

Licence Agreement – RTO Licence

Women’s Health Victoria Inc. (ACN 365 284 944) of Level 8, 255 Bourke Street, Melbourne VIC 3000, Australia (**WHV**).

and the purchaser of the Course in Gender Equity Teaching Resources and/or Learning Guides

Background:

- A. WHV has developed the Licensed Materials in conjunction with other parties, and with funding support from the Victorian State Government. As owner of the Intellectual Property Rights in the Licensed Materials, WHV has the rights to commercialise the Licensed Materials.
- B. The Licensee wishes to take a licence to the Licensed Materials to deliver courses to students.
- C. WHV agrees to grant a licence of the Licensed Materials to the Licensee on the terms and conditions of this agreement.

Agreed terms:

1 Definitions & interpretation

1.1 Definitions

In this agreement:

Additional Term has the meaning in clause 12.1.

Attributions means the attributions in relation to the use of the Licensed Materials in either their original or adapted forms (if applicable) as defined in the Style Guide provided with the purchased resources.

Branding Guidelines means the guidelines developed by WHV for the use of the Gender Equity Branding, as set out in the Style Guide provided with the purchased resources and as amended from time to time by WHV and provided to the Licensee.

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.

Commencement Date means the date on which the resources were purchased.

Gender Equity Branding means the logo, brand and unregistered trade mark used by WHV in relation to the Licensed Materials, as further specified in the Branding Guidelines.

Initial Term has the meaning in clause 12.1.

Intellectual Property Rights or **IPR** means all intellectual property rights subsisting anywhere in the world, including patents, copyright, rights in circuit layouts, designs, trade and service marks (including goodwill in those marks), domain names and trade names, and any right to have confidential information kept confidential, and any application or right to apply for registration of any of those rights, whether or not such rights are registered or capable of being registered.

Learner Guides means the learner guides and supporting resources listed under the product purchased this day.

Learner Guides Licence has the meaning set out in clause 2(b).

Licence Fee means the fee paid at time of purchase.

Licences has the meaning set out in clause 2.

Licensed Materials means each of the Learner Guides and/or Teaching Resources purchased on this day.

Loss means any loss, damage, cost, interest, expense, fee, penalty, fine, forfeiture, assessment, demand, action, suit, claim, proceeding, cause of action, liability or damages, whether or not payable immediately.

Materials IP means any of the IPR subsisting in any of the Licensed Materials, including the Gender Equity Branding.

SCORM or **Shareable Content Object Reference Model** means standards and technical specifications in existence from time to time that enable e-learning courses to be shared across multiple platforms, and **SCORM-Compliant** means that the relevant e-learning course has been developed in compliance with those standards and technical specifications.

Teaching Resources means the resources listed under the product purchased this day.

Teaching Resources Licence has the meaning set out in clause 2(a).

Term means the Initial Term and any Additional Term (if applicable) as further described in clause 12.1.

1.2 Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause or paragraph is to a clause or paragraph of this agreement;
- (d) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (e) a reference to a person includes a body corporate;
- (f) a reference to a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes (i) that Statutory Provision as amended or re-enacted from time to time; and (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision;
- (g) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (h) a provision of this agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this agreement or the inclusion of the provision in this agreement;
- (i) If an act must be done on a specified day that is not a Business Day, it must be done instead on the next Business Day;
- (j) a reference to currency by way of "Dollar", "\$" or "AUD" is to the currency of Australia; and
- (k) headings are for ease of reference only and do not affect interpretation.

2 Grant of licences

With effect on and from the Commencement Date, WHV grants to the Licensee the following:

- (a) a non-exclusive, non-transferable, non-sub-licensable licence for the Term to reproduce and use the Teaching Resources to deliver courses to students, including the right to adapt, modify and alter any of the Teaching Resources (**Teaching Resources Licence**); and
- (b) a non-exclusive, non-transferable, non-sub-licensable licence for the Term to reproduce and use the Learner Guides in the form provided to the Licensee to deliver courses to students (but excluding the right to adapt, modify or alter any of the Learner Guides) (**Learner Guides Licence**),

subject to complying with the Branding Guidelines and using the Attributions in accordance with the terms of this agreement (collectively, the **Licences**).

