



OnGuard Safety Training

MAKING SENSE OF WORKPLACE SAFETY TRAINING

www.OnGuardSafetyTraining.com

SERVICE AGREEMENT (Contract)

NOTICE TO USER: PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE SERVICE. BY USING ALL OR ANY PORTION OF THE SERVICE OR THE PROGRAM YOU AGREE TO BE BOUND BY ALL TERMS AND CONDITIONS OF THIS AGREEMENT.

1. AGREEMENT

- 1.1 This Agreement governs the use of the Service and the Program by clients of the Provider and comprises the following documents:
- (a) this Service Agreement (Contract);
 - (b) Acceptable Use Policy;
 - (c) Initial Licence Registration Form.

2. APPLYING FOR THE SERVICE

- 2.1 This is an invitation by the Provider for new clients to apply for access to the Service and to use the Program.
- 2.2 You may apply for the Service by completing the Initial Licence Registration Form and returning it to the Provider. Clients previously registered with the Provider are still required to apply for the Service.
- 2.3 Should the Provider accept your application for the Service, it will provide your nominated Program Administrator with secure login access details to the Service and the Program including a one-off Program Administrator's username and password. These login details will allow the Client's nominated Program Administrator to access the Program via the Service.
- 2.4 The Program Administrator must keep the Program Administrator username and password confidential and safe and not disclose it to any other person.
- 2.5 The Provider will not be liable for any loss or damage you incur or suffer as a result of the Program Administrator failing to keep the password confidential. You agree to indemnify the Provider for any loss or damage suffered by the Provider as a result of the Program Administrator disclosing the password to any other party without the prior written consent of the Provider.

3. TERMS AND CONDITIONS

- 3.1 Use of the Service and the Program are available to new and existing clients of the Provider .
- 3.2 Clients may be able to access the Service outside of Australia, however such access and availability is subject to local internet carrier service.
- 3.3 The Provider will endeavour to provide current, accurate information but makes no warranty regarding the timely delivery, currency or accuracy of any information provided as part of the Program or the Service.
- 3.4 You indemnify the Provider against any loss or damage suffered or incurred, directly or indirectly, as a result of reliance upon any information received from or in relation to the Program or the Service.
- 3.5 You are only permitted to use the Program for educational and non-commercial purposes and you must not otherwise copy, publish, re-publish, re-engineer, re-distribute, re-communicate or otherwise commercially exploit in any form or by any method whatsoever the Program or the Service. For the avoidance of doubt this prohibition includes framing, linking, posting in news groups and any other form of copying by persons other than as approved in writing by the Provider.



OnGuard Safety Training

MAKING SENSE OF WORKPLACE SAFETY TRAINING

www.OnGuardSafetyTraining.com

- 3.6 All intellectual property rights (including copyright) in and to the contents/data of the Software package is the sole property of OnGuard Safety Training Pty. Ltd. Except to the extent of the licence, the user shall acquire no intellectual property rights in or to the contents/data or any part thereof.
- 3.7 This software package must be treated like any other copyrighted material except that the registered user may:
- (a) use the software package on a multiple number of computers within the school site, including computers owned by staff and student laptops
 - (b) upon seeking written permission from OnGuard Safety Training Pty. Ltd., make minor changes to text within MSWord documents throughout the software package, to meet the very specific needs of students at the location of the registered user. The user agrees to advise OnGuard Safety Training Pty. Ltd. in writing of any change or improvement it makes to the publication which it considers to be in the best interest of safety. The user further acknowledges that any such additions or improvements suggested or made remain the property of OnGuard Safety Training Pty. Ltd.
 - (c) within guidelines set by Australian Copyright law, make print copies of MSWord and PDF documents throughout the software package, for the educational purposes of students at the registered user's location only.

4. TERM OF AGREEMENT

- 4.1 This Agreement commences when you register to licence the Service online and remains in force for a fixed term of 2 years (24 months) unless terminated in accordance with this Agreement.
- 4.2 On the expiry of the 2 year fixed term this Agreement will be re-issued to you for signing. This agreement to be return to us within 21 days of the expiration of your original agreement to ensure continuity of your service.

