

SOFTWARE SUBSCRIPTION AGREEMENT



PARTIES

1. **Worx Inductions PTY LTD (ABN 14 629 751 382)** of 41 / 124 - 130 Auburn Street, Wollongong NSW 2500 Australia (Provider); and
2. **THE PARTY LISTED AS THE SUBSCRIBER/CLIENT IN THE LETTER OF AGREEMENT (Subscriber).**

BACKGROUND

- A. The Provider is the owner and developer of the Worx Inductions Software.
- B. The Subscriber subscribes to use the Worx Inductions Software and receive Services from the Provider.
- C. The Subscriber's use of the Worx Inductions Software is governed by the terms of this Agreement.

1. PROVISION OF SERVICES

1.1 Subject to the Subscriber's full compliance with this Agreement, including but not limited to payment of the Subscription Fee, the Provider agrees to:

- (a) provide the Services;
- (b) grant the Subscriber a limited, non-exclusive, non-transferable right and licence to use the Worx Inductions Software for the Subscriber's Purposes.

1.2 The Provider agrees to:

- (a) perform the Services to the highest standards in a professional, efficient and competent manner; and;
- (b) notify the Subscriber of any expected outages, delays or maintenance work in relation to the Services and the Worx Inductions Software.

1.3 The Provider does not guarantee or warrant that the Worx Inductions Software shall operate flawlessly and without any errors or system deficiencies.

2. TERM AND TERMINATION

2.1 Term of Agreement

This Agreement commences on the Commencement Date and terminates on the expiry of the Term as per the Letter of Agreement.

2.2 Renewal

The Provider shall issue a tax invoice to the Subscriber upon the expiry of the Term for renewal of this Agreement for a further Term. The Subscriber shall be deemed to have renewed the Agreement for a further Term upon payment of the Subscription Fee in the Provider's tax invoice.

2.3 Termination

You may cancel your Subscription and terminate the Software Subscription Agreement at any time by contacting Worx Inductions via email or Live chat and then following the specific instructions indicated to you in Worx Inductions's response.

- (a) unless otherwise provided in the Software Subscription Agreement, you will not be entitled to any refunds of any Fees, pro rata or otherwise;
- (b) Worx Inductions will cease providing you with the Services and you will no longer be able to access your Account upon your next ;
- (c) any outstanding balance owed to Worx Inductions for your use of the Services through the effective date of such termination will immediately become due and payable in full; and your Inductions and relevant data will be taken offline.

- (d) If at the date of termination of the Service, there are any outstanding Fees owing by you, you will receive one final invoice via email. Once that invoice has been paid in full, you will not be charged again.
- (e) We reserve the right to modify or terminate the Worx Inductions Service, the Software Subscription Agreement and/or your Account for any reason, without notice at any time.
- (f) Termination of the Software Subscription Agreement shall be without prejudice to any rights or obligations which arose prior to the date of termination.

3. SUBSCRIPTION FEE

3.1 Consideration

- (a) In consideration of the Provider granting the Subscriber a non-exclusive licence to use the Worx Inductions Software, the Subscriber must pay the Provider the Subscription Fee as per the letter of agreement, for the relevant Term prior to the commencement of the Term.
- (b) The Subscriber acknowledges that the Subscription Fee may be amended by the Provider 30 days on notice and no more frequently than every twelve (12) months and that the tax invoice provided to the Subscriber by the Provider shall indicate the current Subscription Fee.

3.2 Payment Terms

The Subscription Fees are paid in advance and will be billed in 30 day intervals. It is your responsibility to ensure that you have sufficient funds available in your nominated bank account to cover your periodic payments and that your bank account details are correct.

3.3 GST

All amounts payable under this Agreement are expressed exclusive of GST. In the event of any taxable supply, the Subscriber must pay the Provider an additional amount equal to the prevailing GST rate, payable at the same time and in the same manner as the Subscription Fee, subject to the receipt by the Subscriber of a valid tax invoice.