3 Licence Fee

3.1 Payment terms

In consideration of the grant of the Licences, the Licensee will pay to WHV the Licence Fee at time of purchase of the product. If the Initial Term is automatically renewed in accordance with clause 12.1 for any Additional Terms, the Licensee will pay to WHV any subsequent Licence Fees, within 10 Business Days of receipt of a valid tax invoice from WHV.

3.2 GST exclusive pricing

Except where this agreement expressly states otherwise, all amounts payable under this agreement (including the Licence Fee) do not include GST. If GST applies to any supply of goods or services or payment under this agreement, then the amount payable will be adjusted by adding the applicable amount of GST. Payment of the additional GST is, however, subject to provision of a valid tax invoice by the party receiving the payment.

4 Access to Licensed Materials

Upon execution of this agreement by the parties and payment of the Licence Fee by the Licensee, WHV will provide the Licensed Materials to the Licensee as a downloadable Zip file within one day of payment.

5 Intellectual Property Rights

- (a) The Licensee acknowledges and agrees that WHV is the owner of all the Materials IP and that the Licensee has no right in or to the Materials IP, other than the rights granted under the Licences.
- (b) The Licensee must notify WHV immediately if it becomes aware of any actual or threatened infringement of any of the Materials IP or any allegation or claim (written or otherwise) that the use of the Materials IP by WHV or the Licensee infringes any third party rights.

- (c) WHV has the right, at its sole discretion, to take any action in relation to any unauthorised use of any of the Materials IP. In any such action, the Licensee will provide all reasonable assistance to WHV and, unless the Licensee is at fault, WHV agrees to reimburse Licensee for any reasonable costs the Licensee incurs in providing such assistance.
- (d) The Licensee is expressly prohibited from taking any action against any third party for infringement of any Materials IP.
- (e) If the Licensee's use of the Materials IP in accordance with this agreement infringes the Intellectual Property Rights of any person, WHV will indemnify the Licensee against any direct loss or damage the Licensee may suffer as a result of a claim, but only to the extent the claim relates to the Materials IP provided by WHV under this agreement, and only if the Licensee:
 - (i) promptly notifies WHV of the claim in accordance with paragraph (b) above;
 - (ii) allows WHV to defend or settle the claim and to control any proceedings; and
 - (iii) supplies reasonable assistance to WHV in defending or settling a claim.

6 Attributions and Branding Guidelines

6.1 Attributions

The Licensee must ensure that an Attribution is included on the front page of all Licensed Materials that are reproduced or used under the Licences, including any Licensed Materials that are adapted, modified or altered by the Licensee.

6.2 Use of Gender Equity Branding

- (a) To the extent that the Licensee uses any of the Licensed Materials in their original form, it must ensure that it complies with the Branding Guidelines in relation to the use of the Gender Equity Branding.
- (b) If the Licensed Materials are adapted, modified or altered in any way such that they are no longer in their original form, all of the Gender Equity Branding must be removed from the Licensed Materials.

7 Learner Guides

- (a) The Licensee acknowledges that it must not, in any way, adapt, modify or alter the whole or any part of the Learner Guides.
- (b) WHV will, from time to time, provide the Licensee with updated Learner Guides as and when they become available, and subject to this agreement remaining on foot.

8 Accounts and records; inspection rights

The Licensee will maintain separate and accurate accounts and records of the use of the Licensed Materials, including examples of versions of the Licensed Materials (and any adapted, modified or altered versions of same) that are provided by Licensee in the delivery of courses to students. Within 10 Business Days of a request from WHV, the Licensee must provide WHV with a copy of or access to versions of the Licensed Materials that it has used with students for the purpose of allowing WHV to confirm that the Licensee has been complying with the terms of this agreement, particularly to ensure compliance with the requirements with respect to Attributions and the Branding Guidelines.

