

# Training Evidence Systems Services Pty Ltd (ABN: 168 116 112) Software as a Service Terms and Conditions

## 1 Scope and Definitions

1.1 The following terms and conditions govern all access to and use of our online services.

1.2 In these terms and conditions:

“**Applicable Duration**” means the period during which you may access and use the online services as specified by us in connection with the applicable Fees (typically this will be a 12 month period unless otherwise specified);

“**Authorised User**” means a category of user who is permitted by us to access the online services and in relation to whom applicable Fees have been paid.

“**Fees**” means the fees you have paid or which become payable with respect to your access to and use of the online services;

“**online services**” means any software as a service and any other Internet-based services which we have agreed to make available to you and for which you have paid Fees.

“**Password**” means the code or codes required for you or an Authorised User to obtain access to or use our online services;

“**you**” and “**your**” refers to the person agreeing to these terms and conditions who obtains access to our online services;

“**we**”, “**us**” and “**our**” means Training Evidence Systems Pty Ltd (ABN 50 125 868 331) and any related corporations and their respective officers, employees, agents and contractors including (without limitation) site hosts, operators and developers and contributors of hosted software and site content.

## 2 General conditions of access and use

2.1 By accessing or attempting to access our online services or permitting any Authorised User to do so, you agree to be bound by and to comply with these terms and conditions, the general conditions governing all access to and use of our website(s) and any instructions and directions issued by us from time to time.

2.2 You and Authorised Users may only access and use the online services if you have paid or pay all applicable Fees when due.

2.3 You and Authorised Users may only access and use the online services for the Applicable Duration.

2.4 You must not resell our services and must not permit third parties to access or use the online services.

2.5 You must ensure that each Authorised User maintains the security and secrecy of their Password. In particular, you must ensure that Authorised Users are instructed not to tell anyone what their Password is and to take all necessary precautions to prevent unauthorised access or use.

2.6 You must ensure that Authorised Users do not permit any other person to access or use the online services by using their Password.

2.7 You must not (and must not permit Authorised Users or anyone else to) contravene any laws of Australia or of any other country, engage in the mass distribution of unsolicited advertising or promotional material, attempt any “denial of service” attack, attempt to obtain unauthorised access to any computer systems or data, store or distribute defamatory material or material which incorporates executable instructions which produce an undesired result (such as software viruses) or material which constitutes sexual harassment, interfere with the use or enjoyment of internet access by other internet users or do or omit to do anything which may detrimentally affect our software, data, computer systems or business.

2.8 We do not monitor, control or verify the accuracy or completeness of data you submit or receive over the internet and we are in no way responsible for the information or data accessed or transmitted by you.

2.9 You must not (and you must ensure that Authorised Users do not) create any link to the online services except with our express prior written permission.

2.10 Software and/or content updates to the online services may be periodically scheduled and provided by us. We will not provide access to the online services during these and other maintenance activities.

### **3 Copyright & confidentiality**

- 3.1 We retain all copyright and other intellectual property rights in the online services and we retain or obtain all intellectual property rights with respect to any copies, reproductions, adaptations, additions to, enhancements, alterations, modifications or translations made of those online services including those created by you.
- 3.2 You must give us notice of any infringement of our copyright or any other right of ours that comes to your attention.
- 3.3 You and Authorised Users must treat as confidential all information (other than information in the public domain) which we provide to you including (without limitation) information relating to our software and systems, our pricing and our business operations. You must not disclose such information to any other party without our prior written permission. You may only use such information to the extent necessary to enable you to access and use the online services.
- 3.4 Upon termination, you must return all copies of confidential information to us.
- 3.5 These confidentiality obligations shall survive and continue to binding upon you, notwithstanding termination.
- 3.6 You agree that some personal information relating to Authorised Users may be obtained and retained by us or on our behalf. You agree that the personal information may be stored in a database hosted by a third party or by us. We will not be liable to you for any loss of or damage to this data or for any unauthorised access to and use of this data.

### **4 Warranties and liability**

- 4.1 We warrant that access to and use of the online services by Authorised Users in accordance with these terms will not infringe the intellectual property rights of any third party. If such access or use infringes a third party's intellectual property rights, we will either arrange a non-infringing work-around, obtain a licence at our cost permitting such access or use or suspend the availability of such access or use.
- 4.2 Unauthorised access and faults in computer networks can and do occur which may result in the interception, corruption, alteration, non-delivery, incorrect delivery or loss of information transmitted over the internet. Accordingly, we do not warrant that the online services will be available on a continuous or uninterrupted basis or that the online services will provide a secure or confidential means of communication, or that the data transmitted or received by you using the online services will be accurate or virus free.
- 4.3 We shall be under no liability to you or any Authorised User or any other party in respect of any loss or damage (including loss of profit or savings, loss of or damage to data or any direct, indirect or consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of the online services or in respect of a failure or omission on our part to comply with our obligations under this agreement or otherwise.
- 4.4 To the maximum extent permitted by law, all warranties (apart from the warranty in clause 4.1 above) whether express, implied, statutory or otherwise, relating in any way to these terms or access and use of the online services are excluded. Where any term is implied in this agreement by law and cannot be excluded by express agreement, that term is included. Our liability for any breach of such an implied term is limited (at our option) to resupplying the relevant services or paying the reasonable cost of having those services supplied again.
- 4.5 You must indemnify us and keep us indemnified against all loss, liability, costs and expenses (including without limitation, legal expenses on a solicitor-client basis) which we may incur as a direct or indirect result of access or use of the online services by you.

### **5 Additional matters**

- 5.1 Your access to and use of the online services is subject to the laws of South Australia and you irrevocably agrees that all legal proceedings arising in connection with these arrangements must be prosecuted in the Courts of South Australia.
- 5.2 If any provision of these terms is unlawful, void or for any reason unenforceable, then that provision shall be deemed severed from these terms and shall not affect the validity and enforceability of any remaining provisions.
- 5.3 We may revise these terms at any time by written notice to you and you will be bound by such revisions from the date on which the revisions take effect. If you do not wish to be bound by the revisions you may give written notice to terminate these arrangements providing your notice of termination is given not less than 14 days after your receipt of our notification of the revisions.