



Terms and Conditions

DIGITAL LEARNING RESOURCES PTY LTD ABN 52 638 800 414 of 132 Cremorne Street
Cremorne, Melbourne, VIC 3121

Training Delivery Terms and Conditions – Effective as at 21 October 2022

1. Interpretation

In this agreement unless the context otherwise requires:

ACL means the *Australian Consumer Law* (Cth)

Agreement means the terms and conditions in this agreement amended from time to time, including any schedules, annexures and attachments;

Commencement Date has the meaning given to it by item 1 of Schedule 1;

Compliance and Assessment Documents means a softcopy version of unit specific trainer tools included within the DOL Site.

Content means SIT and BSB multi-media training content and related materials provided by DLR via the DOL Site as outlined in Schedule 2 developed by DLR, but excludes any materials developed by any third-party resource providers;

Content Fee means the set fee as described in Item 6 of Schedule 1;

DOL Site means the URL specific dedicated LMS generated by DLR for sole access by the Client;

Force Majeure Event means any:

- (i) act of God;
- (ii) outbreak or escalation of hostilities (whether or not war has been declared) or any other unlawful act against public order or authority;
- (iii) industrial dispute;
- (iv) governmental restraint; or
- (v) other event which is not within the reasonable control of the parties or either party as the case may be,



however, for the avoidance of doubt, does not include any act, event or circumstance in connection with the COVID-19 pandemic;

GST has the meaning provided in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**);

A person or company is **Insolvent** if:

- (i) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the *Corporations Act* (Cth) and *Bankruptcy Act* (Cth)); or
- (ii) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller (as defined under the *Corporations Act*) appointed to its property; or
- (iii) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved; or
- (iv) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (i), (ii) or (iii) above; or
- (v) it is otherwise unable to pay its debts when they fall due.

Intellectual Property means all intellectual and industrial property rights (including underlying rights in any media now in existence or developed in the future) including, without limitation, rights in the nature of any patent, trade mark or service mark, copyright, visual image right, performance right, design, business name or trade secret or confidential information whether or not registered or registrable;

Learner means a student candidate enrolled with the Client;

LG means Learner Guide, the softcopy PDF content booklet included in the DOL Site;

LMS means the password protected online learning management system environment; and

Term has the meaning given to it by item 5 of Schedule 1.

2. General

- 2.1 Unless otherwise agreed in writing and to the fullest extent permissible under law (including without limitation the ACL, this Agreement and its terms and conditions govern and are incorporated into all agreements and arrangements between DLR and the Client for the provision of Content by DOL to the Client via the DOL Site.
- 2.2 By signing and accepting this Agreement, the Client accepts an offer by DLR and enters into a lawfully binding agreement for the supply of the Content and related materials made available to the Client from the DOL Site.



- 2.3 By accepting this Agreement, the Client confirms that it will access the DOL Site and the Content on and subject to the terms and conditions of this Agreement and agrees to be bound by and to duly and punctually observe them.

3. Grant of licence

- 3.1 From the Commencement Date, DLR hereby grants a non-exclusive and non-transferable licence to the Client to access and use the Content and materials available on the DOL Site during the Term and subject to the terms and conditions of this Agreement.
- 3.2 The Content will be made available to the Client via the DOL Site to each Learner subject to the terms and conditions of this Agreement.
- 3.3 The Client agrees and acknowledges that it will enrol all Learners into the DOL Site via the online enrolment feature.