9 Indemnity from Licensee

The Licensee hereby indemnifies and must keep indemnified WHV, its directors, officers and employees (**WHV Indemnified Party**) against all Loss incurred by any of them in connection with:

- (a) any negligence of, or breach of this agreement by, the Licensee;
- (b) any unlawful act, wilful misconduct, theft or fraud (or involvement of same) of the Licensee;
- (c) any damage, loss or destruction of property due to any act or omission of the Licensee; or
- (d) any injury to, or death of, any person due to any act or omission of the Licensee.

This indemnity does not apply to the extent that any Loss incurred by any WHV Indemnified Party is caused by or contributed to by any act or omission of the WHV Indemnified Party.

10 Warranties and covenants

10.1 Mutual warranties and covenants

Each party warrants and covenants to the other that:

- (a) it will comply with all applicable laws, codes, regulations, rules, and orders in the performance of this agreement;
- (b) it has the power and authority to enter into and perform its obligations under this agreement;

- (c) the execution, delivery and performance of this agreement will constitute legal, valid and binding obligations of it, enforceable in accordance with its terms;
- (d) it is not an externally administered body corporate or body politic;
- (e) the execution, delivery and performance of this agreement will not violate, breach or constitute a default under any of:
 - (i) any legislation or rule of law or regulation, authorisation, consent or any order of any governmental or other public authority, institution or body;
 - (ii) its constitution or any legislation, rules or other document constituting that party or governing its activities; or
 - (iii) any written or oral undertaking, or any instrument (including any contract of employment, consultancy agreement or other agreement or arrangement or understanding, whether in written form or not) of a similar nature, to which it is a party or which is legally binding or may in the future become binding on it.

10.2 Warranties by WHV

- (a) WHV warrants that, as at the date of this agreement, any of the Licensed Materials that are provided in the form of e-learning modules are SCORM Compliant.
- (b) In compiling the information contained in the Licensed Materials, WHV has used reasonable endeavours to ensure that the information contained within the Licensed Materials is correct and current at the time of publication but takes no responsibility for any error, omission or defect in the Licensed Materials.

11 Exclusion of liability

- (a) Nothing in this agreement shall exclude or in any way limit either party's liability to the other for fraud or for death or personal injury caused by a party's negligence, or any other liability to the extent that it may not be excluded or limited as a matter of law.
- (b) The Licensee acknowledges that, other than as set out under clauses 10.1 and 10.2, WHV makes no other warranties under this agreement.
- (c) To the extent permitted by law, WHV excludes liability:
 - (i) for any consequential or indirect Loss which may or does arise in respect of the use by the Licensee of the Licensed Materials provided under this agreement or otherwise in connection with this agreement, or any breach of it or any negligence by or on behalf of WHV; and
 - (ii) without limiting clause 11(c)(i), for any Loss resulting indirectly from any breach of this agreement or any negligence by or on behalf of WHV, including by way of example, loss of income; loss of business profits or contracts; business interruption; loss of information; loss of, or corruption to, data; loss of privacy of communications; and loss of opportunity, goodwill or reputation.
- (d) If any law prohibits the exclusion of liability pursuant to this clause, WHV limits its liability to the extent permitted by law, to the resupply of the Licensed Materials.

12 Term and termination

12.1 Term

Subject to earlier termination under clauses 12.2 or 12.4, this agreement will commence on the Commencement Date and continue from the Commencement Date until the end of the initial Course Accreditation period being 31 July 2024 (**Initial Term**). The agreement will automatically renew for an additional period (each such period being an **Additional Term**) unless and until the Licensee provides written notice to WHV no later than 60 Business Days prior to the expiry of an Additional Term.

12.2 Termination

A party may terminate this agreement with immediate effect by giving notice to the other party if:

- (a) that other party breaches any provision of this agreement and fails to remedy the breach within 20 Business Days after receiving notice requiring it to do so;
- (b) that other party breaches a material provision of this agreement where that breach is not capable of remedy; or
- (c) any event referred to in clause 12.3 happens to that other party.

12.3 Notification of events

Each party must notify the other party immediately if:

- (a) that party ceases to be able to pay its debts as they become due;

- (b) any step is taken by a mortgagee to take possession or dispose of the whole or part of that party's assets, operations or business; or
- (c) any step is taken to enter into any arrangement between that party and its creditors; or
- (d) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person of the whole or part of that party's assets, operations or business.

