

TRAINING SERVICES AGREEMENT

THIS TRAINING SERVICES AGREEMENT IS MADE BETWEEN

Vitals Consultants (ABN 44637361170) of 65a Moray Street, RICHMOND NSW 2735 (hereafter referred to as “The Training Provider” for brevity reasons)

And

Client (“the Customer”)

And

Learner (“the Customer”)
(together, referred to as the Parties)

RECITALS

- A. The Training Provider engages in the business of supplying training services to its customers.
- B. The Customer wishes to appoint The Training Provider to provide training services.
- C. This Training Services Agreement sets out the terms and conditions upon which the training services will be provided by The Training Provider to the Customer.

NOW IT IS HEREBY AGREED AS FOLLOWS:

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement:

ACL means the Australian Consumer Law which is contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

Agreement means this Training Services Agreement together with any schedules and the Special Conditions.

Business Day means any day that is not a Saturday, Sunday or public holiday in the state in which the Services are supplied.

Commencement Date means the date of this Agreement as described in Schedule 1 of the Agreement.

Consequential Loss means any loss of profits, lost production costs, increased production costs, and any other damages which are not direct and which do not flow naturally from the relevant breach of this Agreement.

Consumer Guarantees means the consumer guarantees set out in the ACL.



Course means any course provided by The Training Provider as described in Schedule 1 to a Participant and includes all training, advice and recommendations.

Course Content means all content and materials used in the delivery of a Course by The Training Provider including, but not limited to, handouts, slides, videos and other training materials.

Course Outcome means the outcome arising from a Participant completing a Course, including, but not limited to statements of attainment, certificates of competency, certificates of attendance, verification of competency, licences and cards.

The Training Provider' Personnel means personnel engaged by The Training Provider to deliver the Services, including training contractors and The Training Provider employees.

Expiry Date means the date of expiry of this Agreement as described in Schedule 1 of the Agreement.

Fees means the fees for the Services as set out in Schedule 1 to the Agreement.

Venue Fees means the fees payable by the Customer for the purpose of conducting the training by The Training Provider.

Insolvency Event means in respect of a party:

- a) the board of the party passes a resolution under section 436A of the Corporations Act 2001 (Cth);
- b) the party is placed into administration pursuant to Part 5.3A of the Corporations Act 2001 (Cth);
- c) a deed of company arrangement is entered in respect of the party;
- d) an application is made to a court for the winding up of the party;
- e) the party resolves that it be wound up voluntarily;
- f) a winding up order is made in respect of the party;
- g) a receiver or receiver and manager is appointed to any substantial assets of the party;
- h) a court orders that there be a meeting of creditors or members of the party for any purpose related to Part 5.1 of the Corporations Act 2001 (Cth);
- i) a mortgagee takes possession of any substantial assets of the party;
or
- j) the party informs the other party or any creditor of the party, in writing, that it is insolvent.

Intellectual Property means all industrial and intellectual property rights, whether protectable by statute, at common law or in equity, including, without limitation, all copyright, inventions, business processes, know-how, patents, designs (whether or not registrable), registered and unregistered trademarks, circuit layout designs and rights in relation to circuit layout designs, but excluding non-assignable moral rights and similar non-assignable personal rights

of authors and producers. This definition includes, but is not limited to, any training materials or modules communicated under this Agreement.

Services means those training services which will be delivered by The Training Provider to the Customer under this Agreement and which are more fully described in Schedule 1 to this Agreement.

Panel means the panel established in accordance with clause 11.

Participant means an individual who is nominated by the Customer to attend a Course.

Minimum Number of Participants means the minimum number of participant The Training Provider will conduct training and invoice for.

Special Conditions means the terms and conditions set out in Schedule 2 of this Agreement.

1.2. Interpretation

In this Agreement, unless the context indicates a contrary intention:

- a) The singular includes the plural and conversely.
- b) A gender includes all genders.
- c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- d) A reference to includes or including should be construed without limitation.
- e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- f) A reference to a Clause, Schedule or Annexure is reference to a Clause of, or a schedule or annexure to, this Agreement, and a reference to a paragraph is to a paragraph of the same Clause or Schedule unless the context requires otherwise.
- g) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
- h) A reference to a Party to this Agreement or another agreement or document includes the Party's successors, permitted substitutes and assigns (and, where applicable, the Party's legal personal representatives).
- 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 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 a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- l) A reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.