4. Fees & Invoices

- 4.1 In consideration of the licence granted and the provision of the Content under clause 3, the Client must pay DLR the Content Fees during the Term.
- 4.2 The Content Fees are payable by the Client within 14 days of receipt of a rendered tax invoice from DLR. If the rendered tax invoice is not paid by the Client within 14 days, interest will be payable by the Client at the rate of two per cent (2%) per annum above the penalty interest rate as set out from time to time under the Penalty Interest Rates Act 1983 (Vic) or at such other rate as may be fixed from time to time by DLR where that Act is, such interest to be calculated daily and computed from the date a payment becomes overdue until payment of such monies is received in full. If the Client defaults in payment of any invoice then, without prejudice to these or any other rights, DLR shall be entitled to suspend the Licence granted hereunder and/or its remaining obligations under this Agreement and to cancel the Client's access to the Site without notice and until the default is rectified in full.
- 4.3 In addition to paying the Content Fee and any other amount payable or in connection with this Agreement the Client will:
- (a) pay to DLR an amount equal to any GST payable from any taxable supply by DLR to the Client in respect of which the Content Fee or any other amount that is payable under this Agreement; and
 - (b) make such payment in respect of GST either on the date when the Content Fee or other monies payable are due or otherwise within seven (7) days after the Client is issued with a tax invoice, whichever is the later.
- 4.4 A 'grace period' for student unenrolment's is available for all clients using the Didasko LMS (unless otherwise stipulated and excluding clients enrolling via LTI method). The 'grace period' covers 31 days during which a student may be enrolled and un-enrolled from a unit. This may result in either no charge being raised, or a credit may be applied.



Unenrolment requests are attended to within approximately 2 business days and are reviewed on a case-by-case basis to determine credit eligibility.

Factors that may affect the grace period being honoured are as below:

- i. The unenrolment falls outside the 31-day grace period
- ii. The student has accessed the 'Digital content'
- iii. The student has submitted work. You may require this information during an audit, for this reason we do not remove this data from your platform
- iv. The student has accessed the units' resources in a manner which has been deemed by Didasko as qualifying for a charge to be raised
- v. The request has been submitted for a 'Trainer' account. All 'Trainer' accounts should remain on the platform for auditing purposes. If you no longer wish for the 'Trainer' to access the platform you should suspend their account.

Where your unenrolment request does not fulfill the grace period terms you will be notified by email.

Billing is automatically adjusted in line with the unenrolment outcome.

Where the unenrolment request fulfills the grace period terms within the same billing month, a credit is applied automatically.

Where the unenrolment request fulfills the grace period terms, yet falls outside of the current billing month, a credit will be applied in your next billing month.

4.5 An annual platform fee is charged to the Client on an annual basis, payable from the 1st year anniversary of the creation date of the Client's DOL site. The annual platform fee is calculated as 10% of the Client's annual spend, which is capped at \$2,000 + GST.

4.6 Where the client uses an LTI link provided by DLR to access the Learning Content, student level users will be enrolled by interacting with the LTI link which is housed within the client's LMS. The client accepts that by providing their student(s) access to LTI link(s) charges will be generated for student level users that access these. These charges are collated at the end of the month and invoiced to the client in the following month. Given that both the enrolment and corresponding charge are only generated through the student's engagement with the LTI link, unenrolment's and grace periods on these enrolment fees will not be offered.

5. Termination

5.1 The fixed term of this Agreement has been agreed by the parties to be for the Term. This Agreement may be terminated in accordance with the terms and conditions hereunder.

5.2 DLR may terminate this Agreement at any time and without cause or any form of compensation being payable by DLR to the Client as a consequence, by giving 28 days' prior notice in writing to the Client. If such termination is not as a result of the Client breaching any one or more of the terms and conditions of this Agreement, the Client is not liable to pay out the remainder of the Content Fee (based on the remainder of the Term).

5.3 If the Client breaches any one or more of the terms and conditions of this Agreement which (i) cannot be rectified, or if capable of rectification is not rectified within 28 days of notice in writing by DLR, or (ii) the Client is Insolvent, then DLR may terminate this Agreement with

immediate notice and the Client must pay out the remainder of the Content Fee in full, based on the remainder of the Term and which the parties further agree shall correspond to a genuine and reasonable assessment and measure of the damages suffered by DLR as a consequence of early termination of this agreement by virtue of the Client's default or insolvency.

