

## **Registered Training Organisation Materials Pty Ltd Online Subscription and Licence Agreement**

READ THIS ONLINE SUBSCRIPTION AGREEMENT (**AGREEMENT**) CAREFULLY BEFORE PROCEEDING WITH THE PURCHASE OF YOUR SUBSCRIPTION AS IT SETS OUT THE BASIS UPON WHICH WE GRANT YOU A LICENCE TO USE THE COURSEWARE.

This Agreement is between the entity you represent, or, if you do not designate an entity in connection with the purchase of a Subscription, you individually (“you” or “your”) and Registered Training Organisation Materials Pty Ltd (“RTO Materials”, “we”, “us” or “our”). This Agreement is effective on the day we provide you with confirmation of your Subscription, or the date your Subscription is renewed, as applicable.

BY PROCEEDING WITH PURCHASING YOUR SUBSCRIPTION, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

### **1. SUBSCRIPTION FEE**

- (a) In consideration of the Subscription Fee paid by you, we grant you a non-exclusive and non-transferable licence to access and use the Courseware in accordance with the terms of this Agreement for the Term for the Licensed Purposes.
- (b) You acknowledge that the Subscription allows you to access and use Courseware for the Subscription Fee which represents a discount of the total price of each individual unit of Courseware which would be otherwise payable.

### **2. ACCESS TO AND USE OF WEBSITE**

- (a) You may access the Website and Portal solely for the purpose of accessing the Courseware and in accordance with our Terms of Use.
- (b) You are responsible for maintaining all confidentiality of any authentication credentials associated with your use of the Website. You must promptly notify us of any possible misuse of your accounts or authentication credentials or any security incidental related to the Portal.

### **3. LICENCE TO USE COURSEWARE**

- (a) You may only access and use up to the maximum number of units of Courseware specified for the Subscription level you select as stated on our Website.
- (b) We retain full and complete title to the Courseware and to all updates and subsequent copies of the Courseware regardless of the media or form in which the copies may exist, including copies made in violation of the terms of this Agreement.

### **4. RIGHTS AND RESTRICTIONS ON USE OF COURSEWARE AND ACCESS TO WEBSITE**

- (a) You must not:
  - (i) resell the Courseware or create any derivative works from the Courseware;
  - (ii) use the Courseware to produce another commercial product for sale, lease, rent or otherwise in any form whatsoever;
  - (iii) resell, lend, rent, assign or transfer the Courseware or your Subscription to any third party except with our written consent;
  - (iv) allow any third party to use your Subscription to access the Website;
  - (v) represent, whether by omission or otherwise, that the Courseware is owned by any party other than us.

- (b) Where you use the Courseware for the Licensed Purposes then:
- (i) individuals attending training courses conducted by you where the Courseware is being used may retain copies of the printed Courseware for reference purposes only. You may only distribute electronic versions of the learner guide component of the Courseware in PDF form; and
  - (ii) if the Courseware is downloaded from our Website in SCORM and/or MOODLE file format (**Alternative Format**), then you may only use the Courseware in the Alternative Format for the purposes of uploading the Courseware to a learning management system accessible only by individuals attending training courses conducted by you.
- (c) You must at all times acknowledge our ownership of the Courseware and the copyright subsisting in the Courseware.

## **5. TERM AND TERMINATION**

- (a) This Agreement will remain in effect until its expiration, termination or renewal of your Subscription, whichever is earliest.
- (b) We may immediately and without prior notice terminate the Licence or Subscription if you breach any term of this Agreement. If we terminate the Licence or Subscription, your rights under the Licence terminate immediately. Any termination by us is without prejudice to any of our rights to seek and obtain damages for any breach of this Agreement by you.
- (c) No part of the Subscription Fee is refundable on termination of this Agreement.

## **6. CONSEQUENCES OF BREACH**

- (a) A breach of any term of this Agreement by you constitutes a breach of all licences granted to you by us whether under this Agreement or any other Licence Agreement.
- (b) If you fail to pay any part of the Subscription Fee, then, in addition to terminating the Licence or Subscription, we may:
- (i) seek injunctive relief against you to prevent you from continuing to use or hold the Courseware; and
  - (ii) sue for payment of the outstanding Subscription Fee, the Withholding Fee and/or the total full price of each individual unit which you have or were permitted to access pursuant to your Subscription level.
- (c) You acknowledge that:
- (i) monetary damages alone would not be a sufficient remedy for a breach of your obligations to cease using and destroy or return the Courseware at the termination or expiry of this Agreement; and
  - (ii) in addition to any other remedy which may be available in law or equity, we are entitled to interim, interlocutory or permanent injunctions or any of them, to prevent breach of this Agreement with respect to the use of our intellectual property subsisting in the Courseware.

## **7. RETURN OR DESTRUCTION OF COURSEWARE**

- (a) Upon termination or expiry of the Term, you will have no further rights to the Courseware and must:
- (i) return it immediately to us; or
  - (ii) provide us with satisfactory evidence that the Courseware, and each and every copy thereof, has been destroyed.

