

# DISABILITY AWARENESS

## END USER LICENCE AGREEMENT

This End User Licence Agreement (the “**EULA**”) is a contract between the user of the SCORM Files (the “**End User**”) and the University of Tasmania (the “**Licensor**”) continued under the *University of Tasmania Act 1992* (Tas) at 2 Churchill Avenue, Sandy Bay in Tasmania. The Licensor and the End User together shall be referred to as the “**Parties**” and individually shall be referred to as a “**Party**”.

Please read this EULA carefully. By installing or using the SCORM Files, the End User accepts all of the terms and conditions set out in this EULA. If the End User does not wish to be legally bound by the terms and conditions of this EULA, do not install or use the SCORM Files.

### The Parties agree as follows:

#### 1 Definitions

- 1.1 *Definitions.* Unless otherwise provided in the main body of this EULA, capitalised terms shall have the meaning given to them below:
- 1.2 Confidential Information means the SCORM Files, and all information, data, drawings, designs, specifications, documentation, and other items (in any form whatsoever) which the Licensor may (directly or indirectly) disclose or otherwise make available to the End User during the course of or in anticipation of this EULA.
- 1.3 Field means the End User’s own internal business purposes including through use of a learning management system.
- 1.4 SCORM Files means the Introduction to Disability Awareness eLearning SCORM files to be used in an organisations Learning Management System.
- 1.5 Start Date means the date the End User downloads the SCORM Files.

#### 2 Licence

- 2.1 *Licence.* Subject to the provisions of this EULA, the Licensor grants to the End User a non-transferable, non-sub-licensable, royalty-free, and non-exclusive licence to use, solely in the Field and solely in object code form, the SCORM Files.
- 2.2 *Reservation of rights.* Except for the licence explicitly granted by Clause 2.1, the Licensor reserves all its rights. The End User acknowledges and agrees that the End User is licensed to use the SCORM Files only in accordance with the express provisions of this EULA and not further or otherwise.
- 2.3 *No support.* Unless otherwise agreed by the Parties in writing, the Licensor shall have no obligation to upgrade, update, bug-fix, to provide support or maintenance services, or to provide assistance or consultancy services in relation to the SCORM Files.

#### 3 Use

- 3.1 *Restrictions.* Except to the extent permitted by applicable mandatory law, the End User shall not, except where permitted through use of the Field: (a) copy or reproduce the SCORM Files; (b) merge the SCORM Files with any other software or; (c) translate, adapt, vary, or modify the Software; or (d) disassemble, decompile, or reverse engineer the SCORM Files.
- 3.2 *Further restrictions.* The End User shall not: (a) provide, disclose or otherwise make available the SCORM Files to any third party unless required through use of the Field; or (b) use the SCORM Files to provide any services or training for any third party unless required through the use Field;

or (c) sell, lease, rent, transfer, hire-out, license, sub-license, assign, distribute, publish, charge, pledge, encumber, commercially exploit, or otherwise deal with the SCORM Files, or have any software written or developed that is based on or derived from the SCORM Files.

- 3.3 *Obligations.* The End User shall at all times: (a) effect and maintain adequate security measures to safeguard the SCORM Files from unauthorised access, use, and disclosure; (b) supervise and control access to and use of the SCORM Files in accordance with the provisions of this EULA; (c) ensure that the SCORM Files are presented in an accessible format; (d) provide the Licensor from time to time on request with contact details for the person responsible for supervising and controlling such access and use; (e) must acknowledge and attribute the original source of the SCORM Files as <https://disabilityawareness.com.au/> and (f) ensure that the SCORM Files is at all times clearly labelled as the property of the Licensor. The provisions of this Clause 3.3 are without prejudice to the provisions of Clause 5.1.

#### **4 Confidential Information**

- 4.1 *Confidentiality obligations.* As between the Parties, all Confidential Information belongs to the Licensor. At all times during the term of this EULA and at all times subsequently, the End User shall: (a) maintain all Confidential Information securely and in the strictest confidence and shall respect the Licensor's rights therein; (b) not disclose or otherwise make available any Confidential Information to any third party; and (c) not use any Confidential Information for any purpose, except for the purpose of using the Software in accordance with the provisions of this EULA.
- 4.2 *Exceptions to obligations.* The provisions of Clause 4.1 shall not apply to Confidential Information which the End User can demonstrate by reasonable, written evidence: (a) is subsequently disclosed to the End User without any obligations of confidence by a third party who has not derived it directly or indirectly from the Licensor; or (b) is or becomes generally available to the public through no act or default of the End User or its agents, employees, or affiliates.
- 4.3 *Disclosure to employees, etc.* The End User shall procure that all its employees and other personnel who have access to any Confidential Information shall: (a) be made aware of, and subject to the obligations, set out in Clause 4.1; and (b) have entered into written undertakings of confidentiality and non-use which are at least as restrictive as Clause 4.1 and Clause 4.2 and which apply to the Confidential Information.

