributable to Androgogic.