

## Facilitate SaaS Subscription General Terms & Conditions

### 1 Licensed Software

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#### 1.1 Licence

- (a) Unleashed grants to the Licensee a License to use the Licensed Software for the Licensed Purpose in accordance with the terms of this Agreement.
- (b) The Licensee is entitled to a Free Trial of the Licenced Software as set out in clause 8.
- (c) The Licensee may permit its personnel to exercise any of the rights granted to it under this clause 1.1 provided that any access to the Licensed Software is in accordance with the terms of this Agreement.
- (d) The Licensee is liable to Unleashed for the acts and omissions of its personnel and any person to whom it grants a Licence of the Licensed Software (including Sub-Licensees), as if they were those of the Licensee.

#### 1.2 Master Licence

- (a) Where the Licensee obtains a premium tier licence (as per the terms set out in the Onboarding Form) the Licensee may sub-lease the Licensed Software to any third party (**Sub-Licensee**), provided that the Licensee:
  - (i) obtains the written consent of Unleashed to sub-lease the Licenced Software to that Sub-Licensee (which may be withheld by Unleashed at its absolute discretion, or may be conditional upon such terms and conditions as Unleashed may determine in its absolute discretion);
  - (ii) opens a separate account for each of those Sub-Licensee with Unleashed; and
  - (iii) each of those Sub-Licensee agrees to be bound by the terms of this Agreement as if they were the Licensee.
- (b) The Licensee acknowledges that it will remain fully responsible for the performance of each Sub-Licensee's obligations and each Sub-Licensee's breach of this Agreement, including any and all payments required under this Agreement.

#### 1.3 Restrictions

- (a) The Licensee must not, and must ensure that its personnel, do not:
  - (i) use any part of the Licensed Software other than for the Licensed Purpose;
  - (ii) disclose, display, grant access to or distribute any part of the Licensed Software to any person other than as expressly permitted under this Agreement;
  - (iii) modify or adapt the Licensed Software except as permitted by their Licence;
  - (iv) remove any trade mark, branding, disclaimer or legal notice incorporated into the Licensed Software or Downloadable Content except as permitted by this Agreement;
  - (v) use the Licensed Software in any manner that exposes Unleashed to any harm (including any adverse publicity or any damage to its reputation) or liability of any nature;
  - (vi) interfere with or violate any security measures implemented in relation to the Licensed Software; or
  - (vii) circumvent (or attempt to circumvent) any technical limitations designed to protect the integrity of the Licensed Software.
- (b) The Licensee must:
  - (i) ensure that any person who is provided access to the Licensed Software is subject to terms and conditions which:
    - (A) prohibit the person from modifying, reproducing or reverse-engineering the Licensed Software; and
    - (B) are consistent with clause 1.3(a).
  - (ii) terminate a person's use of the Licensed Software if directed to do so by Unleashed, where Unleashed reasonably believes that the person's use of the Licensed Software breaches the restrictions set out in this Agreement.

- (c) The parties must comply with any Special Conditions.

#### **1.4 Branding & ownership of Downloadable Content**

- (a) Unleashed's brand will be recognised with the words "**Powered by Facilitate**" on all Downloadable Content.
- (b) The Licensee shall own and be free to use any Downloadable Content created during the Subscription Period for the Licensed Purpose.

#### **1.5 Exceeding the Service Capacity Tier**

- (a) Where the Subscription Fee is paid monthly pursuant to the Onboarding Form, the Subscription Fee charged for any given month will be the fee set out on the Unleashed website for the volume of usage that the Licensee incurred in that month; and
- (b) Where the Subscription Fee is paid annually pursuant to the Onboarding Form and the Service Capacity Tier is exceeded in any given period, the Licensee must pay the difference in the Subscription Fee relevant to their level of usage compared to the Service Capacity Tier they are subscribed for on a monthly basis; and

Unleashed will provide appropriate tax invoices as required.

## **2 Licensee's duties and undertakings**

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The Licensee will:

- (a) perform the Licensee Obligations;
- (b) abide by any reasonable rules or instructions relating to the use or performance of Licensed Software notified by Unleashed to the Licensee;
- (c) promptly inform Unleashed of any facts or opinions relevant to the operation or marketing of the Licensed Software and any use or re-sale of it which is advantageous or disadvantageous to Unleashed; and
- (d) observe any applicable laws in regard to the use of the Licensed Software.