- m) Reference to any professional body includes the successors of that body.
- n) A reference to a year, month, week or to a day is to a calendar year, month, week or day respectively.
- o) A reference to dollars and \$ is to the Australian currency and all invoices and payments under this Agreement shall be in Australian dollars.
- p) A reference to Party is a reference to a Party to this Agreement.
- q) A reference to The Training Provider includes The Training Provider Services' Personnel, unless specified otherwise.

2. APPOINTMENT OF THE TRAINING PROVIDER

The Customer agrees to engage The Training Provider to provide the Services and The Training Provider hereby accepts the engagement for the provision of the Services in accordance with the terms and conditions of this Agreement.

3. TERM OF AGREEMENT

This Agreement shall come into effect from the Date the Customer agrees to these terms.

4. DUTIES AND RESPONSIBILITIES OF THE TRAINING PROVIDER

4.1. Delivery of Services

The Training Provider agrees to provide all Services in accordance with the terms of this Agreement and warrants that:

- a) the Services will be provided in a thorough, professional and competent manner using that standard of care, skill and diligence, that would reasonably be expected from an experienced provider of similar Services in Australia;
- b) the Services are fit for the purpose for which they were designed; and
- c) The Training Provider' Personnel are appropriately skilled and experienced to perform the Services.

4.2. Compliance with laws

The Training Provider will comply with all federal and state laws and regulations with respect to the provision of the Services.

5. INTELLECTUAL PROPERTY

5.1. The Customer acknowledges that:

- a) The Training Provider owns all Intellectual Property rights in the Course Content;
- b) no title in the Course Content passes to the Customer under this Agreement;
- c) the Course Content can only be used by Participants for the purpose of completing a Course; and
- d) the Customer may not reproduce any part of the Course Content without the prior written consent of The Training Provider.

6. LIABILITY

- 6.1. Neither Party will be liable to the other party in any circumstances for any Consequential Loss.
- 6.2. The Customer is liable for and indemnifies The Training Provider against all claims, liability, loss, costs and expenses (including without limitation any legal costs or environmental losses, costs, damages or expenses) arising from the Services or from a breach of this Agreement by it or its employees, agents or contractors. The Customer's liability will be reduced to the extent that any loss or damage is caused or contributed to by The Training Provider or by The Training Provider's breach of the Agreement.
- 6.3. The Training Provider is liable for and indemnifies the Customer against all claims, liability, loss, costs and expenses (including without limitation any legal costs or environmental losses, costs, damages or expenses) arising from a breach of this Agreement by it or its employees, agents or contractors. The Training Provider's liability will be reduced to the extent that any loss or damage is caused or contributed to by any act or omission of the Customer or by the Customer's breach of the Agreement.
- 6.4. Notwithstanding any other provision of this Agreement, The Training Provider's liability to the Customer for any claim for loss or damage made in connection with this Agreement (for contract, tort, under statute or otherwise) in respect of death, personal injury or damage to property is limited to the Fees paid by Customer pursuant to this Agreement.
- 6.5. Where Services supplied under this Agreement are subject to the ACL, and are not of a kind ordinarily acquired for domestic or household use or:
 - a) The supplying of the Services again; or
 - b) The payment of the cost of having the Services supplied again.

7. SERVICES COMMENCEMENT & COMPLETION TIMES

The Services are to be provided by The Training Provider in accordance with the dates nominated by the Customer and agreed by The Training Provider.

8. WORKPLACE HEALTH AND SAFETY

- 8.1. In addition to any duty or obligation imposed on The Training Provider under general law, The Training Provider shall ensure that it and its respective employees act in accordance with their responsibilities as contained in relevant health and safety legislation.
- 8.2. The Customer agrees that all Participants and its respective employees shall comply with all relevant The Training Provider policies and procedures while on The Training Provider premises.
- 8.3. The Customer agrees that all Participants and its respective employees have the physical ability to perform some strenuous activities in the practical exercises.

9. DISPUTE RESOLUTION

- 9.1. If a dispute arises, the Parties must, prior to the initiation of any legal proceedings, use their best efforts in good faith to reach a reasonable and equitable resolution of the dispute.
- 9.2. If a dispute arises, the dispute must be referred to a representative of each Party for resolution by written notice specifying that it is a notice given under this clause giving full particulars of the nature and extent of the dispute.
- 9.3. If the dispute is not resolved within 10 Business Days of a referral in accordance with this clause, the dispute must be referred to a Panel for resolution. Each Party must nominate a senior representative for the Panel within 3 Business Days of the referral to the Panel in accordance with this clause.
- 9.4. The Panel will determine its own procedures for the resolution of a dispute. Unless otherwise agreed by the Parties, all discussions involving the Panel will be conducted on a without prejudice basis.
- 9.5. Decisions of the Panel may only be made by unanimous agreement of the members of the Panel.
- 9.6. Any decision of the Panel which is recorded in writing and signed by each member of the Panel is binding on the Parties.
- 9.7. Neither Party may commence legal proceedings unless the Parties have undertaken the processes set out in this clause and: those processes have failed to resolve the dispute; or one of the parties has attempted to follow these processes and the other party has failed to participate; or a Party is unhappy with a decision of the Panel.
- 9.8. Nothing in this clause prevents a Party seeking urgent injunctive relief or similar interim relief from a court.
- 9.9. Despite the existence of a dispute, the Parties must continue to perform their respective obligations under this Agreement.