- 5.4 In the event of termination, DLR will immediately or as soon as reasonably practicable terminate all Client access to the DOL Site. The Client is permitted to request DLR to export all Learner records following termination for a period of up to 28 days, following which requests will be refused.
- 5.5 Upon termination of this Agreement, the Client must either destroy or return all files or other Intellectual Property to DLR and will confirm in writing within 30 days from termination that it has not retained any Confidential Information and/or Intellectual Property belonging to DLR in any format, including hard copy or electronic format.
- 5.6 Should the Client wish to terminate this Agreement prior to the conclusion of the Term, the Client must pay out the remainder of the contract (i.e. the Content Fee for the remainder of the Term) in full and as agreed reasonable and genuine assessment of the damages occasioned to DLR by virtue of early termination of the Agreement by the Client.
- 5.7 In the event the Client stops carrying on the whole of its business or is unable to carry on a business of similar nature as a result of any relevant regulator including the Australian Skills Quality Authority:
 - (a) the Client may request in writing to DLR to defer the Client's rights and obligations under clauses 3 and 4 of this Agreement (for the avoidance of doubt this will include a deferral of both the balance of the Term and the balance of the Content Fee), with consent from DLR will not be unreasonably withheld;
 - (b) clause 5.7(a) is subject to a continuing obligation of the Client not engaging or receiving, in any manner and whether directly or indirectly, the services of another provider similar to or the same as those of DLR; and
 - (c) the rights and obligations deferred in clause 5.7(a) will continue until such time as the Client (or the Client's shareholders, directors, employees, related entities and or affiliates) can re-commence the carrying on of part of its business or a business of similar nature.
- 5.8 The rights of termination by DLR under this Agreement shall be without prejudice to any other rights, including the right to seek injunctive relief, available to it at law.

6. Copyright and Intellectual Property

- 6.1 All Intellectual Property in the DOL Site, including all Content, and materials and source codes, developed or owned by DLR belong to and are retained by it and without limitation to the exclusion of the Client, and all rights are expressly reserved.

- 6.2 Without seeking to exclude or limit the application of the Copyright Act 1968 (Cth), at no time shall the Client print or copy Content from the Site for any purpose without seeking DLR's prior written consent. Failure to seek such consent by the Client will represent a fundamental and material breach of this Agreement resulting in the immediate termination of the Agreement under clause 5.3. The Client further agrees it shall not directly or indirectly and in any capacity attempt to reverse engineer or reproduce or substantially reproduce the Content in any manner whatsoever hereby licensed to the Client, or to otherwise permit same to occur.
- 6.3 The Client shall be responsible for protecting the Content and materials including the Compliance and Assessment Documents and Learner Guide at all times from unauthorised access, use or damage. The Client further agrees to use its best endeavours and to take all necessary steps to safeguard the Content to ensure that no unauthorised person has access to the product and that there is no unauthorised copying or distribution of the Content and user documentation.
- 6.4 The Client must ensure that all printed material is used for the purposes of training delivery only. Printed materials are non-transferable to any third party and such use would constitute a breach of copyright and a fundamental and material breach of this Agreement. The Client acknowledges and agrees that only one (1) LG per unit is allowed to be printed by an individual Learner for his/her personal use.
- 6.5 Subject to the terms and conditions of this Agreement, upon enrolment into an individual unit, a Learner may for the purposes of learning print any portion in whole or in part one (1) copy of the unit's LG and as specified above remains the property of DLR and cannot be copied or re-printed for re-distribution purposes by the Client or Learner. Any copying, reprinting or redistribution will constitute a fundamental and material breach of DLR's Intellectual Property rights and this Agreement.
- 6.6 The Client agrees that it shall not use any registered or unregistered trademarks, logos or emblems of DLR in respect to the use of the Content, Compliance and Assessment Documents or LG without the prior written consent of DLR and then only upon the terms stipulated by DLR.
- 6.7 Other than as permitted under this Agreement, the Client agrees not to sub-licence, lease, rent or lend the Content or the materials appearing on the DOL Site or otherwise deal with the Content or materials or any user documentation or otherwise transfer or assign any of its rights under this Agreement without the prior written consent of DLR, where such consent may be withheld in DLR's absolute discretion.
- 6.8 Delivery of DLR training materials to Learners not enrolled within the DOL Site will constitute a fundamental and material breach of DLR's Intellectual Property rights and this Agreement.
- 6.9 The resources and tools provided by DLR are developed in line with each unit of competency's requirements and the standards for RTOs to assist RTOs to more efficiently address compliance. However, it is highly recommended that individual RTOs, and the trainers and assessors using the resources, contextualise them to meet the needs and requirements of their organisation, students, and the training, assessment and workplace



