

TRAINING CONTRACT TERMS AND CONDITIONS

1. TRAINING ON BEHALF OF CLIENTS

The Client engages Public Sector Training Solutions Pty Ltd (PSTS) to provide the Training on behalf of the Client on the terms and conditions set out in this agreement and PSTS accepts the engagement.

2. FEE

- (a) The Client will pay PSTS the agreed Fee for the Training.
- (b) The Fee is inclusive of all the PSTS's costs except as expressly provided in this agreement.
- (c) The Fee is GST exclusive unless provided otherwise.
- (d) PSTS will provide the Client with a tax invoice for the Fee and agreed expenses following the completion of the face-to-face element of the course.
- (e) The Client will pay PSTS 30 days from date of invoice.
- (f) PSTS reserve the right to withhold services should clause 2(e) not be met.
- (g) Marking of assessments and issuing of certificates will not be issued until payment for the relevant service and/or training has been paid in full.

3. CANCELLATION

- (a) The Client may only cancel Training by written notice.
- (b) If Training is cancelled, the Client must pay the following:
 - i. 3-5 working days before the Training was scheduled 25% of the Fee.
 - ii. 2 full working days or less before the Training was scheduled 100% of the Fee.

4. TRANSFER

- (a) If the Client wants to transfer a course to another date less than five working days before the Training is scheduled, this is treated as a cancellation and clause 3 applies.

5. PSTS OBLIGATIONS

PSTS will ensure that Training is provided safely in a diligent, careful, skillful and competent manner.

PSTS will ensure that the course is delivered within ASQA guidelines and code of conduct.

6. OCCUPATIONAL SAFETY & HEALTH

If the Training or any part thereof is to be performed at the Client's premises, PSTS may complete the workplace Risk Assessment prior to commencing the course. If any risks are identified PSTS will notify the Client immediately to allow adequate time for the Client to be notified and the risk eliminated.

The Client shall ensure a safe work environment and PSTS agrees to comply with all applicable occupational safety and health legislation during their engagement with the Principal.

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7. RELATIONSHIP OF THE PARTIES

The relationship between the Client and PSTS is that of a principal and independent contractor.

8. CONFIDENTIAL INFORMATION

During the term of this agreement and for a period of five years after termination of this agreement, the Client will not:

- (a) disclose any Confidential Information without PSTS prior written approval; or
- (b) use or allow any person to use the Confidential Information for any purpose except to the extent the disclosure or use is required by law.

9. NON COMPETE

The Client agrees that it will not, and covenants that its officers and employees (including a Delegate) will not, for a period of six (6) months after termination of this Agreement (howsoever caused) at any place in Australia, in any capacity (whether as employee, contractor, partner, proprietor, director, agent or otherwise) offer to complete Assignments to, or otherwise engage or be concerned or have any interest in any Client or any person, company or other entity, if to do so would compete or conflict with or derogate from PSTS Business.

10. NON SOLICITATION

The Client agrees that it will not, and covenants that its officers and employees (including the Delegate) will not for a period of twelve (12) months after termination of this Agreement (howsoever caused) do any of the following:

- a) solicit or approach for the purpose of obtaining business, any person, company or other entity who is or was at any time during the continuance of this Agreement and any extension of this Agreement, a Client of PSTS; or
- b) solicit or approach for the purposes of obtaining products, skills or services, any person, company or other entity who does or did at any time during the continuance of this Agreement and any extension of this Agreement, provide services or complete Assignments for PSTS whether as an employee or independent contractor of PSTS.

11. INTELLECTUAL PROPERTY

- (a) The Client agrees that all Materials and all right, title and interest in the Materials developed as a result of this agreement vest in PSTS and will be the property of PSTS.
- (b) The Client hereby assigns to PSTS without further compensation, all Intellectual Property Rights in all or any part of the Materials (which includes all past, present and future Materials) for Materials PSTS created for training on behalf of the Principal.

12. TERMINATION

- (a) Either party may terminate this agreement if the other party commits any material breach of any provision of this agreement and the material breach is not remedied within one week of written notice.
- (b) This agreement may be terminated by either party without cause at any time by giving 30 days notice to the other.

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13. INSURANCE

PSTS must take out, keep current, and produce to the Client on request, evidence of:

- (a) accident, travel and workers' compensation insurance in respect of PSTS to perform Training under this agreement; and
- (b) public liability and professional indemnity insurance in an adequate amount according to industry practice.