3.4 Failure to pay

In the event that the Subscriber fails to pay the relevant tax invoice for the Subscription Fee on the Provider's standard terms (in accordance with clause 3.2) for the Subscription Fee and it remaining unpaid for a further fourteen (14) days, the Provider may:

- (a) Notify you by email if you default on a payment. It is then your responsibility to arrange for an alternative payment to be made to us within five (5) working days of the original due date.
- (a) cease providing the Services and terminate this Agreement;
- (b) suspend the Subscriber's access to the Worx Inductions Software;
- (c) charge a \$30 dishonour fee to cover administration costs for the collection of any defaulting payment under this agreement;
- (d) cancel any accounts the Subscriber has relating to the Worx Inductions Software;
- (e) archive the Subscriber's content.

4. LETTER OF AGREEMENT

- 4.1 The parties agree that any changes to the Letter of Agreement will be made by the parties as and when necessary to ensure the terms reflect negotiations that have been agreed between the parties.
- 4.2 This Agreement shall prevail to the extent of any inconsistency between the Letter of Agreement and the terms of this Agreement.

5. INTELLECTUAL PROPERTY

5.1 Rights to Intellectual Property

The Provider warrants that the Worx Inductions Software and the Intellectual Property:

- (a) is owned by the Provider and that no other person has any claim to, or interest in, the Intellectual Property or Worx Inductions Software;
- (b) is the original work of the Provider and its Personnel, and is not copied wholly or substantially from any other item or thing which is protected by copyright anywhere in the world; and
- (c) does not infringe any person's intellectual property rights.

5.2 Provider Sole Beneficiary and Owner of All Intellectual Property

The Subscriber acknowledges and agrees that the Provider is and shall remain the sole owner of the Intellectual Property, including any and all moral rights in such intellectual property and the Subscriber acknowledges and agrees that nothing in this Agreement prejudices that ownership.

5.3 Use of Intellectual Property

The parties expressly agree that the Subscriber shall not use, modify, reproduce, display or disclose any Intellectual Property except for the Subscriber's Purposes as permitted by this Agreement.

5.4 Subscriber to Notify of Infringements

The Subscriber recognises and acknowledges the exclusive ownership, right and control of the Provider with regard to the Intellectual Property and must immediately notify the Provider of any infringement or potential infringement that would affect such exclusive ownership, control and any copyright, in and to the Intellectual Property and take all such measures set out by the Provider as being required to prevent further infringement of ownership.

5.5 Uploaded Content

- (a) The Provider acknowledges and agrees that the Subscriber who uploaded the Content to the Worx Inductions Software is and shall remain the sole owner of the Content, including any and all moral rights in such intellectual property and nothing in this Agreement prejudices that ownership.
- (b) The Provider agrees to delete any Content (and any copies of the same) if the Subscriber who uploaded the Content to the Worx Inductions Software provides with a written request to the Provider to do so.

6. CONFIDENTIALITY AND SECURITY

6.1 Confidential Information

- (a) The parties must:
 - (i) keep confidential the Confidential Information and ensure that their Personnel do the same;
 - (ii) not use the Confidential Information in any way other than for the Subscriber's Purposes in accordance with this Agreement;
 - (iii) not make improper use of the Confidential Information to gain directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the Provider or any other Subscribers or Contractors.

6.2 Unauthorised Use

- (a) The parties must take all reasonable steps to prevent the unauthorised use or disclosure of the Confidential Information and agree to immediately notify the other party in writing upon becoming aware of unauthorised use of the Confidential Information by a third party.

- (b) The Subscriber must use reasonable efforts and precautions to prevent any unauthorised use of the Worx Inductions Software or the Services and must immediately notify the Provider in writing of any suspected unauthorised use that comes to the Subscriber's attention.
- (c) The Subscriber must cooperate with the Provider and take any actions necessary to prevent or terminate unauthorised use of the Worx Inductions Software.