environments they are used in. Unfortunately, DLR cannot contextualise assessments on behalf of your RTO. It is a requirement of individual RTOs to document their consultation, planning and assessment processes and any contextualisation of assessment tools. Evidence of contextualisation may be requested during an audit to demonstrate your compliance with the standards.

7. Limited Warranty and Disclaimer

- 7.1 DLR will use its reasonable endeavours to ensure the Content remains current against changes to Australian national competency standards. To the fullest extent permissible under law including the ACL (if applicable), DLR makes no warranty about the Content's currency or fitness for purpose.
- 7.2 To the maximum extent permitted by law, the warranties provided by DLR are limited to those set out in this Agreement, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise are expressly excluded.
- 7.3 Other than as specified in this Agreement, and to the extent permitted by law, the Client acknowledges and agrees that the Content is provided on an "as is" basis and DLR makes no representation concerning the quality or currency of the Content, and does not promise, warrant or guarantee that the Content will (a) meet the Client's requirements or be suitable or fit for a particular purpose; (c) be provided in a secure manner, free of viruses or other harmful code; (d) be provided uninterrupted or error or defect free.
- 7.4 If during the period of thirty (30) days which commences from the delivery of the Content, the Client notifies DLR in writing of any defects or faults in the Content, DLR shall at its own expense, commence to examine the Content and, as soon as practicable thereafter, rectify the defect or amend the Content in its sole discretion.
- 7.5 The limited warranty in clause 7.4:
 - (a) is subject to the Client having fully complied with its obligations under this Agreement;
 - (b) is not a warranty that the results obtained from the Content will be in accordance with the Client's expectations; and
 - (c) does not operate where the substantial non-performance arises in any respect from accessing the Content, the nature or operation of the equipment on which the Content is downloaded or the use of any materials or Content not provided by DLR.

8. Client Indemnity & Release

- 8.1 To the fullest extent permissible under law including without limitation the ACL, the Client indemnifies and shall keep indemnified DLR from and against all claims, loss or damages arising from a breach of this Agreement (including legal costs on an 'indemnity basis' as that term is defined in the Supreme Court of Victoria Rules 2012) or resulting from the Client uploading or saving any third party Intellectual Property that the Client uploads or saves to the Client's specific client folder made available to it on the Site.

- 8.2 DLR further reserves the right in its sole discretion to delete or otherwise remove any works or materials that it regards as infringing any third party Intellectual Property to delete such material or any part thereof (including any works or materials uploaded by the Client onto the DOL Site, and the Client releases DLR from any claim, action, proceedings or suit in the event that DLR exercises its rights under this clause.

9. Personal Information

- 9.1 The Client agrees to DLR storing content use information (learner, trainer and administrator names that are registered in the DOL Site, passwords, email addresses, units purchased, learner results and DLR e-communication).
- 9.2 The Client agrees to DLR sending marketing, Client notifications, instructional and other service-related items. The Client agrees that it may opt out of non-critical communications at any time by notifying DLR by email, however, DLR reserve the right to send important user communication at its absolute discretion.
- 9.3 The Client agrees under this Agreement that any personal information stored on the Site will remain and be held in accordance with the statutory requirements for the keeping of such information and records as varied from time to time.
- 9.4 Any requests for the purging of any Client specific personal information must be made in writing to DLR and will be treated on a case-by-case basis subject to the requirements of applicable law.
- 9.5 DLR will comply with the Australian Privacy Principles (APPs) and the Privacy Act 1988 (Cth) (together Privacy Laws) in doing any act or engaging in any practice pursuant to this Agreement.
- 9.6 The Client consents to DLR using any personal information (as defined in the Privacy Act 1988 (Cth) disclosed to it by the Client for the purposes of fulfilling its obligations under this Agreement. The Client warrants that it will procure any relevant consents required from any individuals whose Personal Information is being disclosed by the Client to the DLR in accordance with this Agreement. The Client indemnifies and shall keep indemnified DLR from and against any claims against DLR in connection with a breach of this clause.