10. GST

- 10.1. Unless otherwise expressly stated, all amounts payable for any supply under this Agreement are expressed to be exclusive of GST. If GST is payable on a taxable supply made by The Training Provider to the Customer under this Agreement, then the Customer will pay to the supplier an amount in respect of the GST in addition to any other consideration provided that The Training Provider provides the recipient with a "tax invoice" in accordance with the applicable legislation.
- 10.2. In this clause the terms "GST"; "supply", "taxable supply" and "tax invoice" have the meanings respectively given to them in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

11. PRIVACY STATEMENT

- 11.1. The Training Provider takes the protection of the privacy of Participants seriously.
- 11.2. The Customer consents to The Training Provider collecting personal information supplied by the Customer with respect to Participants for the following purposes:
 - a) for the fulfilment of functions associated with the supply of training Services;
 - b) for the lodgement of certificate numbers with any appropriate training body;

- c) to enable The Training Provider to contact Participants for Course feedback;
- d) to enable The Training Provider to send out Course Outcomes to Participants;
- e) to market to the Customer and to maintain a client relationship with the Customer; and
- f) For the lodgement of demographic data as required by law to relevant government bodies.

11.3. The Customer also consents to The Training Provider disclosing personal information provided to it by the Customer:

- a) to The Training Provider' providers, contractors and affiliated companies from time to time to help improve and market The Training Provider' Services to the Customer.

11.4. The Training Provider will take all necessary measures to prevent unauthorised access to or disclosure of Participants' personal information. This personal information will be disclosed as required to any relevant State Government authorised body. This information will not be disclosed to any other external agencies unless required or authorised by law.

11.5. Participants are able to access their training records from The Training Provider upon request.

11.6. Copies of The Training Provider' Privacy Policy is available at www.vitalsconsultants.com.

12. MISCELLANEOUS PROVISIONS

12.1. Entire Agreement

- a) The terms and conditions contained in this Agreement and the terms of the Special Conditions constitute the entire agreement and supersede any other agreement or understanding between the Parties.
- b) In the event of any inconsistency between the terms of the Agreement and the terms of the Special Conditions, the terms of the Special Conditions shall prevail to the extent of that inconsistency.
- c) The Parties acknowledge that changing circumstances may require changes to this Agreement.

12.2. Severability

In the event of the invalidity of any part or provision of this Agreement, such invalidity shall not affect the enforceability of any other part or provision of this Agreement.

12.3. Amendment

This Agreement cannot be amended except by an instrument in writing signed by the Parties and stating the Parties' intention to amend this Agreement accordingly.

12.4. Assignment



This Agreement and the rights contained herein are not assignable without the prior written consent of the other Party.

12.5. No waiver

The failure of either Party to exercise or the delay in exercising, any right, power or privilege available to it under this Agreement will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise by that Party of any other right, power or privilege under this Agreement.

12.6. Force majeure

Failure or delay in performance of any obligation under this Agreement by either Party will not be deemed to be a breach of this Agreement if that failure or delay is due to any cause beyond the reasonable control and without the fault or negligence of that Party, but in order to excuse its default on this basis, a Party will notify the other of the occurrence of the cause as soon as it becomes aware, specifying the nature, particulars and expected duration thereof.

12.7. Governing Law

This Agreement is governed by the law of the state or territory specified in Schedule 1. If no state or territory is listed, then the applicable law will be that of the state or territory in which the Services are delivered. In either circumstance, the Parties agree to submit to the exclusive jurisdiction of the courts of that state or territory.

13. PAYMENT TERMS

- 1.1. As compensation for the provision of the Services, the Customer agrees to pay The Training Provider the Fees.
- 1.2. The Customer agrees to pay all Fees in advance of receiving the Services.
- 1.3. Payment can be made by EFTPOS, credit card, money order or cheque.
- 1.4. Where payment is made by cheque, cheques should be made payable to Vitals Consultants.
- 1.5. Vitals Consultants will issue invoices for Fees as tax invoices containing a full itemisation of the Fees.