6.3 Permitted Disclosure

The parties may disclose the Confidential Information:

- (a) on a confidential basis to advisers (including accountants, lawyers and auditors) to enable them to advise in connection with this Agreement;
- (b) to a person whose consent is needed in connection with this Agreement, if the party seeking consent uses reasonable endeavours to obtain the agreement of the consenting person to keep the Confidential Information confidential (and then only to the extent that the consenting person needs to know the Confidential Information in order to decide whether to consent);
- (c) to its Personnel so long as the Personnel have agreed to maintain the confidentiality of Confidential Information on similar terms to those set out in this Agreement;
- (d) if the Confidential Information is in the public domain (other than because the party has disclosed it);
- (e) if the party lawfully had the Confidential Information before it was disclosed to them in connection with this Agreement;
- (f) in connection with legal or other proceedings relating to this Agreement;
- (g) if compelled by Law or any government authority; or
- (h) with the consent of the party who has disclosed the particular Confidential Information.

6.4 Security

- (a) At all times, the Subscriber shall be solely responsible for maintaining the security and confidentiality of any password issued to the Subscriber by the Provider for the purpose of accessing the Worx Inductions Software.
- (b) If any password or security code provided by the Provider to the Subscriber is lost, stolen or otherwise compromised, the Subscriber must immediately notify the Provider whereupon the Provider may suspend access to the Worx Inductions Software by use of such password and issue a replacement password to Subscriber.
- (c) The Provider shall use its best endeavours to protect the security and accessibility of Confidential Information on the Worx Inductions Software however, it cannot guarantee the security of any Confidential Information uploaded onto the Worx Inductions Software due to factors outside of its control.
- (d) Where the Provider becomes aware of a security breach which may compromise an individual's privacy, the Provider agrees to comply with the Australian Privacy Laws and report the breach to the Office of the Australian Information Commissioner and the individuals to whom the breach relates, where the Provider assesses this to be the appropriate course of action.

7. ASSIGNMENT

7.1 The Subscriber must not:

- (a) assign, novate or sub-license any of its rights under this Agreement;
- (b) subcontract the performance of any of its obligations under this Agreement; or

- (c) release, disclose, display or resell the Subscriber's rights to use the Worx Inductions Software to any third party (with the exception of the Subscriber's Personnel)
- (d) without the prior written consent of the Provider (which may be withheld at the Provider's sole discretion).

8. LIABILITY AND WARRANTIES

- 8.1 The Provider makes no warranty in relation to the provision of the Services and the Subscriber acknowledges that from time to time the Services and/or the Worx Inductions Software may be inaccessible or inoperative due to:
- (a) equipment or server malfunctions;
 - (b) periodic maintenance procedures;
 - (c) necessary repairs to equipment or upgrades;
 - (d) interruption or failure of telecommunication or digital transmission links;
 - (e) delays or failures caused by the Subscriber's internet service provider;
 - (f) hostile network attacks;
 - (g) network congestion;
 - (h) the Subscriber's failure to install, configure, maintain or update the necessary software or hardware systems to operate the Worx Inductions Software; or
 - (i) any other force majeure event detailed in clause 11.
- 8.2 The Provider will take all reasonable steps but makes no warranty that the data available through the Worx Inductions Software shall be:
- (a) Accurate and reliable;
 - (b) Malware and virus free; or
 - (c) Accessible by the Subscriber on all occasions.
- 8.3 The Provider will take all reasonable steps but makes no warranty or representation to the Subscriber as to the accuracy of the information provided by Contractors on the Worx Inductions Software.
- 8.4 The Provider is not liable for claims, loss or damages (including any special, economic or other consequential loss) sustained by the Subscriber in relation to its use of the Worx Inductions Software, other than due to the neglect or default of the Provider.

9. INDEMNITIES

- 9.1 The Subscriber agrees to indemnify the Provider and its Personnel from and against all actions, claims, demands, losses, damages, proceedings, compensation, costs, charges and expenses (excluding any special, economic or other consequential loss) for which any of them may be or be come liable whether during or within 12 months of the end of this Agreement in respect of or directly arising from;
- (a) any loss, damage or injury caused by the neglect or default of the Subscriber or its Personnel to observe and perform any of its obligations, covenants, terms and conditions contained in this Agreement.
 - (b) any loss, damage or injury suffered by a Contractor due to the actions of the Subscriber.
 - (c) other than due to the negligent act or omission of the Provider including because of any negligent acts or omissions of the Provider.
- 9.2 The indemnity in clause 9.1 in favour of the Provider shall be proportionally reduced by the contribution of any neglect or default of the Provider to the loss, damage or injury for which indemnity is claimed against the Subscriber.