5. VARIATION

- 5.1 Variation:
- (a) The Provider may vary any term of this Agreement at any time by giving you at least 21 days written notice;
 - (b) If any variation has more than a nominal detrimental effect on you, then you may, within 21 days of receiving notice of the variation, terminate this Agreement by giving the Provider at least 21 days notice. If notice is given by you terminating this Agreement in accordance with this clause, any proposed variation will not be applied to you and you will not be liable to pay any applicable Early Termination Fee.
 - (c) The rights to terminate contained in clause 5.1(b) herein do not apply where the variation is a variation of fees and charges to reflect increases in CPI or GST as described in clauses 6.8(a) and 6.8(b).
- 5.2 The Provider may vary the Service at any time, including the Program, Service, Products, Content or Transmission. If the Provider withdraws features of the Program which causes a more than nominal detrimental change to the Service and we do not reduce the price accordingly or do not replace the feature with a similar feature, you may, within 21 days of receiving notice of the variation, terminate this Agreement by giving us at least 21 days' notice, and if you do you will not be liable to pay the Early Termination Fee.

6. PRICE AND PAYMENT

- 6.1 You agree to pay the following charges in respect of the Service:
- (a) \$15.00 (plus GST) account set up fee; and
 - (b) \$15.00 (plus GST) per month for the 'OnGuard' Safety Training Program; or
 - (c) \$25.00 (plus GST) per month for the 'OnGuard' ACEPro Training, Testing & Tracking Program.
- 6.2 Charges for use of the Service will be billed quarterly, annually or lump sum (at your discretion) in advance and must be deposited into the Provider's bank account by either: cheque, credit card, direct credit or direct debit.



OnGuard Safety Training

MAKING SENSE OF WORKPLACE SAFETY TRAINING

www.OnGuardSafetyTraining.com

- 6.3 It may take up to 14 working days from the original send or request date for the Service charges to be applied.
- 6.4 You must give the Provider accurate and complete billing information including your legal trading name, address, telephone number and details of the nominated Program Administrator.
- 6.5 In the event that you terminate the Service during the Term of this agreement you will be required to pay an Early Termination Fee being the lesser of
- (a) one year's Service Charge; or
 - (b) the time remaining of the 2 year fixed term.
- 6.6 The Provider may also charge the following fees:
- (a) An administration fee if your account is not paid by the due date;
 - (b) a reconnection fee to reactivate your OnGuard 'Software as a Service' if it has been suspended because you have not paid your account by the due date or because you breached this Agreement; and/or
 - (c) a statement fee, if you request that the Provider provide you with a monthly statement.
- 6.7 You must pay the Provider all fees, charges and taxes that apply to the Service by the due date. If you do not pay the amounts that are owed by the due date the Provider may suspend or limit access to the Service or terminate this Agreement immediately by notice in writing.
- 6.8 Variation to fees and charges:
- (a) The Provider may increase its fees and charges once in each calendar year of the term of this Agreement to reflect any increase in the Consumer Price Index by providing you with 21 days notice of the increase, and you may not terminate this Agreement because the Provider has done so.
 - (b) The Provider may make other changes to its fees and charges by giving you 21 days notice of the changes and clause 5.2 applies.
- 6.9 Fees and charges specified in this Agreement exclude the goods and services tax. If the rate of GST is varied at any time, all fees and charges will be adjusted without notice to take account of this variation, and you may not terminate this Agreement because of this variation. The Provider will provide a tax invoice to you within 21 days of your request to us.
- 6.10 When using the Service, Client accounts must be in financial order to utilise the Program.

7. ONGUARD 'SOFTWARE as a SERVICE' PRODUCT DELIVERY

- 7.1 The Provider will provide you with access to the Program via the Service after you have completed Initial Registration and remitted payment or lodged signed direct debit form with us.
- 7.2 If you are using a previous version of the Program on your school's server (SaaS) you can upgrade to the current version of the Program by contacting us by telephone or in writing.

8. EQUIPMENT

- 8.1 It is your responsibility to obtain and maintain any equipment necessary to enable access to the Service at your own cost.
- 8.2 You are responsible for all costs of accessing the Service, including but not limited to internet carrier charges.



