

End User License Agreement



VET Advisory Group Pty Ltd (ABN 97 632 038 325) of 301/101 Overton Road, Williams Landing VIC 3027 (VAG) grants the Purchaser a license to use the Resources on the terms of this Agreement.

1. Definitions and Interpretation

- (a) **Commencement Date** means the date of the payment of the Price.
- (b) **Contextualise** means is a process in updating the assessment and learner resources to suit your learner/cohort.
- (c) **Intellectual Property Rights** includes copyright and neighbouring rights and other rights resulting from intellectual activity throughout the world.
- (d) **Price, Purchaser and Territory** have the respective meanings specified in the Schedule.
- (e) **Resources** means the educational resources specified in the Schedule, whether in printed or electronic form, and including any updates and replacement versions.
- (f) A reference to “includes” or “including” means “includes without limitation”.
- (g) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

2. Licence

- (a) VAG grants to the Purchaser a non-exclusive licence to use the Resources in its business within the Territory for the term of this Agreement. Non-exclusive means that VAG can license the same Resources to other parties.
- (b) This licence will commence on the Commencement Date and continue until this Agreement is terminated in accordance with this Agreement.
- (c) The Purchaser may reproduce and copy the Resources and distribute them to its staff and students for the purposes of its business in print and/or electronic form.
- (d) The Purchaser must not, under any circumstances, sell or otherwise supply any of the Resources to any third party (except its students and staff) or use the Resources for or on behalf of any third party.
- (e) The Purchaser must not assign or sub-license this Agreement to any third party without the prior written consent of VAG.
- (f) If the Territory includes any country other than Australia, the Purchaser acknowledges that the Resources are designed for use in Australia. The Purchaser is responsible for determining the suitability of the Resources for its purposes in any country other than Australia, including compliance of the Resources with local laws, regulations and requirements.

3. Purchaser changes to Resources

- (a) The Resources are not intended or designed to be an “off-the-shelf” resource automatically suitable for the Purchaser’s use in its business. The Purchaser is permitted and expected to Contextualise the Resources for its particular purposes.

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- (b) The Purchaser may remove the branding of VAG from the Resources and substitute its own branding.
- (c) The Purchaser acknowledges that, if the Purchaser Contextualises any of the Resources, VAG is not responsible for whether the Resources as Contextualised comply with any regulatory requirements or satisfy an audit by an official registering body. However, if an audit by an official registering body shows that any of the Resources, in the form supplied by VAG, fails to comply with any regulatory requirements, VAG will rectify the non-compliance at no additional cost.
- (d) The Purchaser will indemnify VAG and hold it harmless against any liability, loss, damage or expense (including legal costs on an indemnity basis) suffered by VAG arising directly or indirectly from Contextualisations to the Resources made by or on behalf of the Purchaser.
- (e) Except as referred to in clause 3(c) and to the extent permitted by law, VAG does not give any warranty or guarantee, and excludes all liability (including in negligence), arising directly or indirectly in relation to the promotion, supply or use of the Resources or under this Agreement. This clause is subject to any rights of the Purchaser under any law, including the *Australian Consumer Law*, that cannot be excluded or limited. If any liability cannot be excluded but may be limited, VAG limits its liability, at its option, to the replacement or amendment of the Resources or the supply of any services again.

4. Property

- (a) All Intellectual Property Rights in all Resources are the property of VAG. The Purchaser is not granted any interest in the Resources apart from those specifically granted in this Agreement.
- (b) The Purchaser must immediately notify VAG if the Purchaser becomes aware that any third party appears to be infringing any Intellectual Property Rights in the Resources or that any third-party claims that any of the Resources infringe its rights.

5. Termination

- (a) VAG may terminate this Agreement with immediate effect if the Purchaser breaches this Agreement and fails to remedy the breach within 7 days of receipt of notice from VAG requiring the breach to be remedied. Upon termination the Purchaser must cease all use of the Resources.

6. General

- (a) This Agreement will be construed in accordance with and governed by the laws of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria and the federal courts of Australia.
- (b) If the whole or any part of a provision of this Agreement is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this Agreement will have full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Agreement or is contrary to public policy.
- (c) Any waiver by VAG in respect of any breach of this Agreement will not be deemed to be a waiver in respect of any other breach or of any subsequent breach.

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(d) This Agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties.

(e) Any amendment to this Agreement must be in writing and signed by both parties.

7. Dispute Resolution

(a) In the event a dispute arises out of or in connection with this Agreement or its validity, the parties will comply with this Dispute Resolution provision before commencing any litigation in relation to the dispute, except where a party seeks urgent interlocutory relief.

(b) The party claiming a dispute will give the other party notice of the dispute providing details. The parties will attempt to resolve the dispute through good faith consultation.

(c) If the dispute is not resolved within 20 days from the date of notice of the dispute, then any or all outstanding issues will be submitted to mediation by a mediator mutually agreed between the parties or, failing agreement, a mediator appointed by the President of the Law Institute of Victoria. The mediation will be held in Melbourne, Victoria. The parties will share the costs of the mediation equally.

(d) If mediation is not successful in resolving the entire dispute within 30 days of referral to mediation (unless such period is extended by agreement of the parties), any outstanding issues will be submitted to final and binding arbitration by an arbitrator mutually agreed between the parties or, failing agreement, an arbitrator appointed by the President of the Law Institute of Victoria. The arbitration will be conducted in Melbourne, Victoria in accordance with the laws of the State of Victoria. The arbitrator's award will be final, and judgment may be entered upon it by any court having jurisdiction within the State of Victoria.