## **3 Intellectual Property Rights**

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### **3.1 Ownership of Licensed Software**

The parties agree that Unleashed retains all ownership and Intellectual Property Rights in the Licensed Software and Brand under this Agreement and nothing in this Agreement is interpreted to assign an interest in the Licensed Software or Brand to the Licensee.

### **3.2 Ownership of Licensee IP**

The parties agree that the Licensee retains all ownership and Intellectual Property Rights in the Licensee IP.

### **3.3 Action by Unleashed**

Unleashed will have the sole right, in its absolute discretion, to bring proceedings or take any action in relation to any infringement or threatened infringement of Unleashed Intellectual Property.

## **4 Professional Services.**

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### **4.1 Initiating Professional Services.**

All Professional Services provided by Unleashed to the Licensee shall be implemented through individual statements of work ("**SOW**"). A SOW will become effective upon execution by authorised representatives of both parties.

### **4.2 SOW Integration.**

If the SOW contains provisions inconsistent with this Agreement, the SOW provisions shall prevail with respect to that SOW. This Agreement by itself does not obligate a party to provide any Professional Services or enter into any SOW.

### **4.3 Change Order.**

Any changes to the obligations of either party or to any other material aspect of a SOW will require a written change order signed by both parties that describes the changes and any related cost adjustments.

#### **4.4 Acceptance.**

Generally, each executed SOW shall specify deliverables, content requirements, specifications, acceptance criteria and procedures relevant to that SOW. Otherwise, Professional Services will be deemed satisfactory to and accepted by the Licensee unless within ten (10) days after submission of the Professional Services to the Licensee, the Licensee gives Unleashed written notice of aspects in which the Professional Services do not meet the SOW requirements.

#### **4.5 Invoicing.**

Unless otherwise agreed in a SOW, Professional Service fees and expenses shall be calculated by Unleashed on a monthly basis and invoiced to the Licensee within fifteen (15) days after the end of each month. Payment for Professional Services under the SOW shall be due thirty (30) days from the date of invoice.

#### **4.6 Payment**

- (a) The Licensee acknowledges that payments made pursuant to this Agreement will be processed via Stripe. The Licensee will be required to establish and link its account through Stripe Connect during the onboarding process, including authorising Stripe Connect to forward payments directly to Unleashed as per this Agreement. The Licensee is responsible for maintaining its Stripe Connect account at all times.
- (b) The Licensee agrees that, if required, it will be registered for GST, will provide Unleashed with its Australian Business Number and issue tax invoices for amounts charged to its Sub-Licensees.

### **5 Limitation on Liability**

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#### **5.1 Exclusion of terms and warranties**

To the full extent permitted by law, Unleashed expressly excludes all terms, representations and warranties that otherwise would be implied by law into this Agreement.

#### **5.2 Restriction of liability**

Where any term or condition imposing liability is implied through the operation of any law, and that term or condition cannot be excluded, the liability of Unleashed for a breach of such a term or warranty will be limited, at the option of Unleashed, to any one or more of the following:

- (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.

#### **5.3 Limitation of liability**

The maximum aggregate liability of a party in respect of all Claims made by the other party in relation to this Agreement or its subject matter (other than in relation to payment of Fees or Rental Fees) will be an amount equal to:

- (a) for Unleashed: the aggregate of all amounts actually paid by the Licensee to Unleashed under this Agreement in the 12 months preceding the date on which the first Claim arose; and
- (b) for the Licensee: the aggregate amount that the Licensee is obliged to pay under this Agreement.

#### **5.4 No liability for consequential loss**

Notwithstanding anything else in this Agreement, each party expressly excludes liability for loss of profit, business, revenue, goodwill or anticipated savings and indirect, special, incidental, or consequential loss or damage.