SCHEDULE 1 – AGREEMENT DETAILS

AGREEMENT DETAILS			
THE TRAINING PROVIDER	Name		
	Address		
	Phone		
	Email		
	ABN		
THE CUSTOMER	Name		
	Address		
	Phone		
	Email		
	ABN		
COMMENCEMENT DATE (Clause 1.1)			
EXPIRY DATE (Clause 1.1)			
SERVICES (Clause 1.1)	Course / Description	Calculation Method	Price (\$)
MINIMUM NUMBER OF PARTICIPANTS (Clause 1.1)			
ADMINISTRATION FEES (Schedule 2 - Clause 1.1)	15% of Course Fees		
VENUE FEES (Clause 1.1)	N/A		
INVOICE PAYMENT DETAILS (Clause 13)	ADDRESS:		
	TERMS:		
	METHOD:		
TRAINING DELIVERY DATE(S) (Clause 7)			
DELIVERABLES	Learning resources per participant		

(Clause 4)	Certificate of Participation per participant
SPECIAL CONDITIONS (Schedule 2)	The Customer shall bear all training site costs.

Vitals Consultants



VITALS CONSULTANTS
— Training for Success —

SCHEDULE 2 – SPECIAL CONDITIONS**1. DEFINITIONS**

- 1.1. Administration Fee means 15% of the Course Fee.
- 1.2. Course Fee means the fee payable by the Customer with respect to a particular training course.

2. LITERACY AND NUMERACY

All Participants must have a basic level of literacy and numeracy skills. If assistance in these areas is required please contact The Training Provider on +61 435 795 785.

3. ASSESSMENT

- 3.1 Competencies are assessed throughout each Course and Courses may include assessments.
- 4.1 If a competency is not achieved at the initial assessment, Participants are given the opportunity to be reassessed at a time agreed between the Parties.

4. PARTICIPANTS' RESPONSIBILITIES

The Customer must ensure that each Participant is made aware of the following requirements, and agrees to comply with the following:

- a) The Training Provider accepts no responsibility for damage or loss of any property left on its premises by Participants.
- b) The Training Provider recommends that Participants carry their personal valuables at all times, and The Training Provider will not be responsible for any loss or damage to a Participant's personal valuables or property unless such property is damaged as a result of The Training Provider's negligence.
- c) There is no provision for child minding at The Training Provider Courses and children are not permitted at any premises where Courses are conducted.
- d) Participants are required to report all injuries and incidents to The Training Provider's Personnel immediately.
- e) Participants must turn off mobile phones during Courses.
- f) Where Participants are, in the reasonable opinion of The Training Provider's Personnel:
 - i. being disruptive during the Course;
 - ii. found to be cheating (collusion or plagiarism);
 - iii. acting inappropriately towards, or harassing, The Training Provider employees or other Participants;

The Training Provider will remove that Participant from the Course immediately, without a refund of the Fees.

5. COURSE OUTCOMES

- 5.1. Subject to successful completion of all Course requirements and the Fee being paid in full, The Training Provider will issue each Participant with the appropriate Course Outcome (unless otherwise agreed between the Parties).

- 5.2. The Training Provider will not release Course Outcomes to Participants for any Course that has not been paid for in full.

6. CANCELLATION BY THE TRAINING PROVIDER

- 6.1. The Training Provider reserves the right to cancel any Course for any reason.
- 6.2. In the event of a cancellation that is not caused by a force majeure event, The Training Provider will refund the Fees paid by the Customer for the cancelled Course.

7. CANCELLATION BY CUSTOMER

- 7.1. Where a Course is cancelled by the Customer with a notice period of not less than 7 Business Days prior to the commencement date of the Course, the Customer will be refunded the Course Fee, less the Administration Fee. The Administration Fee is non-refundable.
- 7.2. Where a Course is cancelled by the Customer with a notice period of 7 Business Days or less prior to the commencement date of the training course, the Course Fee is non-refundable.
- 7.3. If a Participant is enrolled in a Course and they wish to transfer to another Course date for the same Course they are able to do so providing they advise The Training Provider in a minimum of 7 Business Days in advance. Should a Participant wish to transfer to another date and does not provide notice at least 7 full Business Days in advance, the Customer forfeits the full Course Fee.

8. ELIGIBILITY

- 8.1. All Participants must be 18 years of age or over.

EXECUTED AS AN AGREEMENT

Signed for and on behalf of the Customer by:

Sign:

.....

Name:

Position:

Date:

Signed for and on behalf of The Training Provider by:

Sign:

.....

Name:

Position:

Date:

