

Licence Agreement

This is a Licence Agreement between The Trustee for TL Trust trading as RTO Works (“RTO Works”) ABN 32 620 355 338 (as “Licensor”) and RTO Works’ customers, users or clients (as “Licensee”).

The following indicates the purchased learning and assessment units for:

OVERVIEW

1. This Licence Agreement sets out the way in which the Licensee shall deal with the training and assessment materials and any other materials the Licensor provides to the Licensee under any arrangement (the “Work”).
2. The Licensor is the author of the Work. The Licensee’s use of the Work does not grant or transfer to the Licensor any rights, title or interest in relation to the Work.
3. The Licensee must not reproduce, exploit or use any of the Work for the purpose of re-selling the Work, or offering products or services similar to the Licensor’s for any purpose other than the purpose specified in this License Agreement.
4. The Licensee must not breach the Licensor’s intellectual property rights connected with the Work, including (without limitation) altering or modifying any of the Work or creating Derivative Works from the Work (unless expressly permitted by the terms of this License Agreement).
5. The Licensee must ensure that the copyright information shown in the Work (i.e. in the footer of each document) is retained.

RECITALS

6. The Licensee has requested to use the Work.
7. The Licensor is the owner of the Intellectual Property Rights of the Work.
8. Subject to this agreement, the Licensor agrees to allow the Licensee a licence to use the Work.

DEFINITIONS

9. In this Licence Agreement, the following definitions apply:

“**ACL**” means the Australian Consumer Law which is contained in the Competition and Consumer Law Act 2010 (Cth).

“**Derivative Works**” means works that are an adaptation of the Work, that reproduce a substantial part of the Work, or that combine the Work with other pre-existing work.

“**Intellectual Property Rights**” means, in relation to the Work, or any part, summary or derivation of the Work, all present and all future right title and interest in or to any confidential information, business know-how, inventions, business systems or other related information.

“**Licence**” has the meaning as defined in the “Grant of Licence” clause of this Licence Agreement.

“**Moral Rights**” means the same as in the Copyright Act 1968 (Cth).

“**Party**” means Licensor or Licensee and “**Parties**” means the Licensor and Licensee, collectively.

“Purpose” has the meaning as defined in the “Grant of Licence” clause of this Licence Agreement.

10. All other terms within will take their ordinary meaning from the Interpretation Act 1987 (NSW).

GRANT OF LICENCE

11. The Licensor owns any materials that are supplied, under any arrangement, to the Licensee including training and assessment materials or other materials connected or related thereto such as policies and procedures, training and assessment strategies, business plans, checklists, reports, and any other documents that may be used by the Licensee in the operation of its business.
12. The Licensor has issued an invoice to the Licensee that itemises the Work to be supplied to the Licensee by the Licensor. Upon receipt of payment of the invoiced amount in full by the Licensor, the Licensor will provide a license to the Licensee to use the Work in accordance with the terms and conditions set out in this License Agreement (the “Licence”).
13. The Licence permits the Licensee to use the Work, for an indefinite period and for an indefinite number of students, for the sole purpose of delivering training and assessment services in the course of the Licensee’s ordinary training and assessment business (the “Purpose”).
14. The Licensee may not use the Work for any purposes other than the Purpose described under the preceding clause, except with the Licensor’s express written permission.
15. The Licensor retains title, rights, interests, licences and ownership of the Work, except as otherwise expressly provided by this Licence Agreement or other express written permission.

FEE

16. As a condition precedent to the License, the Licensee must pay the Licensor the fees or other amounts payable or owed by the Licensee to the Licensor. Upon payment of this amount in full, the Licensee gains the License.
17. Subject to the ACL, once the Work has been supplied by the Licensor, electronically or otherwise, the Licensee will not be permitted to seek a refund.
18. Unless otherwise agreed to by the Parties, the fees payable exclude Goods and Services Tax (GST). In the event that GST is payable, the Licensee will pay to the Licensor an amount equal to the GST payable. The GST must be paid at the same time as the fees.

MODIFICATIONS

19. The Licensee may amend the Work without the Licensor’s permission provided that any amended Work must also be used solely for the Purpose. This includes modifications to works to upload to a Learning Management System or to contextualise to a certain cohort.
20. The Licensee must ensure that the copyright information shown in the Work (i.e. in the footer of each document) is retained.
21. Any updates of the Work requested by the Licensee for the life of the training product will be provided free of charge by the Licensor. This does not apply when a unit is superseded but only to the specific unit code sold even if units are deemed equivalent by the relevant SSO.
22. Where any amendment of the Work made by or on behalf of the Licensee results in the Work being non-compliant with applicable law, regulation of standard, the Licensor shall not have any liability whatsoever in respect of such non-compliance.

COMMERCIAL IN CONFIDENCE INFORMATION

23. The Licensee hereby acknowledges and agrees that during the term of this Licence Agreement, the Licensee may have access to information that is commercially valuable to the Licensor (Commercial in Confidence Information), which may include but is not limited to:
- a. information of whatever nature relating to the business activities or practices of the Licensor; and
 - b. evaluation material, design work, technologies, technological ideas or strategies, strategic plans and ideas, marketing strategies, creative plans or concepts developed by the Licensor (or on its behalf), or used by the Licensor, whether relating specifically to the Licensor's business or otherwise.
- But does not include information which:
- c. was known or in possession of the Licensee before it was provided to the Licensee by the Licensor, provided that it was known or possessed by the Licensee by legal means
 - d. is, or becomes, publicly available, through no fault of the Licensee; and
 - e. is provided legally to the Licensee by a third party.
24. If there is any doubt as to whether information constitutes Commercial in Confidence Information the Licensee should presume it is Commercial in Confidence Information.
25. The Licensee shall only use the Commercial in Confidence Information in accordance with this Licence Agreement and in genuine pursuit of the Purpose.
26. The Licensee will not disclose the Commercial in Confidence Information to any third party without the prior written consent of the Licensor.
27. The Licensee shall promptly advise the Licensor if they become aware of any possible unauthorised disclosure or use.
28. This clause survives termination, expiration or completion of this Licence Agreement.

INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

29. In the event that the Licensee becomes aware of any infringement of any Intellectual Property Rights in relation to the Work, the Licensee must immediately notify the Licensor.

LICENSOR RIGHT TO USE DERIVATIVE WORKS

30. In the event that the Licensee creates Derivative Works, the Licensee grants back to the Licensor a non-exclusive licence to use the said Derivative Works ("Licence Back"), provided that such Licence Back does not limit or restrict the Licensee's rights to use the Work in accordance with the Licence.

LICENSOR WARRANTIES & INDEMNITIES

31. The Licensor provides the following warranties that:
- a. the Licensor owns or control the rights in the Work and that the Licensor has the legal authority to provide the Work to the Licensee
 - b. there are no restrictions, legal or otherwise, which prevent the Licensor from entering into this Agreement;
 - c. the Work does not and will not infringe the intellectual property rights of any third party; and
 - d. the Licensor has exercised due care and skill in preparing the Work.

LICENSEE WARRANTIES & INDEMNITIES

32. The Licensee provides the following warranties:

- a. That the Licensee will only use the Work in accordance with the Licence granted under this Licence Agreement.
33. Without limiting clause 31, the Licensee indemnifies the Licensor against any losses, liabilities, claims, damages or other costs which the Licensor may incur in relation to:
- a. the use, operation, storage of the Work
 - b. any breach of this Licence Agreement by the Licensee or their representatives; and
 - c. any claim made by a third party against the Licensor that is related in any way to the Licensee's use of the Work.

LIABILITY

34. Notice to the Licensee:

Our goods and services supplied below the statutory amount of \$100,000 (as amended) come with guarantees that cannot be excluded under the ACL. For major failures with the services, you are entitled to:

- cancel your service contract with us; and
- a refund or compensation.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the services and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from the failure in the goods or service.

