

Terms and Conditions

Digital Learning Resources Pty LTD
ABN 52 638 800 414

Training Delivery Terms and Conditions – Effective as at 10 October 2018

1. Interpretation

In these terms and conditions unless the context otherwise requires:

Client means a person, a business, a company or a party to any contractual arrangement with the Company, subject to these Terms and Conditions;

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

Content means multi-media training content and related materials provided by DLR via the DOL Site;

DLR means Digital Learning Resources Pty LTD ABN 52 638 800 414 of Level 7 607 St Kilda Road Melbourne Victoria 3004 Australia;

DOL Site means Didasko Online Learning Site, a URL specific dedicated LMS generated by DLR for the 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.

Insolvency Event means an event of insolvency as that term is commonly understood at law;

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

LTI means Learning Tools Interoperability, a link that allows single sign on integration from one LMS to another

Content Fee means the fee payable by the Client to use the Content subject to these Terms and Conditions;

Terms and Conditions means these terms and conditions;

2. General

2.1 To the fullest extent permissible under law including The Australian Consumer Law (**ACL**) these Terms and Conditions are incorporated into all agreements between DLR and the Client for the provision of Content by DOL to the Client via the Site. Where the ACL applies to the extent of any inconsistency these Terms or any part thereof will be void and capable of severance without affecting any remaining clauses.

2.2 By clicking on the acceptance window and accepting these Terms and Conditions, 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 Site.

2.3 By accepting these Terms and Conditions, the Client confirms that it will access the Site and the Content subject to these Terms and Conditions and agrees to be bound by them.

3. Commencement

3.1 DLR will commence providing Content upon receiving acceptance by the Client by confirmation in writing and completion of a registration form.

4. Grant of licence

4.1 In consideration of payment of the Content Fee by the Client DLR hereby grants to the Client a non-exclusive and non-transferable licence to access and use the Content and materials available on the DOL Site subject to these Terms and Conditions.

4.2 The Content will be made available via the DOL Site to each Learner subject to these Terms and Conditions.

5. Fees & Invoices

5.1 All Content the subject of these Terms and Conditions is charged to the Client on a per Learner/per unit basis exclusive of all taxes, duties and surcharges payable in respect of the Content (including GST) and in respect of these Terms and Conditions. New Clients may be liable for a site registration fee imposed at the discretion of DLR.

5.2 The Client agrees to enrol all Learners into the DOL Site via the online enrolment feature and agrees to indemnify DLR for all Content Fees in the event that any audit indicates that Learners are accessing the Content without being enrolled.

5.3 Subject to the provisions of this clause 5, DLR will issue an invoice for the DOL Site enrolment activities upon the Client enrolling Learners.

5.4 If payment is not made by the Client within 14 days of the due date from the date which an invoice is issued, interest will be payable by the Client at the rate of two per cent (2%) per annum per calendar month above that 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, such interest to be computed from the date a payment becomes overdue until payment of such monies is received in full. If the Client defaults in payment after this time, without prejudice to these or any other rights, DLR shall be entitled to suspend its remaining obligations under these Terms and Conditions and to cancel the Client's access to the Site without notice.

5.5 In addition to paying the Content Fee and any other amount payable or in connection with these Terms and Conditions (which is exclusive of GST), the Client will:

- a. pay to DLR an amount equal to any GST payable from any supply by the supplier in respect of which the Content Fee or any other amount is payable under these terms and conditions; and
- b. make such payment either on the date when the Content Fee is due or within seven (7) days after the Client is issued with a tax invoice, whichever is the later.

5.6 The Client may be required to make payment up-front and be approved (in clear funds) prior to DLR providing the Client with access to their DOL Site. Credits can be purchased by the Client in bundles as notified by DLR. Up-front payment is to be made to DLR via MasterCard, Visa or Direct Credit (Electronic Funds Transfer (EFT)) only.

5.7 A 'grace period' for student unenrolments 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:

- a. The unenrolment falls outside the 31 day grace period
- b. The student has accessed the 'Digital content'
- c. 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
- d. The student has accessed the units' resources in a manner which has been deemed by Didasko as qualifying for a charge to be raised
- e. 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.

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.

5.8 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, unenrolments and grace periods on these enrolment fees will not be offered.

6. Termination

6.1 The term of the licence granted by DLR is ongoing until terminated in accordance with these Terms and Conditions or as otherwise reasonably determined by DLR acting in its sole discretion.

6.2 The Client may terminate the provision of Content by DLR under these Terms and Conditions at any time by giving 28 days' notice in writing.

6.3 DLR may terminate the provision of Content at any time under these Terms and Conditions by giving 28 days' notice in writing, in its sole discretion, or if the Client breaches any of these Terms and Conditions or enters into an Insolvency Event.

6.4 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 export all Learner records following termination for a period of up to 28 days, following which access will be refused.

6.5 The rights of termination by DLR under these Terms and Conditions shall be without prejudice to any other rights, including the right to seek injunctive relief, available to it at law.

6.6 DLR expressly reserves the right to suspend the Client's access to their DOL Site if the Client has no enrolled Learners within their DOL Site.

7. Copyright and Intellectual Property

7.1 All Intellectual Property in the DOL Site, including all Content, and materials and source codes, developed or owned by DLR are retained by it and all rights are expressly reserved.

7.2 Without seeking to exclude or limit the application of the *Copyright Act 1968* (Cth) the Client and subject only to the provisions of this clause 8 at no time shall the Client print or copy Content from the Site for distribution purposes without seeking DLR's prior written consent. Failure to seek such consent by the Client will represent a fundamental breach of these Terms and Conditions resulting in the immediate termination of the licence. The Client further agrees it shall not directly or indirectly as an officer, employee, agent, contractor or trustee attempt to reverse engineer or reproduce or substantially reproduce the Content in any manner whatsoever hereby licensed to the Client.

7.3 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.

7.4 The Client must ensure that all printed material is used for the purposes of training delivery only. Printed materials are non-transferable to any other Client or individual and such use would constitute a breach of copyright and

these Terms and Conditions. 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. LGs are only accessible at the discretion of DLR.”

7.5 The Compliance and Assessment Documents may be exported, contextualized and reproduced by the Client. The use of these documents is permissible only for Learners enrolled within the DOL Site. DLR grants a non-exclusive, royalty-free licence to the Client for the applicable term under these Terms and Conditions to adapt, reproduce and print the Compliance and Assessment Documents to the extent that such a use does not represent a ‘fair dealing’ of such works provided by DLR under this Agreement as that term is understood under section 40 of the *Copyright Act 1968* (Cth). DLR confirms that all moral rights in any of the works in the Compliance and Assessment Documents have been unconditionally waived subject to the use of the Content under these Terms and Conditions.

The Compliance and Assessment documents are to be used in conjunction with the DLR Content only. The use of these materials by the Client with any other third party training materials is a breach of these Terms and Conditions and DLR reserves all of its rights in the event of being notified or informed of any such breach.

7.6 Subject to these Terms and Conditions, upon enrolment into an individual unit, a student may for the purposes of learning print any portion in whole or in part One copy of the unit’s LG and as specified above remains the property of the student and cannot be copied or re-printed for re-distribution purposes by the Client or student. Any such activity will constitute a breach of DLR’s intellectual property rights and these Terms and Conditions.

7.7 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.

7.8 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 these Terms and Conditions without the prior written consent of DLR, such consent to be withheld in DLR’s absolute discretion.

7.9 Upon termination of the provision of Content under clause 6, subject to clause 6.4 the Client agrees to 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 Intellectual Property belonging to DLR in any format, including hard copy or electronic format.

7.10 Delivery of DLR training materials to Learners not enrolled within the DOL Site is a breach of copyright in which event DLR reserves all of its rights.

7.11 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.

8. Limited Warranty and Disclaimer

8.1 DLR will use its reasonable endeavours to ensure the Content remains current against changes to Australian national competency standards and only to the fullest extent permissible under law including the ACL (if applicable) makes no warranty about its currency or fitness of purpose.

8.2 Except as outlined above and subject to any statutory terms which cannot be excluded varied or modified, the Content is accessed on an "as is" basis and the Client subject to the ACL (if applicable) assumes the entire risk as to its quality and performance. It remains at all times the responsibility of the Client to verify the results obtained from the use of the Content at its own cost.

8.3 If during the 14 day limited warranty period, the Client notifies DLR in writing of any defects or faults in the Content apart from any other rights the Client may have including those under the ACL (if applicable) 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.

8.4 The above warranty:

- a. is subject to the Client having fully complied with its obligations under these Terms and Conditions;
- 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.

9. Client Indemnity & Release

9.1 To the fullest extent permissible under law including the ACL (if applicable) the Client indemnifies DLR for all claims, loss or damages arising from a breach of these Terms and Conditions (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.

9.2 DLR further reserves the right in its sole discretion upon seven (7) days' notice to the Client of any works or materials that it regards as infringing any third party Intellectual Property to delete such material or any part thereof and the Client releases DLR from any claim, action, proceedings or suit in the event that DLR exercises its rights under this clause.