12.4 Termination by WHV

WHV may terminate this agreement with immediate effect by giving notice to the Licensee if:

- (a) WHV determines, at its sole discretion, that the Licensed Materials are no longer relevant or in a form that is current enough to be delivered as student courses;
- (b) the Licensee undergoes any change in beneficial ownership or control, except if the Licensee has obtained the prior written consent of WHV;
- (c) the Licensee purports to assign or otherwise deal with, or dispose of, its rights or obligations under this agreement without the prior written consent of WHV;
- (d) the Licensee disposes of the whole or part of its assets, operations or business other than in the ordinary course of business; or
- (e) the Licensee ceases to carry on business.

13 After termination

13.1 Action on termination or expiry

On termination or expiry of this agreement, the Licences end and the Licensee must immediately:

- (a) pay to WHV all amounts due;
- (b) stop using any of the Licensed Materials, including any adapted, modified or altered versions of the Licensed Materials;
- (c) stop using any of the Gender Equity Branding; and
- (d) deliver to WHV all property of WHV in the possession, power or control of the Licensee.

13.2 Survival

Clauses 1, 3.1, 9 to 11 (inclusive), 13 to 17 (inclusive), and any other clause that by its nature should survive expiry or termination of this agreement will survive any termination or expiry of this agreement.

13.3 Accrued rights and remedies

Termination or expiry of this agreement does not affect any accrued rights or remedies of either party.

14 Dispute resolution

- (a) Except for any dispute where a party seeks urgent injunctive or interlocutory relief, if any dispute arises between the parties in connection with this agreement, each party's nominee must, upon 15 Business Days' notice from either party, meet to review the dispute and, if possible, resolve it by good faith negotiation.
- (b) If the parties are unable to resolve the dispute within 20 Business Days after the notice referred to in paragraph (a) is delivered, either party may refer the matter to mediation administered by the Australian Disputes Centre (**ADC**) before having recourse to litigation. The mediation must be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC (**Guidelines**). The terms of the Guidelines are deemed to be incorporated into this agreement.
- (c) If any dispute has not been so resolved within 30 Business Days after the mediation under paragraph (b), either party may commence court action or proceedings.

15 Notices and other communications

15.1 Service of notices

A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post, facsimile or electronic mail to the recipient's address, as varied by any Notice given by the recipient to the sender.

15.2 Effective on receipt

A Notice given in accordance with clause 15.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the third Business Day after the date of posting;
- (c) if sent by electronic mail, at the time and date that the sender's computer system states that the Notice was sent unless the sender receives a notification that the electronic mail has not been successfully delivered or the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

16 Governing law and jurisdiction

This agreement is governed by the laws of the State of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the Victorian Courts.

17 General

- (a) Nothing in this agreement is intended by the parties to constitute the Licensee or any of its employees as an employee, agent, partner or representative of WHV and the Licensee has no authority to incur, and must not incur, any obligation on behalf of WHV.
- (b) No amendment or variation of this agreement is valid or binding on a party unless made in writing executed by all parties.
- (c) The Licensee may not assign this agreement or any rights or obligations under this agreement without the prior written consent of WHV.
- (d) WHV may assign or transfer its rights or obligations under this agreement as it considers reasonably necessary.
- (e) Each party must do anything, and, if applicable, must ensure that its employees and agents do anything, that the other party may reasonably require to give full effect to this agreement.
- (f) This agreement contains the entire agreement between the parties with respect to its subject matter and fully replaces any previous understandings, agreements, representations or warranties relating to that subject matter.
- (g) This agreement may be executed in any number of counterparts. All counterparts will constitute one instrument. The parties agree that facsimile or electronic signatures forwarded by email will be accepted as originals.
- (h) The failure of a party at any time to insist on performance of any provision of this agreement is not a waiver of its right at any later time to insist on performance of that or any other provision of this agreement.
- (i) Part or all of any provision of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining provisions of this agreement continue in force.