10. Site Service & Monitoring

- 10.1 DLR reserves the right to change, remove or add functionality or discontinue the DOL Site or any of the Services at any time without prior notice for the purpose of performing site upgrades or maintenance. DLR provides no guarantees that the Client will be able to access the DOL Site in the same manner using the same equipment prior to the change.
- 10.2 DLR reserves the right, but has no obligation, to:
- (a) monitor the Site and at all times, or take any appropriate action to resolve disputes that it may have with any Clients or other third parties; and

- (b) to remove any materials at its sole discretion for any reason whatsoever (excluding any Content purchased by the Client).

10.3 The Client acknowledges that its use of the DOL Site and associated services may be subject to interruption or delay. Due to the nature of the internet and mobile phone communications, DLR and its service providers do not make any warranty that the Site or services will be error free, without interruption or delay or free from defects in design or engineering.

11. Client obligations

11.1 The Client agrees not to post or transmit any material through the DOL Site or related third party site that:

- (a) violates or infringes the rights of others, is unlawful, abusive, defamatory threatening, obscene, invades one's individual's privacy or publicity rights, or is otherwise objectionable;
- (b) encourages conduct that constitutes a criminal offence, gives rise to civil liability or otherwise violate any law, or
- (c) will advertise, publicise or perform any commercial, religious, political or non-commercial solicitation including but not limited to, the solicitation of users of this site to become users of other online or offline services directly or indirectly competitive or have the potential to compete with DLR.

11.2 The Client shall not use the DOL Site or any third-party site that inhibits any other end user from using or enjoying the site.

11.3 In addition the Client agrees NOT to do any of the following in relation to the DOL Site or linked third-party sites:

- (a) interfere with the DOL Site functioning;
- (b) harvest information;
- (c) generate unsolicited email advertisements or spam;
- (d) impersonate another user;
- (e) transmit or upload a virus, worm, trojan horse or harmful code;
- (f) attempt to gain access to unauthorised or secure areas of the site or services to which you are not entitled;
- (g) to attempt to derive source code, reverse engineer or impact on site functionality including disrupting the website or the servers and networks that host the website;

- (h) to copy, distribute or commercialise content (including printing off or downloading the LG and circulating it) except as permitted by law, this Agreement, or with our prior written consent;
- (i) to share 'log in' information and/or passwords with other individuals;
- (j) mislead or deceive any person regarding any association with the site or DLR (whether implicitly or expressly).

11.4 The Client acknowledges and agrees that suspected fraudulent, abusive or unlawful activity may be referred to appropriate law enforcement authorities.

11.5 In the event that the Client engages in any of the abovementioned conduct or activity then DLR reserves the right to terminate its access to the DOL Site in accordance with this Agreement.

11.6 The Client agrees that DLR may determine in its absolute discretion the space allocated on its server in relation to any authorised uploads by the Client under this Agreement and will provide reasonable notice when the Client is approaching this limit before deleting any such additional content or uploads provided by the Client.

11.7 The Client acknowledges and agrees that it has read the DLR Security Statement (including use of DLR Cloud Services) which details the use by DLR of cloud infrastructure services in the provision of Content and related services under this Agreement and to the fullest extent permissible under law consents to such use by DLR.

11.8 The Client warrants and represents that the Client will take all appropriate reasonable steps to ensure the Learner does not and cannot copy or re-print for distribution or re-distribution any of the Content or the LG.