OnGuard Safety Training

MAKING SENSE OF WORKPLACE SAFETY TRAINING

www.OnGuardSafetyTraining.com

9. CLIENT OBLIGATIONS

- 9.1 You must not publish or use, without the prior written consent of the Provider any trade mark, trade name, logo or service mark of the Provider. You agree to indemnify the Provider against any claim, loss or damages arising out of any unauthorised use by you or any third party intellectual property rights in relation to the Service or the Program.
- 9.2 You agree to take all reasonable steps not to disclose any usernames, passwords or account information to any unauthorised persons. In the event that you do disclose such information to an unauthorised person, you must immediately notify the Provider. Until you notify the Provider, you will be responsible for any unauthorised use of the Service and/or the Program facilitated by the use of information you disclose.
- 9.3 When using the Service and the Program you must comply with:
 - (a) Service Agreement (Contract)
 - (b) Acceptable Use Policy;
 - (c) Initial Licence Registration Form;
 - (d) Any other instructions the Provider gives you, whether via the Provider's website or otherwise;
 - (e) You must not re-sell or attempt to re-sell the Service or the Program, or transfer your account to another person or entity without the Provider's prior written consent.

10. LIABILITY

- 10.1 The Provider cannot and does not accept responsibility for interruption or delay to the Service due to any events outside the reasonable control of the Provider including weather and defaults of third party suppliers. In the event there is an interruption to the Service which lasts more than 14 days, you may terminate this Agreement within 21 days of the interruption. In the event that you terminate this Agreement in accordance with this clause 10.1 you will not be required to pay the Early Termination Fee unless previously advised by the provider.
- 10.2 The Provider does not warrant or represent that the content of the Program is suitable for viewing by any particular audience. The Provider does not accept responsibility for the accuracy of information contained in the Program.
- 10.3 Nothing contained in this Agreement excludes, restricts or modifies any rights you have under the Trade Practices Act and Fair Trading Laws which cannot be lawfully excluded or limited. For example, your rights include an assurance from the Provider that any services provided are provided with due care and skill and that any resources supplied in connection with those services are reasonably fit for their purpose. Other than as referred to above or expressly stated in this Agreement, the Provider does not make any promises or warranties, whether express or implied, about the Service or the Program.
- 10.4 Except where the Provider has breached any of your rights under the Trade Practices Act or Fair Trading Laws which cannot be lawfully excluded, the Provider does not accept any liability in contract, negligence or on any other basis for any indirect loss, consequential loss, special loss, economic loss, loss of data, loss of profits, loss of income, loss of revenue or loss of goodwill, arising out of or connected in any way with this Agreement.
- 10.5 The Provider does not accept any liability for any damage to your equipment which may occur due to using the Service or the Program, including any burn-in suffered to your monitor, except where the Provider has breached any of your rights under the Trade Practices Act or Fair Trading Laws which cannot be lawfully excluded or limited.
- 10.6 Under no circumstance, including negligence, shall OnGuard Safety Training Pty. Ltd. be liable for any indirect, special incidental or consequential damages arising out of the use of or inability to use the software package, including without limitation, loss of data, computer failure or malfunction or any and all other commercial damages or losses, that result from the use of, or the inability to use, the software package.
- 10.7 OnGuard Safety Training Pty. Ltd., the authors, consultants, publishers and distributors are not responsible for the results of any action taken on the basis of information contained in the software package, nor for any error in or omission from the information in the software package. OnGuard Safety Training Pty. Ltd., the authors, consultants,



OnGuard Safety Training

MAKING SENSE OF WORKPLACE SAFETY TRAINING

www.OnGuardSafetyTraining.com

publishers and distributors expressly disclaim all and any liability and responsibility to any person, whether a registered user or reader of this software package or not. This is in respect of the consequences of anything, done or omitted to be done by any such person in reliance upon the whole or part of the contents of this software package.

10.8 It is understood that the registered user will take determined steps to investigate the Workplace Health and Safety needs specific to their situation, and implement workplace 'systems of work', in addition to utilising the resource material in the Software package. It is understood that the school purchasing this software will also take steps to investigate and obtain the following from the manufacturer of the machinery / equipment including: recommended operating instructions, safety precautions, safeguards, cleaning and storage instructions. It is also understood that this resource material is general in nature and schools will need to include practical instruction, supervisor demonstration and specific training relevant to the brand and type of their machinery / equipment.

11. DISCLAIMER

11.1 You acknowledge that the Provider is not responsible for any damage you or any other person using the Service may suffer arising from the Service (including data, delays, or service interruptions, whether or not caused by the Provider's negligent acts or omissions).