10. NOTICES

Any notice given under or in connection with this Agreement:

- (a) must be in legible writing and in English;
- (b) must be addressed to a party as shown next to the name of the party on page 1 of this Agreement or as otherwise notified by a party to each other party from time to time;
- (c) must be signed by the party giving the notice or (on its behalf) by the solicitor for, or by any solicitor, director, secretary, or authorised agent of, that party;
- (d) must be:
 - (i) delivered to that person's address;
 - (ii) sent by pre-paid mail to that person's address; or
 - (iii) sent by email to that person's email address;
- (e) is deemed to be received by the addressee:
 - (i) if delivered by hand, at the time of delivery;
 - (ii) if sent by post, on the third Business Day after the day on which it is posted, the first Business Day being the day of posting;
 - (iii) if sent by email, at the time that would be the time of receipt under the Electronic Transactions Act 1999 (Cth).

11. FORCE MAJEURE

If the performance of this Agreement or any obligation hereunder is prevented, restricted or interfered with by reason of failure of supply, fire, explosion, breakdown, strike, labour dispute, accident, lack of transportation, epidemic, pandemic, cyclone, flood, earthquake, drought or lack of raw materials, power or supplies, war, revolution, civil commotion, acts of God, blockade or embargo or any law, order, proclamation, decree or requirement of any government or any authority or representative thereof or any other acts whatsoever beyond the reasonable control of the parties hereto, then:

- (a) The party so affected, upon giving prompt notice to the other party, will be excused from such performance to the extent of such prevention, restriction or interference; and
- (b) The other party will likewise be excused from performance of its obligations to the extent such obligations relate to the performance so prevented, restricted or interfered with provided that the party so affected must use its best efforts to avoid and to remove such causes of nonperformance. The parties will resume performance of their respective obligations as soon as is practicably possible when such causes are removed.

12. ELECTRONIC EXECUTION

The parties agree that this Agreement may be signed by way of electronic signature which may include software programs such as DocuSign. The Subscriber agrees and acknowledges that the electronic signature technology used by the Provider:

- (a) is sufficient to identify the person and to indicate the person's approval of the contents; and
- (b) is as reliable as is appropriate for the purposes of the communication; and
- (c) is an agreed method for the purposes of the parties' execution of the Agreement; and
- (d) is binding on the parties.

13. GENERAL

- (a) The parties to this Agreement have no authority to represent, bind or commit the other parties and nothing in this Agreement shall be deemed to create a joint venture, employment, partnership or agency relationship between the parties.
- (b) No amendment or variation of this Agreement is valid or binding on a party unless made in writing and executed by both parties.
- (c) This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.
- (d) This Agreement contains the entire understanding and agreement and supercedes any previous agreement or understanding between the parties about its subject matter.
- (e) The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.
- (f) If any provision of this Agreement is void, voidable by either party, unenforceable or illegal, it must be read down so as to be valid and enforceable or, if it cannot be so read down, the provision (or where possible, the offending words) must be severed from this Agreement without thereby affecting the validity, the legality or the enforceability of the remaining provisions (or parts of those provisions) of this Agreement which will continue in full force and effect.
- (g) This Agreement is governed by the laws of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Agreement.
- (h) Each party must do all things and execute all further documents necessary to give full effect to this Agreement.