#### **5 Acknowledgements and disclaimers**

- 5.1 *Acknowledgements.* The End User acknowledges and agrees that downloadable material in general is not error-free and agrees that the existence of any errors in the SCORM Files shall not constitute a breach of this EULA by the Licensor.
- 5.2 *Obligation to correct material errors.* If the End User discovers a material error in the functionality of the SCORM Files which substantially affects the End User's use of the SCORM Files, the End User will report the error with the SCORM Files to the Licensor.
- 5.3 *No such obligation in certain circumstances.* The Licensor's obligations under Clause 5.2 shall be excluded in the following circumstances: (a) following wilful damage to the SCORM Files or negligence in its use; (b) where the SCORM Files has not been used, maintained, and/or stored in accordance with any instructions or recommendations given by the Licensor or in accordance with the provisions of this EULA; (c) where the problem arises from additional software not supplied by the Licensor; (d) where the SCORM Files are used other than in the correct configuration; and/or (e) following any unauthorised use of or modification to the SCORM Files.
- 5.4 *Viruses, etc.* The Licensor does not warrant that the SCORM Files supplied under this EULA shall be free from all viruses. The End User acknowledges and agrees that it is solely the End User's responsibility to conduct appropriate virus scanning of the SCORM Files prior to installation and use.
- 5.5 *Possible charges.* Where a defect in the SCORM Files is found upon investigation not to be the Licensor's responsibility, the Licensor reserves the right to charge the End User on a time and materials basis at the Licensor's then current rates for all time, costs, and expenses incurred by the Licensor in consequence of such investigation.

- 5.6 *No implied warranties, etc.* The express undertakings and warranties given by the Licensor in this EULA are in lieu of all other warranties, conditions, terms, undertakings and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing or in any other way, including any implied warranty of merchantability, satisfactory quality or fitness for any particular purpose. All of these are excluded to the fullest extent permitted by applicable law. Without limiting the scope of the preceding sentences, the Licensor gives no warranty or guarantee that the SCORM Files will meet the End User's requirements, that the use of the SCORM Files will be un-interrupted, or that any errors and/or defects in the SCORM Files can or will be corrected.
- 5.7 *Indemnity.* The End User shall indemnify the Licensor from and against any and all losses, damages, claims, demands, liabilities, costs, and expenses of any nature whatsoever that may be asserted against or suffered by the Licensor and which relate to: (a) any use by the End User of the SCORM Files; and/or (b) the development, manufacture, use, supply, or any other dealing in any products or services that were generated from the use of the SCORM Files, including any claims based on product liability laws.
- 5.8 *Limit of liability.* The cumulative maximum liability of the Licensor to the End User under or in connection with this EULA, irrespective of the basis of the claim (whether in contract, tort, negligence, or otherwise), shall be limited in accordance with the provisions of this Clause 5.8:
- (a) The Licensor does not seek to exclude or limit liability where such exclusion or limitation is precluded from applicable law, including any liability that may arise in respect of (i) death or personal injury resulting from the Licensor's negligence, or (ii) fraud.
  - (b) Subject to Clause 5.8(a), the Licensor shall in no circumstances be liable for any type of special, indirect or consequential loss, for any loss of profit, revenue, or anticipated saving, lost, incorrect or spoilt data, loss of use, loss of contracts with third parties, loss of business or loss of goodwill, even if such loss was reasonably foreseeable or the Licensor had been advised of the possibility of the same arising.

## **6 Duration and termination**

- 6.1 *Commencement and termination.* This EULA, and the licence granted hereunder, shall come into effect on the Start Date and shall continue in force unless and until terminated in accordance with Clause 6.2.
- 6.2 *Rights of the Licensor to terminate.*
- (a) The Licensor may terminate this EULA, and the licence granted hereunder, at any time by notice in writing to the End User, such termination to take effect as specified in the notice.
  - (b) In addition, this EULA, and the licence granted hereunder, shall terminate automatically if the Licensor's licence in respect of the SCORM Files is terminated for any reason. In such circumstances, the Licensor shall give prompt written notice thereof to the End User.
- 6.3 *Consequences of termination.* In the event of any termination of this EULA for any reason:
- (a) any licence granted by the Licensor under this EULA shall automatically terminate without further notice, and the End User shall make no further use of, or carry out any other activity in relation to, the Software.
- 6.4 *Accrued rights.* Termination of this EULA for any reason shall not affect the rights and obligations of the Parties accrued before termination, including any right to claim damages. The rights and obligations of the Parties set out in Clauses 4, 5.7, 5.8, 6.3, 6.4, and 7 shall survive any termination of this EULA for any reason.

## **7 General**

- 7.1 *Amendments.* This EULA may be amended and the End User will be required to review the terms. The End User will be informed where any amendments have been made.

- 7.2 *Invalid clauses.* If any provision or part of this EULA is held to be invalid, amendments to this EULA may be made by the addition or deletion of wording as appropriate to remove the invalid part or provision but otherwise retain the provision and the other provisions of this EULA to the maximum extent permissible under applicable law.
- 7.3 *No agency.* Nothing in this EULA shall create, evidence, or imply any agency, partnership, or joint venture between the Parties. Neither Party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf.
- 7.4 *Interpretation.* In this EULA:
- (a) references to persons include incorporated and unincorporated persons and references to the singular include the plural and vice versa;
  - (b) references to Clauses and Exhibits mean clauses of, and exhibits to, this EULA;
  - (c) references in this EULA to termination include termination by expiry; and
  - (d) where the word "including" is used it means "including without limitation".
- 7.5 *Governing law and jurisdiction.* The validity, construction, and performance of this EULA shall be governed by and construed in accordance with the laws of Tasmania and shall be subject to the non-exclusive jurisdiction of the courts of Tasmania to which the Parties hereby submit.
- 7.6 *No use of names, etc.* Neither Party shall use the names, marks, trade names, trademarks, crests, logos, or registered images of the other Party without that Party's prior written consent.
- 7.7 *Entire agreement.* This EULA sets out the entire agreement between the Parties relating to its subject matter and supersedes all prior oral and written agreements, arrangements, or understandings between them relating to such subject matter.