

THE CLIENT AGREES TO THIS AGREEMENT UPON THE OCCURRENCE OF ANY OF THE FOLLOWING: (1) SIGNING AND RETURNING TO KAPLAN EDUCATION PTY LIMITED ('KAPLAN') (VIA EMAIL OR OTHERWISE) THE ORDER FORM ISSUED UNDER THIS AGREEMENT, (2) ITS USERS COMMENCING USE OF THE PRODUCT, OR (3) PAYING TO KAPLAN ANY FEES DUE UNDER THIS AGREEMENT, WHICHEVER OCCURS FIRST, AND (4) AS STATED IN CLAUSE 19.3. NO FURTHER ACTION IS REQUIRED BY THE PARTIES FOR THIS DOCUMENT TO FORM A BINDING AGREEMENT BETWEEN THEM.

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

Agreement means these terms and conditions and includes the Order Form, and if the Client operates under a trust structure the separate Trustee Addendum signed by the parties.

ASIC means the Australian Securities & Investments Commission.

Business Day means a day in which banks are open for retail banking business, other than a Saturday, Sunday or public holiday in New South Wales.

Client means the individual or legal entity named as the client in the completed Order Form.

Client Content means training materials and other content that is developed or owned by the Client and made available to Learners via the Product.

Commencement Date has the meaning specified in the Order Form.

Content means all training materials, information, data, readings, assessments, questions, audio, videos, multimedia and other content (including as updated from time to time) accessible via the Product, but excluding Client Content, Reports and Learner Data.

Confidential Information means information of the Discloser, or its Group that would reasonably be regarded as confidential and is disclosed or made available to or otherwise acquired by the Recipient in connection with this Agreement before or after the Commencement Date, including the terms of this Agreement, but excluding information which:

- (a) the Recipient can prove it possessed before the relevant information was disclosed or made available to it by or on behalf of the other party or its Group;
- (b) is lawfully acquired prior to the date of disclosure under this Agreement by Recipient from a third party without restrictions as to its use or disclosure;
- (c) is in or becomes part of the public domain other than as a result of the breach by the Recipient of this Agreement;
- (d) is properly disclosed pursuant to a statutory obligation, the order of a court of competent jurisdiction or that of a competent regulated body.

Discloser means the party who discloses the Confidential Information.

Feedback means any information, responses or other feedback that the Client or the Learners provide to Kaplan regarding errors, problems, defects or suggestions for changes and improvements in respect of the Product or the Content.

Fees means (as applicable) the prices specified in the Order Form for the Initial Term or the prices notified to or agreed with the Client for a Renewal Period.

Group means a party and any of its associated entities (as defined in section 50AAA of the *Corporations Act 2001* (Cth)).

Initial Term has the meaning specified in the Order Form.

Intellectual Property Rights means all statutory and other proprietary rights (including rights to require information be kept confidential) in respect of copyright, know-how, trade secrets, trade marks, designs, patents and all other rights relating to intellectual property.

Kaplan means, Kaplan Education Pty Ltd (ABN 54 089 002 371), an Australian limited liability company, trading as Kaplan Professional.

Kaplan's Privacy Policy means Kaplan's privacy policy available at www.kaplanprofessional.edu.au.

Law means any legislation, regulations, by-laws, code of conduct, writ, order, declarations, other sub-ordinate legislation, regulator or ministerial directions or requirements and the common law.

Learner means the Client's or its Group's employee, director, officer or other authorised personnel who access and use the Product under this Agreement (across all Order Options).

Learner Data means data that Learner enter or submit when using the Product but does not include the Reports or Client Content.

Learner Limit means (for a Client that pays the Fees upfront) the quantity of Learners stated in the Order Form (being a limit for each content library or course as well as in aggregate across all subscription and/or enrolment options) or subsequently varied in accordance with clause 7.3(a).

Order Form means the ordering document, that sets out the details of the Client's subscriptions to the Product and/or enrolments in subjects (as relevant) and is made pursuant to and incorporates by reference the terms of this Agreement to form a contract between the Client and Kaplan.

Order Options means the subscription and/or enrolment options specified in the Order Form or otherwise agreed between the parties in writing, being different subscription options for the Content packages, or enrolment options for subjects, that may be available via the Product to applicable Learners in accordance with this Agreement.

Personal Information has the meaning given to that term in the Privacy Act.

Privacy Act means, as applicable, the *Privacy Act 1988* (Cth) or the *Privacy Act 2020* (NZ), as amended.

Product means the Ontrack online platform and includes any manuals, guides or other materials made accessible by Kaplan to support use of the Product.

Purpose means training and education for Learners in connection with their professional learning and development.

Recipient means the party who receives the Confidential Information.

Regulators means, as applicable, ASIC and other Australian or New Zealand regulatory or government bodies.

Renewal Notice has the meaning given to it in clause 2.2.

Renewal Period means a period of equivalent duration to the Initial Term.

Reports means reports generated by or accessible via the Product, or provided by Kaplan to the Client, its Group or Learners, relating to one or more Learners' use of the Product, which typically will include details of the training and education the relevant Learner(s) has(have) undertaken.

Term means the Initial Term and, where this Agreement is renewed pursuant to clause 2.2, each applicable Renewal Period.

1.2 Interpretation

In this Agreement, unless a contrary intention appears, reference to:

- (a) "including" and similar expressions are not words of limitation;
- (b) the singular includes the plural and vice versa;
- (c) money amounts are to Australian currency unless otherwise specified;
- (d) a document (including this Agreement), policy or statute includes any variation or replacement of it;
- (e) the word 'person' includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Regulator;
- (f) a group of persons or things is a reference to any two or more of them jointly and to each of them individually; and
- (g) headings are included for convenience only and do not affect the interpretation of this Agreement.

2 Term and renewal

2.1 Term

- (a) This Agreement begins on the Commencement Date and terminates at the expiry of the Initial Term unless otherwise terminated in accordance with this Agreement or this Agreement is renewed in accordance with clause 2.2.

2.2 Renewal

- (a) Kaplan will provide the Client with at least 60 days prior written notice that the Term is due to expire ('**Renewal Notice**'). If the Ontrack Client Terms and Conditions have been updated since the Client executed this Agreement or last renewed the Term (whichever occurred last) Kaplan will provide to Client the most up to date version with the Renewal Notice.
- (b) If the Client pays the Fees upfront and wishes to renew the Agreement beyond the Term for the Renewal Period, the Client must pay the upfront Fees (the amount of which, Kaplan will specify in the Renewal Notice) for the Renewal Period to Kaplan before the expiry of the Term, otherwise this Agreement will terminate at the expiry of the Term.
- (c) If the Client pays the Fees in arrears by monthly invoice, on expiry of the Term this Agreement will automatically renew for the Renewal Period (and will continue to renew for successive Renewal Periods) unless and until Client gives Kaplan at least 30 days written notice prior to the commencement of a Renewal Period that it does not wish this Agreement to renew. The Fees payable for a Renewal Period will be the Fees that Kaplan notifies in writing to the Client at least 60 days prior to the commencement of that Renewal Period, unless Kaplan and the Client agree otherwise in writing. If Kaplan does not notify the Client of the Fees for the Renewal Period in accordance with the above and no other agreement regarding Fees is reached, the Fees applying immediately prior to the commencement of the Renewal Period will apply for the Renewal Period.

3 Ordering

3.1 Initial order

- (a) Client may submit to Kaplan a completed Order Form, with the number of Learners, to initiate the first order for the subscriptions or enrolments.

3.2 Subsequent orders

- (a) Client will nominate at least one representative to whom Kaplan will give access rights to manage the Order Options in the Product, including the number of and relevant Learners ('**Client Administrator**').

- (b) Client Administrator may adjust the number of Learners subject to the restrictions in clause 7.

4 Fees

4.1 Payment of Fees

The Client must pay Kaplan the Fees either:

- (a) upfront (for example, annually in advance or at the time of a course enrolment) prior to the Commencement Date (or prior to the commencement of the relevant Renewal Period, where applicable); or
- (b) if the Client has obtained Kaplan's express consent to do so, monthly in arrears.

4.2 Calculation of Fees

- (a) If the Client pays the Fees upfront, Kaplan will calculate and charge the Fees based on the applicable Learner Limit, with reference to the applicable Order Option applying to each Learner.
- (b) If the Client pays the Fees monthly in arrears, Kaplan will calculate and charge the Fees based on the number of (unique) Learners that were entitled to access and use the Product at any time during the relevant period, with reference to the applicable Order Option applying to each Learner.
- (c) For the purpose of clause 4.2(b), if a Learner was entitled to access and use the Product at any time during the relevant calendar month, the Client will be charged for that Learner even if the Learner did not access or use the Product during that month.

4.3 Taxes

Unless expressly stated otherwise, all amounts payable by the Client under this Agreement are stated inclusive of GST.

4.4 Invoicing

Kaplan will invoice the Client for the Fees (plus applicable GST, if any) prior to the applicable due date for payment and the Client must pay each invoice in full by the due date specified in the relevant invoice.

4.5 No refunds

Subject to clauses 17.6 and 18.6, the Fees are non-refundable.

4.6 Charges for unauthorised Learners

Without limiting Kaplan's other rights and remedies, Kaplan may charge Fees to the Client for any individuals within the Client's, or its Group's, influence or control who, when not entitled to do so under this Agreement, access, use or otherwise view the Product or the Content.

4.7 Interest

If the Client does not pay the Fees properly due and specified in an invoice in full by the due date, Kaplan may charge the Client interest. Interest will be calculated at two percentage points above the cash rate target announced by the Reserve Bank of Australia from time to time. That interest will accrue and be recoverable by Kaplan from day to day on demand.

5 Licence

5.1 Grant of Licence

From the Commencement Date, Kaplan grants to the Client:

- (a) a non-exclusive, non-transferrable, non-sublicensable licence for the Learners to use the Product for the Term, solely for the Purpose and subject to the terms of this Agreement; and
- (b) a perpetual, non-exclusive, non-transferrable, non-sublicensable licence to use the Reports for the Client's internal business purposes (except Client may provide copies of the Reports to Learners and Regulators on their request, subject to the Client's compliance with applicable laws, including the Privacy Act).

6 Passwords

6.1 Password use and monitoring

The Client:

- (a) acknowledges that the Product is password protected and that each Learner's password is unique to that person and must not be used by any other person (including any other Learner);
- (b) must not, and must ensure that each Learner does not, disclose password details to any person; and
- (c) acknowledges that Kaplan may monitor activity on the Product and related servers and may maintain user access logs.

7 Learners

7.1 Details of Learners

The Client must provide Kaplan with details of each Learner (including first name, surname and email address) before the Learner accesses or uses the Product.

7.2 Restrictions

The Client must not allow, permit or facilitate access to the Product by:

- (a) any person for whom the Client has not complied with clause 7.1; or

- (b) if the Client pays the Fees upfront, a greater number of Learners than the Learner Limit.

7.3 Variations to the number of Learners

- (a) The Client may make variations as described in this clause 7.3 in connection with subscription options, but not in relation to course enrolment options. Clauses 7.3(b) to (d) only apply to subscription options.
- (b) If the Client pays the Fees upfront the Client may:
- (1) only reduce the Learner Limit with effect from the commencement of the next Renewal Period, provided the Client has agreed the reduction with Kaplan prior to the commencement of that period; and
 - (2) increase the Learner Limit at any time with effect from a nominated (future) date. Kaplan will invoice the Client for the additional fees payable in respect of the increase (for the balance of the Term) and the Client must pay that invoice by its specified due date; and
 - (3) substitute a Learner for another individual at any time with effect from the start of the next calendar month, subject to compliance with clause 7.2.
- (c) If the Client pays the Fees monthly in arrears, the Client may, subject to compliance with clause 7.2(a) vary the number of Learners at any time. For the avoidance of doubt, the Client will be charged in full for each Learner that was entitled to access and use the Product at any time during the relevant calendar month (even if the Learner was removed or added part way through that month).
- (d) A Learner that is substituted or removed by the Client during a calendar month will remain a Learner until the end of that month.
- (e) When varying the Learner Limit or the number of Learners, the Client must do so with reference to the applicable Order Option(s) affected by the variation.

8 Content

8.1 Kaplan Content

- (a) Kaplan will use reasonable endeavours to ensure that the Content is accurate at the time of its publication or release. Kaplan will promptly update the Content following any change that may impact the accuracy of the Content, but Client acknowledges the updates cannot be immediately implemented.
- (b) The Content has been developed and is maintained by Kaplan for the Purpose only. The Content does not constitute financial or

other advice and cannot be relied on or used for providing advice.

- (c) Kaplan will maintain a rigorous selection process and high degree of quality control of its Content writers.
- (d) The Product contains a sufficient volume of Content for Learners to satisfy their continuing education obligations. The Client must make its own assessment to select suitable Content in view of the needs of the Learners and for the Purpose.
- (e) Despite any other provision of this Agreement, to the extent legally permitted, Kaplan does not warrant or represent that:
- (1) using the Product or the Content will satisfy any statutory requirements in relation to the continuing professional education obligations of Learners or achieve any particular learning outcomes (on request, Kaplan will provide reasonable assistance to the Client for it to determine if the statutory requirements are met); or
 - (2) the Product or the Content is complete or free from errors or omissions.

8.2 Client Content

- (a) The Client may upload Client Content to the Product.
- (b) The Client must ensure the Client Content does not:
- (1) exceed 2GB in total for a scorm file or 4MB per file for any other file;
 - (2) infringe third party rights (including Intellectual Property Rights);
 - (3) be or contain anything that is defamatory, illegal or obscene; or
 - (4) contain any virus, harmful or malicious code, malware or similar.
- (c) Kaplan reserves the right to delete any Client Content that, in Kaplan's reasonable opinion, breaches, or is likely to breach, clause 8.2(b).
- (d) The Client indemnifies Kaplan against any claim, action, damage, loss, liability, cost charge, expense, outgoing or payment suffered, paid or incurred by Kaplan in connection with any claim against Kaplan that Kaplan's receipt, or use, of the Client Content infringes any intellectual property rights of a third party. Kaplan must promptly notify the Client in writing of any claim and the Client will have the right to fully control the conduct of the settlement and/or defence of the claim, provided that the Client must obtain Kaplan's prior written approval to any proposed settlement of the claim (such consent not to be unreasonably withheld or delayed).

(e) Kaplan will ensure that access to Client Content via the Product is restricted to:

- (1) the Learners;
- (2) Kaplan's and its Groups employees, directors, officers, contractors, suppliers or other personnel who are involved in providing, maintaining, supporting or developing the Product; and
- (3) others whose access is authorised by the Client in writing.

(f) During the Term, the Client Content can only be accessed and used via the Product. Provided Client makes a request for a copy of the Client Content no later than 7 days before the end of the Term, Kaplan will provide one copy of the Client Content to the Client in the form of a scorm file.

9 Restrictions

The Client must ensure that:

- (a) each Learner only uses the Product in a manner that is consistent with the licence granted in clause 5.1(a) and does not:
 - (1) allow, permit or facilitate non-Learners to access, use or otherwise view the Product or the Content; or
 - (2) access, use or otherwise view Content that is not included in the Order Option applicable to that Learner;
- (b) the Client only uses the Reports in a manner that is consistent with the licence granted in clause 5.1(b);
- (c) no person (other than the Learners) within the Client's, or its Group's, influence or control accesses, uses or otherwise views the Product or the Content; and
- (d) no person (including the Learners) within the Client's, or its Group's, influence or control:
 - (1) creates or maintains copies of the Content;
 - (2) disassembles, reverse engineers or attempts to derive source code from the Product;
 - (3) resells, markets, transfers or distributes the Product or the Content;
 - (4) interferes or tampers with any security features of the Product;
 - (5) does anything that breaches, or is likely to breach, Kaplan's Intellectual Property Rights;
 - (6) uses the Product or the Content in a manner that causes, or is likely to cause, Kaplan or its Group to breach any laws; or

(7) allows, assists or facilitates any person to do any of the matters referred to above.

10 Support and maintenance

10.1 Support

Kaplan will provide general helpdesk support to Learners regarding the Product via phone and email between 8:30 am and 5:30 pm (Sydney Local Time) on Business Days. Self-help guides will also be available to Learners via the Product.

10.2 Maintenance

Kaplan will maintain the Product in good working order, including by correcting material errors and periodically providing updates.

10.3 Back-up

Kaplan will create and maintain for a reasonable period regular back-up copies of the Client Content and Learner Data.

10.4 Updates

The features and functions of the Product are subject to change from time to time at Kaplan's discretion, but any changes will not diminish or remove existing features and functions unless the diminished or removed feature or function is being updated or replaced with another feature or function or the change will not materially reduce or negatively impact the Learners' experience.

11 Compatibility

11.1 No warranty

Kaplan does not warrant that the Product is compatible with all devices, computers and operating systems or data formats, or will operate in an uninterrupted manner.

11.2 Minimum system requirements

- (a) It is the Client's responsibility to ensure that the operating systems and browsers that Learners use to access the Product meet the Product's minimum system requirements (specified on Kaplan's website).
- (b) Kaplan may update the minimum system requirements for the Product from time to time. If an update will impact the Learners' ability to access the Product, Kaplan will provide the Learner's with at least 90 days' prior notice via the Product.
- (c) The Client acknowledges that security issues may arise if the minimum system requirements are not met. Kaplan disclaims all liability for such issues.

12 Intellectual Property Rights

12.1 Ownership

Subject to clause 12.2, the parties agree that Kaplan owns all existing and future title, interest and Intellectual Property Rights in the Product, the

Content, the Reports, the Learner Data and any other data or information generated using the Product or other services provided by Kaplan.

12.2 Client Content

- (a) The parties agree that the Client owns all Intellectual Property Rights in the Client Content.
- (b) The Client grants to Kaplan and its Group a non-exclusive, non-transferable licence to use the Client Content for the Term to the extent necessary to perform Kaplan's obligations under this Agreement.
- (c) Despite clause 10.3, Kaplan is not required to retain the Client Content or Learner Data beyond the expiry or termination of this Agreement.

12.3 Kaplan's warranty

Kaplan represents and warrants that use of the Product in accordance with this Agreement will not infringe the Intellectual Property Rights of any third party.

13 Privacy and data security measures

- (a) If Kaplan handles Personal Information about a Learner in connection with this Agreement, Kaplan will ensure that it does so in a manner that complies with the Privacy Act and Kaplan's Privacy Policy.
- (b) To the extent required by the Privacy Act, Kaplan will seek a Learner's consent to its handling of their Personal Information.
- (c) Kaplan will maintain commercially reasonable data security measures that are designed to safeguard the Client Content, the Reports and the Learner Data from unauthorised access, use or disclosure.
- (d) The Client must notify Kaplan promptly if it becomes aware of or reasonably suspects (including as a result of a Learner's access or use of the Product) any security breach relating to the Product, the Content, the Client Content, the Reports or the Learner Data, including any loss, theft or unauthorised use, access or disclosure.
- (e) Kaplan will comply with its information security management system (ISMS) and ensure that the ISMS complies with ISO 27001:2022. At the Client's request Kaplan will provide a copy of its industry standard certification.
- (f) Kaplan will conduct an annual security audit of Kaplan's sites, facilities, safeguards and security measures in place to protect Personal Information about Learners and to verify compliance with Kaplan's ISMS, using appropriately skilled and functionally independent specialists.
- (g) Kaplan will notify the Client promptly, and in any case, within 48 hours, upon becoming aware of any material security incident affecting Learner Data and will

upon reasonable request from the Client provide information about such incident including information that has been provided to any regulator.

14 Disclosure of Reports and Learner Data

- (a) Where required to do so by an applicable Law, Kaplan may disclose Reports, Learner Data and other information relating to Learners ('**Information**') to Regulators. Where possible, Kaplan will inform the Client of such disclosure as soon as reasonably practicable.
- (b) Kaplan may disclose Information to the Client, the Client's Group, the associated AFSL (Australian Financial Services Licence) holder, and Client's authorised entities, the relevant Learner and any person that the relevant Learner directs or nominates from time to time (for example, their current, future or prospective employer) without having to first notify the Client of the disclosure. To the extent applicable, Kaplan will comply with the Privacy Act in connection with any such disclosure.

15 Feedback

- (a) Kaplan welcomes Feedback from the Client and the Learners in respect of the Product and the Content.
- (b) Feedback can be emailed to pdmail@Kaplan.edu.au.
- (c) The Client agrees that Kaplan will own (free of charge), and the Client waives any rights in, any Feedback provided to Kaplan and it will be deemed Kaplan's Confidential Information.
- (d) Kaplan may use Feedback in any manner it deems fit, including incorporating it in its products and/or services, but is under no obligation to do so.

16 Confidential Information

16.1 Acknowledgment of confidentiality

The Recipient acknowledges that:

- (a) all the Confidential Information is secret and confidential to the Discloser; and
- (b) any unauthorised use, reproduction or disclosure of the Confidential Information by the Recipient may cause loss, damage or expense to the Discloser.

16.2 Obligation of confidentiality

The Recipient must (except as may be required by law or with the Discloser's prior written consent) maintain the secrecy and confidentiality of the Confidential Information.

16.3 Disclosure required by law

If the Discloser is required by law to disclose Confidential Information:

- (a) the Discloser will (to the extent permitted at law) promptly give the Recipient written notice specifying the legal requirement and the Confidential Information to be disclosed; and
- (b) the Discloser will ensure that the relevant Confidential Information is disclosed in a manner that minimises the disclosure.

16.4 Injunctions

The Recipient acknowledges and agrees that a breach of this Agreement may cause the Discloser to suffer loss, damage and expense for which damages may not be adequate compensation and may be difficult to ascertain and that the Discloser may immediately seek to restrain any actual or threatened breach of this Agreement by injunction or any similar remedy.

17 Liability

17.1 Client's warranty

The Client represents and warrants that it has not relied on any representation made by Kaplan that has not been expressly stated in this Agreement.

17.2 Exclusion of implied warranties

Subject to this clause 17, any representation, warranty, condition or undertaking which (but for this clause) would be implied in this Agreement by law is excluded.

17.3 Limitation or exclusion of remedies

To the extent permitted by law, if the Client was located in Australia when it entered into this Agreement, Kaplan's liability for any claim arising directly or indirectly from a breach of any non-excludable term or condition implied by statute (such as warranties under the *Competition and Consumer Act 2010* (Cth)) is limited, at Kaplan's option, to one or more of the following:

- (a) if the breach relates to the supply of goods: repairing or replacing the goods or supplying equivalent goods, or paying the cost of repairing or replacing the goods or of acquiring equivalent goods; or
- (b) if the breach relates to the supply of services: supplying the services again or paying the cost of having the services supplied again.

To the extent permitted by law, if the Client was in trade and located in New Zealand when it entered into this Agreement and the services under this Agreement were obtained for a business purpose, the Client and Kaplan agree that the *Consumer Guarantees Act 1993* (NZ) does not apply to this Agreement.

17.4 Consequential loss

Neither party is liable to the other party for any special, incidental, indirect or consequential loss or damages, loss of profits, loss of data, loss of business opportunity which may be suffered in connection with this Agreement, whether arising from breach of contract, breach of statute, tort (including any negligent act or omission) or otherwise.

17.5 Liability cap

To the extent that Kaplan's liability cannot be or is not otherwise limited according to this clause 17, Kaplan's total aggregate liability for all loss and damage suffered by the Client in connection with this Agreement, whether arising from breach of contract, breach of statute, tort (including any negligent act or omission) or otherwise, will not exceed the total amount of Fees received by Kaplan from the Client under this Agreement during the 12 months prior to the relevant event (less any amounts already paid to the Client in connection with this Agreement in respect of that 12 month period).

17.6 Scope of limitations

Any provision of this Agreement which purports to exclude or limit the warranties given by or liability of Kaplan under this Agreement applies only to the maximum extent permitted by law.

17.7 Client Group

The Client is responsible for the loss caused to Kaplan by any Learners in the Client Group subject to any limitations set out in this Agreement, except to the extent the loss has been caused or contributed to by Kaplan.

18 Termination & Cancellation

18.1 Termination by either party

Either party may immediately terminate this Agreement by written notice if the other party:

- (a) subject to any applicable laws that prohibit termination in such circumstances, becomes insolvent or enters into liquidation, receivership or other insolvency administration or makes a composition or arrangement with its creditors generally or takes advantage of any statute for the relief of insolvent debtors;
- (b) breaches this Agreement and fails to rectify the breach within 10 Business Days of receiving written notice from the other specifying the breach and requiring its rectification; or
- (c) breaches this Agreement and such breach cannot be remedied.

18.2 Termination by Kaplan

Kaplan may immediately terminate this Agreement by written notice to the Client if:

- (a) the Client has not paid an amount due under this Agreement;
- (b) the Client commits a breach of this Agreement that cannot be remedied;
- (c) the Client suffers a change in control (as defined in section 50AA of the *Corporations Act 2001* (Cth)); or
- (d) Kaplan otherwise gives the Client 60 days written notice.