For further information visit <https://consumerlaw.gov.au/consumers-and-acl>.

35. The Licensee may have certain rights under the ACL, or other similar consumer protection laws. The ACL (or related laws) may give the Licensee certain rights, warranties, guarantees and remedies regarding the provision of goods or services by the Licensor. The Licensor's liability to the Licensee is governed by the ACL (or related laws) and this Licence Agreement.
36. Without limiting clause 31, the Parties agree that the:
- a. Australian Skills Quality Authority (ASQA) is the regulator for the vocational education and training (VET) sector and undertakes compliance audits of registered providers operating in the VET sector including in respect of the training and assessment and other materials they use in connection with their business;
 - b. ASQA findings may be subject to interpretation
 - c. a finding by ASQA that any materials supplied under this License Agreement are non-compliant shall not be conclusive evidence of breach of this License Agreement or any other obligation owed to the Licensee by the Licensor;
 - d. to the extent permitted by law, the Licensor's sole liability to the Licensee under this License Agreement or at law shall be limited to undertaking one round of rectification of any relevant non-compliance formally alleged by ASQA following a regulatory audit; and
 - e. the Licensor shall not have any other or further liability to the Licensee in respect of the materials supplied or rectifications performed.

COMMENCEMENT

37. The Licence created under this Licence Agreement commences on the date the Licensor delivers the Work to the Licensee.

TERMINATION

38. If either Party materially breaches the terms and conditions of this License Agreement, the Licence Agreement can be immediately terminated by either Party in writing.
39. This Licence Agreement may be terminated by the Licensor if:
- a. the Licensee fails to pay the agreed fees to the Licensor
 - b. the Licensee breaches this License Agreement and fails to rectify the breach within 21 days after receiving notice from the Licensor of the said breach
 - c. any other reason which would result in frustration of this Licence Agreement, e.g. bankruptcy.
40. This Licence Agreement may be terminated by the Licensee if:
- a. the Licensor breaches this License Agreement and fails to rectify the breach within 21 days after receiving notice from the Licensee of the said breach
 - b. any other reason which would result in frustration of this Licence Agreement, e.g. bankruptcy.
41. Immediately upon termination of this Agreement:
- a. any and all rights in the Work will revert to the Licensor; and
 - b. the Licensee must provide the Licensor any and all documents or other materials in the Licensee's possession which relate to the Work.

GENERAL PROVISIONS

42. **Jurisdiction:** This Licence Agreement shall be governed by the laws of New South Wales and any applicable federal law.
43. **Amendment:** The terms of this Licence Agreement may be updated from time to time. The Parties shall be bound by the terms and conditions as amended.
44. **No Waiver:** None of the powers or rights created under this Licence Agreement shall be deemed to have been waived by any act or acquiescence by either Party. A power or right under this Licence Agreement can only be waived in writing.
45. **Force Majeure/Excuse:** Neither Party is liable to the other for any failure to perform due to causes beyond its reasonable control including acts of God, acts of civil authorities, acts of nature etc.
46. **Further Acts:** Each Party must ensure that its representatives do all things to give effect to this Licence Agreement and to the rights and obligations of the Parties created under this Licence Agreement.
47. **Entire Agreement:** This License Agreement constitutes the entire agreement between the contracting parties concerning the subject matter hereof. All prior agreements, discussions, representations, warranties and covenants are merged herein. There are no warranties, representations, covenants or agreements, expressed or implied, between the parties except those expressly set forth in this License Agreement.

LICENSOR ADDRESS FOR NOTICES

48. Any correspondence for the Licensor can be sent to:

RTO Works
Suite 36/36-38 Gipps St,
Collingwood
VIC 3066

Further contact details for the Licensor are, telephone: 02 7251 1922 and email:

hello@rtoworks.com.au.

Last updated: July 2023