#### **5.5 No warranty**

Unleashed does not warrant (and the Licensee acknowledges) that:

- (a) the operation of the Licensed Software, Compatible Hardware or Services will be uninterrupted or error free or conform to any reliability or performance standards beyond those specified in the documentation;

- (b) the Licensed Software, Compatible Hardware or Services will be compatible with future products or services supplied by Unleashed or those of other vendors;
- (c) the Licensed Software, Compatible Hardware or Services is fit for any particular purpose;
- (d) the Licensed Software will be usable with any hardware other than Compatible Hardware; or
- (e) the Licensed Software can be integrated with any other software or any network or server.

## **6 Confidentiality, Privacy and Security**

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### **6.1 Treatment of Confidential Information**

Each party (*Recipient*) undertakes to keep the Confidential Information of the other party (*Discloser*) secret and to protect and preserve the confidential nature and secrecy of that Confidential Information.

### **6.2 Disclosure of Confidential Information**

A Recipient may not disclose Confidential Information of the Discloser to any person except:

- (a) representatives, legal advisers, auditors and other consultants of the Recipient who require it for the purposes of this Agreement;
- (b) with the prior written consent of the Discloser; or
- (c) as required by law,

provided that the Recipient gives notice to Unleashed as soon as practicable after it becomes aware of the need to make disclosure under this clause 8.2.

### **6.3 Return of Confidential Information**

On the Discloser's request, the Recipient must immediately deliver to the Discloser all documents or other materials containing or referring to the Discloser's Confidential Information which are:

- (a) in the Recipient's possession, power or control; or
- (b) in the possession, power or control of persons who have received Confidential Information from the Recipient under clause 6.2(a) or 6.2(b) ("Disclosure of Confidential Information").

## **7 Fees and Taxes**

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### **7.1 Subscription Fees**

The Licensee must pay the Subscription Fees to Unleashed:

- (a) where an annual Subscription Fee has been selected in the Onboarding Form, on or prior to commencement of the Subscription Period;
- (b) where a monthly Subscription Fee has been selected in the Onboarding Form:
  - (i) for the Trial Period, the Subscription Fee is waived;
  - (ii) for the first month following the Trial Period, the Subscription Fee is payable, one calendar month after the expiry of the Trial Period;
  - (iii) for each subsequent month the Subscription Fee is payable, on the same day of each month (being the day of the month on which the Subscription Period commenced).

### **7.2 GST**

- (a) Amounts specified in this Agreement do not include any amount of GST.
- (b) In the event that GST is payable for an supply under this Agreement by either party, the party which made the supply may in addition to the Fees payable under this Agreement but subject to having issued a valid tax invoice (as required by the GST Legislation) recover from the other an additional amount on account of GST such amount to be calculated by multiplying the amount payable in respect of that supply by the rate at which GST is imposed by relevant GST legislation.

## **8 Trial Period**

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### **8.1 Free Trial**

The Licensee is entitled to a free trial of the Licenced Software in accordance with the terms of this clause 8.

### **8.2 Trial Period**

The Trial period commences on the first day of the Subscription Period and will automatically terminate 28 days from the Commencement Date unless terminated earlier in accordance with this Agreement. Following Completion of the free Trial period, Subscription Fees will be payable in accordance with clause 7.1.

## **9 Term**

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### **9.1 Term**

This Agreement will operate for the Subscription Period unless terminated earlier in accordance with clause 10.

### **9.2 Renewal**

For Annual subscriptions, this Agreement will renew automatically for rolling 12 month Subscription Periods unless the Licence subscription is cancelled by either party by the giving of notice via the Facilitate Platform. Such cancellation shall take effect from the end of the then current Subscription Period.

For Monthly subscriptions, this Agreement will renew automatically for rolling 1 month Subscription Periods unless the Licence subscription is cancelled by either party by the giving of notice via the Facilitate Platform. Such cancellation shall take effect from the end of the then current Subscription Period.

## **10 Termination**

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### **10.1 Termination on expiry of term**

Notwithstanding any other provision of this Agreement, this Agreement will terminate at the end of the Subscription Period provided either party has cancelled the Licence Subscription during that Subscription Period in accordance with clause 9.2.

### **10.2 Termination by parties**

A party may terminate this Agreement immediately by notice in writing to the other party if Event of Default occurs in relation to the other party.

### **10.3 Termination during Trial Period**

The Licensee may terminate this Agreement at any time during the Trial Period by written notice to Unleashed or via the mechanism provided on the Platform.

### **10.4 Accrued rights**

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

### **10.5 Consequences of termination**

If this Agreement is terminated for any reason whatsoever the Licensee will:

- (a) unless terminated in accordance with clause 10.3, immediately pay to Unleashed the amount of all moneys owing in respect of the Licensed Software or Compatible Hardware;
- (b) immediately cease using the Licensed Software and Services; and
- (c) within five (5) days of termination or expiry, at Unleashed's election, delete or return to Unleashed:
  - (i) all electronic copies of the Licensed Software;
  - (ii) any rented Compatible Hardware and Documentation; and
  - (iii) any material or other items in its possession, power or control that was provided by or on behalf to Unleashed to the Licensee.

## **11 Force Majeure**

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Neither party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement, if such failure or delay is due to Force Majeure.

## 12 Notices

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### 12.1 Form

Unless expressly stated otherwise in this Agreement, all notices, certificates, consents, approvals, waivers and other communications under this Agreement ("**Notices**") must be in writing, signed by the sender (if an individual) or an authorised officer of the sender and delivered by hand, post or email.

### 12.2 Receipt

Notices are taken to have been received:

- (a) if sent by post, three days after posting (or seven days after posting if sent to or from a place outside Australia); and
- (b) if sent by email, by the end of the last business hour on the day the email was sent or, where the email was sent after the end of the last business hour on a business day or a non-business day, the email will be deemed to be received at the beginning of the first business hour on the next business day.

## 13 Assignment and Subcontracting

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The Licensee may not assign or otherwise deal with any of its rights or obligations under this Agreement without Unleashed's prior consent.

## 14 General

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### 14.1 Entire agreement

This Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior understandings, arrangements and agreements between the parties.

### 14.2 Waiver

- (a) No right or obligation under this Agreement will be waived except by notice in writing signed by each party.
- (b) A waiver by a party pursuant to clause 14.2 will not prejudice that party's rights in respect of any subsequent breach of this Agreement by the other party.
- (c) Subject to clause 14.2(a), any failure by a party to enforce any of the provisions of this Agreement, or any forbearance, delay or indulgence granted by a party to another party, will not be construed as a waiver of that party's rights pursuant to this Agreement.

### 14.3 Survival

All terms of this Agreement which are expressed to be or which by their nature are intended to continue following termination of this Agreement shall survive termination of this Agreement

### 14.4 Governing Law

This Agreement is governed by the law in force in Western Australia. Each party submits to the non-exclusive jurisdiction of the courts of that place.

## 15 Definitions and Interpretation

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### 15.1 Dictionary

These meanings apply unless the contrary intention appears:

**Active User** means a user (either an individual with their own account for the Licensed Software or an individual that accesses a training session as a guest using a unique session guest code) that enters any training session not as the facilitator of that session.

**Additional Services** means:

- (a) **Onboarding**
  - (i) Onboarding session for Facilitate software.
- (b) **Ongoing support**

- (i) Support relating to technical queries and system issues relevant to the Facilitate Platform but excluding platform usage support.

**Brand** has the meaning given to that term by clause 1.4.

**Business Day** means a weekday on which trading banks are open for domestic business in Perth Western Australia.

**Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

**Compatible Hardware** means the hardware described as such on the Unleashed website as updated from time to time.

**Confidential Information** means any information that, under the circumstances surrounding disclosure, a reasonable person would regard as confidential.

**Documentation** means any documentation in the nature of user manuals, functional specifications or other instructions for the operation of the Compatible Hardware or Licensed Software and includes the Onboarding Form.

**Downloadable Content** means any content that is able to be downloaded from the Licensed Software, being lesson plan data in JSON format.

**Event of Default** means, in relation to a party:

- (a) that party becomes "Insolvent" (as that term is defined by the *Corporations Act 2001 (Cth)*);
- (b) that party ceases to trade;
- (c) that party is in breach of a material term of this Agreement and such breach:
  - (i) is not remediable; or
  - (ii) is not remedied within 10 Business Days of that party receiving notice from the other party requiring such breach to be remedied.

**Force Majeure** means any act of God, war (whether declared or not), sabotage, riot, insurrection, terrorist action, civil commotion, national emergency (whether in fact or in law), martial law, fire, flood, cyclone, earthquake, landslide or explosion affecting or referable to a party's obligations under this Agreement, but does not include any fire or explosion caused by an act or omission of the party concerned and/or any persons for whom that party is responsible under this Agreement.

**GST** means the tax imposed by the GST Act and the related imposition Acts of the Commonwealth.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999*.

**Intellectual Property Rights** means all rights in the field of intellectual property and industrial property including:

- (a) copyright, rights in respect of inventions (including patents) registered and unregistered trademarks (including service marks), rights in designs, plant varieties, circuit layouts and know-how and any right to have information kept confidential;
- (b) any application or right to apply for registration of the rights referred to in paragraph (a); and
- (c) all rights or forms of protection of a similar nature or having equivalent or similar effect to any of the rights in paragraph (a) or (b) which may subsist anywhere in the world.

**Licence** means a non-exclusive, non-transferable licence to use the Licensed Software and the Documentation during the Subscription Period.

**Licensed Purpose** means for the use of VR and virtual learning and training in respect of the operation of the Licensee's business.

**Licensed Software** means the Facilitate Platform being Unleashed's proprietary VR and virtual learning and learning design platform and includes any update, enhancement and related Documentation.

**Licensee IP** means all Intellectual Property Rights owned by the Licensee prior to the execution of this Agreement which are utilised to create lesson plans, run training programs or to otherwise utilise the Licensed Software.



**Licensee** has the meaning given to it in the Onboarding Form.

**Licensee Obligations** means:

(a) **Feedback**

The Licensee will be required to:

- (i) participate in one-on one feedback sessions with Unleashed;
- (ii) procure its personnel involved in using the Licensed Software to complete written surveys.

(b) **Publicity**

The Licensee will allow Unleashed to publicise the Licensee's use of the Facilitate Platform.

**Onboarding Form** means the Onboarding Form provided by the Licensee in the online sign-up form submitted by the Licensee.

**PPSA** means the *Personal Property Securities Act 2009* (Cth), as amended.

**Professional Services** means any consulting, training, implementation, content development and other related services provided by Unleashed.

**Rental Fee** means the per unit rental fee for any Compatible Hardware rented by the Licensee as notified by Unleashed from time to time.

**Service Capacity Tier** means the tier level used to determine the Subscription Fee payable by the Licensee set out in the definition of "Subscription Fee".

**Services** means the Additional Services.

**Stripe** means the payments platform known as such provided by Stripe Payments Australia Pty Ltd (ABN 66 160 180 343);

**Sub-Licensee** has the meaning given to it in clause 1.2(a).

**Subscription Fee** means:

- (c) Pricing will be based on the service capacity tiers set out on the Facilitate website at <https://www.facilitate.tech/plans>. Subject to the terms and conditions in this Agreement, the Licensee will inform Unleashed whether they will subscribe annually or on a monthly basis.
- (d) Licensee has agreed to subscribe for the Subscription Fee Period.
- (e) If the Licensee subscribes on a monthly basis, they will be sent an invoice at the end of each calendar month that charges them for the number of Active Users they incurred during the month.
- (f) If the Licensee subscribes on an annual basis, the Licensee elects to pre-purchase for the Number of Active Users.
- (g) The Subscription Fees are as advertised on the Facilitate website and may be modified from time to time by Unleashed in its absolute discretion.
- (h) The Licensee can request to upgrade its annual subscription to a higher tier at any time.

**Subscription Period** has the meaning given to it in the Onboarding Form.

**Taxes** means any income tax, capital gains tax, goods and services tax, consumption tax, value added tax, fringe benefits tax, pay-as-you-go instalments, provisional tax, family trust distributions tax, ultimate beneficiary tax, additional tax, penalty tax, stamp duty, fine for late payments, tax on deposit or withdrawal of funds from any account or other tax or imposition payable to any government or government instrumentality.

**Trial Period** has the meaning given to it in clause 8.2.

**Unleashed** means Unleashed Pty Ltd ACN 625 086 955 of L1, 76 King Street, Perth, WA 6000.

## 15.2 Interpretation

\$ means Australian Dollars.



This Agreement shall be interpreted in the following order of precedence: (a) the Onboarding Form; followed by (b) the general terms and conditions.