14. INDEMNITY

The Client agrees to indemnify PSTS against all damages, loss, liabilities and claims arising directly from:

- (a) a breach by PSTS of its obligations under this agreement;
- (b) any negligent act or omission of PSTS in connection with the performance of the agreement,

provided always that PSTS will not be liable to the extent that the liability was caused or contributed to by the Client.

15. GENERAL

15.1 Whole Agreement

The Proposal, Training Contract Standard Terms and Conditions and any Schedules comprise the whole agreement between the parties concerning the subject matter and replace any prior agreement, arrangement or understanding concerning the subject matter.

15.2 Precedence of Documents

If there is any conflict between the documents constituting the agreement, the documents will rank as follows:

- (a) Terms and Conditions;
- (b) Purchase Order;
- (c) Written Communication

15.3 Variation

A variation to this agreement must be in writing and signed by the parties.

15.4 Severability

Any provision of, or the application of any provision of, this agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or other jurisdiction.

15.5 Counterparts

This agreement may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this agreement by signing any counterpart.

15.6 Governing Law

This agreement is governed by the laws of Western Australia. Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia.

15.7 Assignment

A party may not assign the benefit of this agreement or any part of it without the prior

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written consent of the other party, which may not be unreasonably withheld.

15.8 Clients terms and conditions not a part of the agreement

If the Client supplies PSTS terms and conditions on any document at any time (including on consignment notes or other documents) the Clients terms and conditions will be of no legal effect; and not constitute part of the contract for the performance of the Training, even if a representative of PSTS signs a document that indicates that the Client terms and conditions apply.

16. DEFINITIONS AND INTERPRETATION

16.1 Definitions

The following words have these meanings in this agreement unless the contrary intention appears:

Confidential Information means any information relating to PSTS or its affairs and includes:

- (a) any information relating to PSTS, its clients or its businesses which is not in the public domain; and
- (b) any trade secrets of PSTS;

Fee means the fee as agreed by the parties for the Training;

GST means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST Act or otherwise on a supply;

GST Act means a New Tax System (Goods and Training Tax) Act 1999;

Intellectual Property Rights means all statutory and other proprietary rights and interests including copyrights and all rights in the nature of copyright, patents, pending patents, trade marks, service marks, trade names, domain names, designs, circuit layouts, database rights and all other intellectual property rights;

Materials means all works as defined in the Copyright Act 1968 (Cth), and all other things including, but not limited to, documents, ideas, reports, formulations, systems, research, inventions, plans, designs, slogans and all intellectual property relating in any way to the business activities of PSTS, or any client of PSTS, which may be produced, improved, developed or otherwise brought into existence by PSTS, alone or with others, in the course of providing the Training, whenever and whosoever. Materials include all course materials, manuals, powerpoint slides, handouts, assessments, student manuals, case studies and documentation;

PSTS means Public Sector Training Solutions Pty Ltd (ABN: 95 138 425 126) as the contracted trainer as an individual and corporate entity as provided in the purchase order or other relevant documentation and includes, where the context permits, PSTS legal representatives, successors, directors, officers, employees, agents and related bodies corporate;

Training means the Training provided by PSTS;

Client means the company, person or persons described as engaging PSTS to provide services and may include by extension the entity receiving the Training.

17. INTERPRETATION

In this agreement, headings are only for convenience and do not affect interpretation and, unless the context requires otherwise, a reference to:

- (a) a party includes that party's legal personal representatives, successors, directors, officers, employees, agents and related bodies corporate;
- (b) words in the singular include the plural and the plural includes the singular;

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- (c) a reference to a clause, party, attachment, annexure or schedule is a reference to a clause of, and a party, attachment, annexure and schedule to, this agreement;
- (d) a reference to this agreement includes any attachment, annexure or schedule;
- (e) a reference to a right includes a remedy, power, authority, discretion or benefit;
- (f) a reference to a person includes a body corporate, an incorporated association, an unincorporated body or other entity and conversely;
- (g) a reference to an agreement or document is to the agreement or document as amended, varied, supplemented, novated or replaced from time to time, except to the extent prohibited by this agreement;
- (h) a promise or agreement by 2 or more persons binds each person individually and all of them jointly;
- (i) a reference to legislation or to a provision of legislation includes a modification or re enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (j) a reference to conduct includes, but is not limited to, an omission, statement and undertaking, whether or not in writing;
- (k) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement whether or not in writing; and
- (l) a reference to a document includes an agreement (as so defined) in writing, and any certificate, notice, instrument or document of any kind and also a reference to a document includes a reference to all electronic, magnetic, photographic and other mediums by which information may be stored or reproduced.

END OF TERMS AND CONDITIONS

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