11.2 The Service is subject to the Provider's data centre capacity.

11.3 The Provider reserves the right to suspend or restrict your use of the Service at any time if it believes you are restricting the quality of the Service.

11.4 The Provider reserves the right to withdraw the Service in order to conduct periodical maintenance.

11.5 Except for any conditions or warranties on the Service, the Provider makes no statement, warranty or promise about the quality or suitability of the Service.

12. INDEMNITY

12.1 You will indemnify the Provider against any costs, expenses, loss or liability directly or indirectly suffered or incurred by the Provider (including as a result of a claim by a third party) resulting from:

- (a) any breach of this Agreement by you;
- (b) the use or misuse of the Service by you or any person using your account; and/or
- (c) any sensitive information being exposed.

13. SECURITY AND CUSTOMER INFORMATION

13.1 When you apply for an Initial Licence Registration and subsequently use the OnGuard 'Software as a Service', the Provider will collect information about you. The information collected by the Provider about you will include your legal trading name, address, contact details (including your telephone numbers and email address), information for identification purposes and information about your bank account details. The Provider will also hold information relating to the provision of the Service to you and information provided by you in connection with the Agreement or any other products and services provided to you by the Provider.

13.2 The Provider may need to collect information about you for several reasons. This includes setting up and managing your account, so the Provider can supply you with the products and services you have requested, and so the Provider can manage its relationship with you as a client. If you don't supply the Provider with your information, the Provider won't be able to supply you with the Program and might not be able to supply you with other products and services. The Provider also needs to collect personal information so that the Provider can keep you informed about the Program, and other products and services that may be of interest to you.

13.3 The Provider will use and disclose your information for purposes permitted by the Privacy Act 1988 (Cth) and purposes that you consent to under this clause. You consent to us using and disclosing your personal information:



OnGuard Safety Training

MAKING SENSE OF WORKPLACE SAFETY TRAINING

www.OnGuardSafetyTraining.com

- (a) to enable the Provider to perform its obligations to you under the Agreement;
- (b) to enable the Provider to ensure that you perform your obligations under the Agreement;
- (c) to a credit reporting agency. The disclosures the Provider will make will include information relating to your credit application including identifying information about you, the fact you have applied for credit (and the amount). The Provider may also subsequently disclose information about your credit relationship with the Provider to a credit reporting agency:
 - (i) to maintain a credit information file about you;
 - (ii) to carry out its own credit assessment on you.
- (d) for planning and research purposes including disclosure to organisations associated with the provision of the services for marketing and analysis purposes;
- (e) for promotional and marketing purposes. Unless you notify the Provider under clause 13.4 below, the Provider will use your information to contact you (including by telephone and email) with promotional and marketing information about the Program and the Service, and also about third party products and services that may be of interest to you. The Provider will understand that this is an ongoing consent unless you tell the Provider otherwise; and
- (f) to a potential purchaser of, or investor in, any business conducted by the Provider.
- (g) to a direct debit company facilitator for the sole purpose of managing the direct debit payments from your nominated bank account.

13.4 You may request that your information not be used or disclosed for marketing or promotional purposes by:

- (a) telephoning the Provider on +61 755226581;
- (b) emailing the Provider at admin@OnGuardSafetyTraining.com; or
- (c) visiting the Provider's "contact us" section on the website at www.OnGuardSafetyTraining.com

13.5 Further information on how the Provider handles information about you including your right to seek access to personal information that the Provider holds about you can be found in the Provider's Privacy Statement which is available on the Provider's website at www.OnGuardSafetyTraining.com or by calling +61 755226581.

14. TERMINATION

14.1 The Provider may suspend the Service or the Program or terminate this Agreement:

- (a) if you breach this Agreement and, if the breach is remediable, you do not remedy the breach within a reasonable period of receiving notice from the Provider requiring you to do so;
- (b) if the Provider has reasonable belief that you have engaged in conduct in relation to the Service or the Program, which is fraudulent or unlawful, or which may cause harm to the Provider, or cause harm or distress to any of the Provider's employees or Authorised Persons;
- (c) if the Provider is unable to continue to provide the OnGuard 'Software as a Service' to you due to legal, regulatory or technical reasons;
- (d) if the Provider has reasonable grounds to believe that you are unable to pay your account; or
- (e) as specifically permitted under any other term of this Agreement.