18.3 Obligations on termination

On the termination of this Agreement for any reason, the licence in clause 5.1(a) ceases immediately and:

- (a) the Client must ensure that all Learners immediately cease accessing and using the Product and the Content;
- (b) the Client must pay to Kaplan within 7 days after the date of termination all amounts owing by the Client under this Agreement; and
- (c) the Recipient must deliver to the Discloser or erase or destroy, or procure the delivery, erasure or destruction (at the Discloser's option and as applicable) all Confidential Information in the Recipient's or its Group's possession or control (excluding any Reports).

18.4 Suspension

Kaplan may immediately suspend the provision of any part or whole of the Services provided pursuant to this Agreement by written notice to the Client if the Client has not paid an amount due under this Agreement by the due date.

18.5 Other remedies

Termination or suspension of this Agreement by either party is without prejudice to its other rights and remedies in respect of this Agreement.

18.6 Refund in limited circumstances

If Kaplan terminates this Agreement under clause 18.2(d), or if Client terminates this Agreement under clause 18.1, and the Client has pre-paid any Fees in respect of the balance of the Term remaining after termination, then Kaplan will refund to the Client the amount of those pre-paid Fees relating to the balance of the Term remaining after termination.

18.7 Survival

Clauses 5.1(b), 8.2(d), 9(b), 9(d), 12.1, 13(d), 14, 15, 16, 17, 18.3, 18.5, 18.7 and 19 survive the termination of this Agreement.

19 General

19.1 Notices

Any notice or other communication to or by a party to this Agreement:

- (a) must be in English and given by personal service, post or email;
- (b) must be in writing addressed to a party at the postal address or email address for that party (or, in the case of the Client, the Client's training manager) specified in the Order Form or any other address last notified by the party to the sender by notice given in accordance with this clause; and
- (c) is deemed to be given by the sender and received by the addressee:

- (1) if delivered in person, when delivered to the addressee;
- (2) if posted, 5 Business Days (or 12 Business Days, if addressed outside Australia) after the date of posting to the addressee whether delivered or not; or
- (3) if sent by email, 24 hours after the email was sent unless the party sending the email knows, or reasonably ought to suspect, that the email (including any attachments) were not delivered to the addressee's server or domain,

but if the delivery is on a day which is not a Business Day or is after 4:00 pm (addressee's time) it is deemed to have been received at 9:00 am on the next Business Day.

19.2 Entire agreement

Subject to law, this Agreement contains the entire understanding and agreement of the parties concerning its subject matter and supersedes all previous agreements, negotiations and representations or statements by either party about that subject matter.

19.3 Variation and waiver

A provision of this Agreement or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

However, if Kaplan advises the Client during the Term (including at renewal) that Kaplan has updated its standard Ontrack Client Terms and Conditions and then this Agreement is subsequently renewed in accordance with clause 2.2, the most recent version of those terms and conditions notified to the Client prior to or at renewal will be deemed accepted by the Client and will replace the relevant earlier version with effect from the commencement date of the renewal.

19.4 Force majeure

Kaplan is not responsible or liable for any delay in or failure to perform any obligation under this Agreement due to any cause or event whatsoever beyond its reasonable control.

19.5 Severability

The invalidity or unenforceability of any one or more of the provisions of this Agreement does not

invalidate or render unenforceable the remaining provisions of this Agreement.

19.6 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Agreement or any part of it.

19.7 Order of precedence

These terms and conditions override the Order Form to the extent of any inconsistency between those documents.

19.8 Relationship of parties

The parties to this Agreement are independent contractors and nothing in this Agreement constitutes a partnership, joint venture, agency or other joint relationship between the parties.

19.9 Assignment

Neither party may assign or otherwise deal with its rights under this Agreement without the other party's prior written consent, such consent not to be unreasonably withheld or delayed, except Kaplan may assign its rights under this Agreement to a member of the Kaplan Group.

19.10 Disputes

If there is a dispute relating to the Product or this Agreement (not including an invoice properly due and payable), the parties will attempt to settle the dispute in good faith promptly, including by escalating the dispute for resolution by its senior managers, before commencing litigation.

19.11 Governing law

This Agreement is governed by and construed in accordance with the laws of New South Wales, and the parties irrevocably submit to the jurisdiction of the Courts of that State and of the Commonwealth of Australia.