10. Personal Information

10.1 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).

10.2 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.

10.3 The Client agrees under these Terms and Conditions that any personal information stored on the Site will remain and be held in accordance with statutory requirements for the keeping of such information and records as varied from time to time.

10.4 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.

11. Site Service & Monitoring

11.1 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. 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.

11.2 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.

11.3 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.

12. Client obligations

12.1 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 ones an 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.

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

12.3 In addition the Client agrees NOT to do any of the following in relation to the 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).

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

12.5 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 these Terms and Conditions.

12.6 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 these Terms and Conditions and will provide reasonable notice

when the Client is approaching this limit before deleting any such additional content or uploads provided by the Client.

12.7 The Client acknowledges and agrees that it has read the [Didasko Security Statement](#) (including use of Didasko Cloud Services) which details the use by DLR of cloud infrastructure services in the provision of Content and related services under these Terms and Conditions and to the fullest extent permissible under law consents to such use by DLR.

13. Limitation of Liability

13.1 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 these Terms shall exclude, restrict or modify any Consumer Rights:

- a. The Client acknowledges and agrees that if it is a ‘consumer’ under the ACL then (i) its right to make any claim(s) for any loss or damage sustained by the Client and/or any third parties shall be limited to the Consumer Rights; (ii) the liability of DLR for failure to comply with a consumer guarantee in relation to the supply of goods and/or services will be limited to that set out under s64A of the ACL;
- b. 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.

13.2 If any services and/or goods are supplied to the Client and it is not a ‘consumer’ as defined under the ACL and the goods and/or services provided are other than of a kind ordinarily acquired for personal, domestic or household use or consumption, then:

- a. the liability of DLR for a breach of a condition or warranty under these Terms is limited to –
 - i. if the breach relates to goods:
 - A. the replacement of the goods or the supply of equivalent goods;
 - B. the repair of such goods;

- C. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - D. the payment of the cost of having the goods repaired; and
 - ii. if the breach relates to services:
 - A. the supplying of the services again; or
 - B. the payment of the cost of having the services supplied again.
- b. Save as expressly provided for under these Terms and Conditions and to the fullest extent possible under law, DLR shall not be liable to the Client or its servants, agents or representatives for any direct, indirect, incidental or consequential loss or damages of any nature however caused (whether based on tort including negligence, contract or otherwise) including but not limited to loss of profits, loss of production, loss of sales opportunity or business reputation, direct or indirect labour cost and overhead expenses and damage to equipment or property or any other claim whatsoever arising directly or indirectly or in any way attributable to the performance of DLR under these Terms and in no event shall any claim be recognized unless the claim is in writing and received by DLR within fourteen (14) days' of the date of Delivery.

14. Liability for consequential loss

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

14.2 Subject to any statutory provision to the contrary including the ACL (if applicable), in the event DLR is in breach of these Terms it shall not be liable for any consequential loss including economic loss and the liability of DLR shall at all times be limited to the replacement of the Software or the supply or equivalent Software or the repair of the Software or the payment of the cost of replacing the Software or of acquiring equivalent Software and subject to any relevant provisions of the ACL (if applicable), DLR may elect any one of the limited forms of compensation to the exclusion of others set out therein.

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

14.4 Subject to the provisions of this clause and the ACL (if applicable) DLR will not be liable to the Client or any person for any direct, indirect, special, incidental, consequential or similar damages, even if DLR has been received notice or been advised of the possibility of such damages.

15. Law

To the extent permissible under law including the ACL (if applicable) these Terms and Conditions 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.

16. Insolvency & Default

If the Client commits or is involved in any act of insolvency the Client shall be deemed to be in default under these Terms and Conditions in which event

- a. 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;
- b. An act of insolvency is deemed to include the appointment of any insolvency practitioner and the calling of any formal meeting of creditors

17. Disputes

Any dispute or difference whatsoever arising in connection with this agreement shall be submitted to mediation in accordance with and subject to the Law Institute of Victoria's Code of Practice for Mediation.

18. Force Majeure

To the extent permissible under law including the ACL (if applicable) neither Party is liable to the other for any failure to perform any of the obligations of these Terms and Conditions (other than an obligation to pay money) caused by any Force Majeure event.

19. Amendments

DLR reserves the right to amend these Terms and Conditions from time-to-time and to the extent permissible under law including the ACL (if applicable) the Client agrees that it will have notice of these amendments once they have been posted by DLR to the Site.