14. DEFINITIONS AND INTERPRETATION

14.1 Definitions

In this Agreement:

Agreement means this Software Subscription Agreement, including its schedules;

Australian Privacy Laws means the Privacy Act 1988 (Cth) as it applies in Australia;

Commencement Date means the commencement date specified in the Letter of Agreement;

Confidential Information means all information concerning, in respect of or incidental to the business, property or affairs each party to this Agreement, including:

- (a) personal information and documents containing personal information;
- (b) operating manuals, user instructions, technical literature, coding scripts, passwords, licence numbers, certificates, registration details, resumes, financial information, bank details;
- (c) information that is, either orally or in writing, designated or indicated as being proprietary or confidential information;
- (d) information about a Related Entity;
- (e) information about products or services which the party deals in and related legal documentation;
- (f) information derived or produced partly or wholly from the information including any calculation, conclusion, statistical data, summary or analysis; and

- (g) trade secrets or information that is capable of protection at law or in equity as confidential information.

Worx Inductions Software means the software developed by the Provider, being an online hosted platform assisting with the compliance management of contractors;

Content means any document or other material uploaded by the Subscriber to the Worx Inductions Software to which the Subscriber holds intellectual property rights, whether through statutory rights or at common law;

Contractors (sometimes referred to as Suppliers) generally means parties who work as contractors and are engaged by Subscribers for the purpose of providing Subscribers with services;

GST means goods and services tax in accordance with the Goods and Services Tax Act 1999 (Cth);

Intellectual Property means:

- (a) copyright;
- (b) designs, patents or trademarks (whether registered, unregistered or applied for);
- (c) knowhow, inventions, processes and Confidential Information (whether in writing or recorded any form);
- (d) moral rights;
- (e) trade, business, company or domain names;
- (f) trade secrets; and
- (g) other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields;

Insofar as they relate to the Worx Inductions Software and associated brand;

Letter of Agreement means the agreement between the Provider and the Subscriber setting out the standard trading terms which relate to the Services;

Personnel means any employee, contractor, director, officer or agent.

Related Entity has the same meaning as in the Corporations Act 2001 (Cth);

Services means the following technology services to be supplied by the Provider to the Subscriber under this Agreement:

- (a) Storage of confidential documentation relating to Contractors on a secure platform;
- (b) Correspondence with Contractors relating to credentials, registrations and proof of compliance as required;
- (c) Management of a central online location to enable Subscribers and Contractors to form compliant workplace relationships;
- (d) Generation of reports on the compliance status of Contractors;
- (e) Management of Contractors relating to compliance requirements of Subscribers;
- (f) Providing dedicated client services manager to liaise directly with Subscriber;
- (g) Related technical support.

Subscribers generally means entities who engage the services of Contractors and are clients of the Provider;

Subscriber's Purposes include:

- (a) Ability to receive confidential documentation relating to Contractors on a secure platform;
- (b) Ability to request credentials, registrations and proof of compliance from Contractors;
- (c) Access to a central online location to view, store and manage confidential documentation relating to Contractors;
- (d) Access to reports on the compliance status of Contractors;
- (e) Administrative support and management of database of Contractors;

Subscription Fee means the annual fee payable by the Subscriber in accordance with this Agreement and the Letter of Agreement; and

Term means the term of this Agreement as specified in the Letter of Agreement.

14.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) reference to a person includes any other entity recognised by law;
- (b) the singular includes the plural and vice versa;
- (c) words importing one gender include all genders;
- (d) any reference to any of the parties by their defined terms includes that party's executors, administrators or permitted assigns or, being a company, its successors or permitted assigns;
- (e) an agreement, representation, or warranty on the part of two or more persons binds them jointly and severally;
- (f) an agreement, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) clause headings are for reference purposes only;
- (h) reference to an Item is a reference to an Item in the Schedule to this Agreement;
- (i) reference to an Annexure or Schedule is a reference to the corresponding Annexure or Schedule to this Agreement;
- (j) reference to a statute, ordinance, code, or other law includes regulations and other instructions under it and consolidations, amendments, re-enactments, or replacements of it;
- (k) reference to a time is to that time in Sydney, Australia;
- (l) if the time for something to be done or to happen is the 29th, 30th or 31st day of a month, and that day does not exist, the time is instead the next day; and
- (m) if the time for something to be done or to happen is a day that is not a business day, the time is extended to the next business day.

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ONLINE SAFETY MANAGEMENT

www.worxinductions.com.au