12. Limitation of Liability

12.1 If the goods and/or services are supplied to the Client as a "consumer" as defined in the ACL, then the Client has the benefit of certain consumer guarantees, non-excludable rights and remedies in respect of those goods and/or services (Consumer Rights) and nothing in this Agreement shall exclude, restrict or modify any Consumer Rights.

12.2 To the fullest extent possible under law including the ACL (if applicable), DLR shall not be liable for any errors or omissions resulting from the Client's failure to sign off on any of the goods and/or services; and/or any claim in any way caused and/or contributed to by the Organisation or any of its employees or servants.

12.3 To the maximum extent permitted by law the liability of DLR for a breach of this Agreement is limited to –

- (a) if the breach relates to goods:
 - (i) the replacement of the goods or the supply of equivalent goods;

- (ii) the repair of such goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and
- (b) if the breach relates to services:
- (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

12.4 Subject to clause 12.3, the total aggregate liability of DLR for all claims relating to this Agreement is limited to the Content Fees paid under this Agreement.

13. Liability for consequential loss

13.1 The Client acknowledges that the software licensed by DLR is not of a kind ordinarily acquired for personal, domestic or household use or consumption.

13.2 DLR will not be liable in respect of any debt, obligation, cost, expense, loss, damage, compensation, charge or liability of any kind which at law is of a consequential, indirect or incidental nature, including (without limitation): loss or damage to data; loss of revenues or profits; loss or interruption of business, contracts or commercial opportunities; damage to goodwill or reputation, even if DLR has received notice or been advised of the possibility of such loss or damage.

13.3 The Client acknowledges that the provisions of this clause are fair and reasonable.

14. Law

To the extent permissible under law including the ACL (if applicable) this Agreement shall be governed by and construed in accordance with the laws for the time being in force in the State of Victoria, Australia and the parties agree to submit to the jurisdiction of the courts and tribunals of that State.

15. Insolvency & Default

If the Client commits or is involved in any act as an Insolvent the Client shall be deemed to be in default under this Agreement in which event DLR may take whatever action is necessary to retain all monies paid, cease further deliveries and/or provision of services and/or goods, recover all lost profits and/or at its discretion take immediate possession of any goods not paid for without prejudice to any other rights and without being liable in any way to any party.

16. Force Majeure

To the extent permissible under law neither Party is liable to the other for any failure to perform any of the obligations of this Agreement (other than an obligation to pay money) to the extent caused by any Force Majeure event.



17. Amendments

This Agreement may be amended by written agreement between the Parties.

18. Notices

All notices which are required to be given under this Agreement must be in writing and must be sent by email to the last known email address of the recipient and also to the address specified in Item 9 of Schedule 1, or as otherwise each recipient designates in writing from time to time.

19. Entire agreement

This Agreement supersedes all previous agreements in respect of its subject matter and is the entire agreement of the parties with respect to that subject matter. The parties have not relied on any representation, warranty or agreement relating to the subject matter of this Agreement that is not expressly set out in this Agreement, and no such representation, warranty or agreement has any effect.

20. Relationship

Nothing in this Agreement is to be construed as constituting one party as employer, agent or partner of the other party or in joint venture with the other party. No party has authority to bind or purport to bind the other party. the Customer is an independent contractor of the Vendor.

21. Waiver

A waiver of any right, power, authority, discretion or remedy must be in writing, signed by the party granting the waiver. A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy does not result in a waiver of that right, power, authority, discretion or remedy.

22. Severability

All or part of any provision of this Agreement that is illegal, invalid or unenforceable will be severed from this Agreement and the remaining provisions (and parts of provisions) will continue in force.

23. Amendment

Any amendment, consent to modification, supplement, replacement, novation, or assignment of any provision of this Agreement must be in writing and is effective only if signed by an authorised representative of each party.

24. Assignment

The Client cannot assign, novate or create an interest in its rights under this Agreement without the prior written consent of DLR in its discretion.

25. Counterparts

This Agreement may be signed in counterparts, each of which constitutes an original and all of which



constitute the same agreement. A party may enter this Agreement by signing and emailing a counterpart copy to the other party.