**8. WITHHOLDING FEE**

- (a) If you fail to comply with clause 7 within 30 days from the end of this Agreement (whether by termination of expiry), then we will charge you a Withholding Fee equal to the Subscription Fee payable for the Courseware which you do not return or provide evidence of its destruction. Your Subscription will be deemed to have been renewed and you will be deemed to have agreed to the terms of this Agreement for a further Term, the effective date being the day after your prior Subscription expired.

**9. ACCURACY OF INFORMATION**

- (a) The Courseware relies on information supplied by third party service providers.
- (b) We use our best endeavours to ensure this information is current and accurate. We will update the Courseware provided under this Agreement once changes are published by training.gov.au.
- (c) Superseded units will be offered at our discretion depending on the complexity of the superseded unit.
- (a) WE DO NOT WARRANT THAT THE INFORMATION CONTAINED IN THE COURSEWARE IS ERROR FREE. YOU AGREE THAT THE WE WILL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM ANY ERRORS OR INACCURACIES IN THE COURSEWARE, THE DOCUMENTS USED IN CONNECTION WITH IT OR INFORMATION SUPPLIED BY THIRD PARTY SERVICE PROVIDERS.

**10. VARIATION OF AGREEMENT**

- (a) We may, from time to time and without notice, vary or modify any part of this Agreement.
- (b) Any changes will be effective immediately from when we notify you of any amendments or the amended Agreement is published on the Website, whichever is earlier.

**11. INDEMNITY AND RELEASE**

- (a) You indemnify us against:
- (i) all losses and liabilities incurred by us; and
  - (ii) all legal costs (on a solicitor and own client or full indemnity basis, whichever is greater) and other expenses incurred by us in connection with a demand, action, arbitration of other proceeding (including mediation, compromise, out of court settlement or appeal);
- arising directly or indirectly as a result of or in connection with a breach or non-performance of any of your obligations of the under this Agreement whether express or implied.
- (b) You must pay to us all liabilities, costs and other expenses referred to in clause 11(a), whether or not the we have paid or satisfied them.

**12. LIMITED LIABILITY**

YOU ARE RESPONSIBLE FOR THE SELECTION AND USE OF, AND RESULTS OBTAINED FROM THE COURSEWARE. UNLESS OTHERWISE REQUIRED BY ANY APPLICABLE LAW, WE AND OUR RELATED COMPANIES, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES RESULTING FROM THE USE OF THE COURSEWARE OR WEBSITE HOWEVER CAUSED INCLUDING, WITHOUT LIMITATION, DAMAGES FOR PERSONAL LOSS OR DAMAGE, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR OTHER PECUNIARY LOSS, LOST DATA, LOSS OF COMPUTER TIME, FAILURE TO REALIZE EXPECTED SAVINGS, AND ANY OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND AND ARISING IN CONSEQUENCE OF THE COURSEWARE'S PERFORMANCE, FAILURE TO PERFORM, OR OTHER BREACH UNDER THIS LICENCE, IRRESPECTIVE OF WHETHER WE HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

OUR TOTAL LIABILITY INCLUDING, BUT NOT LIMITED TO, ANY POSSIBLE LIABILITY FOR INDEMNITY, DEFENCE AND HOLD HARMLESS OBLIGATIONS SHALL NOT EXCEED THE TOTAL AMOUNT PAID TO US UNDER THIS LICENCE.

**13. MISCELLANEOUS**

- (a) **Notices.** A notice or other communication connected with this Agreement has no legal effect unless it is in writing. Notices will be treated as delivered on the date received at the place and date down on the receipt, email transmission date, or date on the facsimile confirmation of delivery. Notices to us must be sent to the following address:

Registered Training Organisation Materials Pty Ltd  
Murdock Chambers  
South Quay  
Douglas  
Isle of Man

By email: sarah@rtomaterials.com.au

Notices to you will be sent to the address that you identify on your account as your address for notices.

- (b) **Further assurance.** Each party must promptly at its own cost do all things necessary or desirable to give full effect to this Agreement.
- (c) **Entire Agreement.** This Agreement and those parts of the Website referred to within this Agreement form the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes any prior agreement or understanding on anything connected with that subject matter.
- (d) **Waiver.** A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- (e) **Severability.** If any provision of this Agreement is unenforceable, illegal or void or makes this Agreement or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Agreement remains in force.
- (f) **Survival of obligations.** Termination or expiry of this Agreement does not relieve you of your obligations under clauses 6, 7, 10 or 11.
- (g) **Governing law.** The law of Western Australia, Australia governs this Licence. The parties submit to the non-exclusive jurisdiction of the Courts of Western Australia and of the Commonwealth of Australia.

**14. DEFINED TERMS**

In this Agreement:

- (a) **Courseware** means the materials purchased through and downloaded via our Website;
- (b) **Licensed Purposes** means the purposes of your training and education of either your employees or customers of your training centre;
- (c) **Portal** means the site providing access to the Courseware located at our Website;
- (d) **Subscription** means an enrolment for access to the Portal for the Term;
- (e) **Subscription Fee** means the fee payable by you per year for the Subscription set out on our Website;
- (f) **Term** means the period commencing on the effective date of this Agreement and ending 2 years after that date subject to termination under clause 5;
- (g) **Website** means the website that can be found at <http://www.rtomaterials.com.au> or any other website we identify; and



(h) **Withholding Fee** means the fee payable under clause 8.