14.2 If the Provider does suspend the Service or the Program or terminate this Agreement for one of the reasons noted above, it will notify you.



OnGuard Safety Training

MAKING SENSE OF WORKPLACE SAFETY TRAINING

www.OnGuardSafetyTraining.com

14.3 You may terminate this Agreement prior to the expiry of the Fixed Term:

- (a) as specifically permitted under any other term of this Agreement; or
- (b) by providing us 21 days' written notice and paying the Early Termination Fee under clause 6.5.

14.4 You or the Provider may terminate this Agreement once the Fixed Term has expired by giving 21 days' notice to the other in which event no Early Termination Fee will apply.

15. MISCELLANEOUS

15.1 This Agreement shall be governed by and construed in accordance with the laws of the state of Queensland and both parties submit to the nonexclusive jurisdiction of the Courts of that State.

15.2 You must not transfer this Agreement or any of your rights under it to anyone else without prior written consent from the Provider, which will not be refused without good reason. The Provider may transfer this Agreement or our rights under it to a third party, but only if such transfer does not cause material detriment to you.

15.3 If any provision in this Agreement is or shall become void, unenforceable or illegal it shall not affect the other provisions of this Agreement and the remainder of this Agreement shall have full force and effect.

16. NOTICE

16.1 The Provider may give notices to you under this Agreement by way of SMS, email, facsimile, letter or publication on the Provider's web site.

16.2 You may give notice to the Provider by:

- (a) telephoning the Provider on +61 755226581;
- (b) emailing the Provider at admin@OnGuardSafetyTraining.com; or
- (c) visiting the Provider's "contact us" section on the website at www.OnGuardSafetyTraining.com

17. DEFINITIONS

In this Agreement, the following words have these meanings:

Acceptable Use Policy: means the guidelines attached to this document.

Agreement: means this Agreement as described in clause 1.1.

Authorised Persons: means any contractors, agents or suppliers used by the Provider from time to time to perform the Service.

Consumer Price Index: means the Consumer Price Index (all groups – weighted average of eight capital cities) published by the Australian Bureau of Statistics.

Early Termination Fee: means the early termination fee as described in clause 6.5 payable by you when you terminate this Agreement during the term.

Fair Trading Laws: means any fair trading or consumer affairs laws applicable to the supply of the Service in the state or territory in which your premises are situated.

Fixed Term: means the initial fixed two (2) year term of this Agreement, as described in clause 4.1.

GST: means any value-added, consumption, turnover or similar tax, impost or duty on goods and/or services.

Provider: means OnGuard Safety Training Pty Ltd (ABN 501 331 104 33).

Program: means the 'OnGuard' Safety Training Program and/or the 'OnGuard' ACEPro Training, Testing & Tracking Program.

Program Administrator: means the nominated Client representative.



OnGuard Safety Training

MAKING SENSE OF WORKPLACE SAFETY TRAINING

www.OnGuardSafetyTraining.com

Service: means access to the Program through OnGuard 'Software as a Service'.

Software as a Service: means the Service, and any program to which you subscribe from time to time.

Trade Practices Act: means the Trade Practices Act 1971 (Cth)

Provider: means OnGuard Safety Training Pty Ltd (ABN 501 331 104 33).

You, Your and Client: means You, the client who the Service is provided to.

By signing this form your application for the Service is subject to:

1. the conditions printed in the Service Agreement (Contract) document;
2. the Acceptable Use Policy document;
3. the Initial Licence Registration Form.

You acknowledge that you have read and understood the information about the Provider's handling of information about you. You give the Provider your consent to obtain and use any credit information.

This Agreement represents the complete understanding between the parties as to the subject matter hereof, and supersedes all prior written and oral negotiations, representations, guaranties, warranties, promises, orders, statements or agreements between the parties or any statement or representation made or furnished by any other person representing or purporting to represent either party. The Provider reserves the right to modify the Agreement by notifying the Client 21 days in advance of the effective date of the modifications.

Client Representative

OnGuard Safety Training Representative

Dated:

Dated:

Signature:

Signature:

Print name:

Print name:

Client:

For: OnGuard Safety Training Pty Ltd

Address:

PO Box 417

Authorised Person:

Palm Beach Qld 4221

END - SERVICE AGREEMENT (Contract)



OnGuard Safety Training

MAKING SENSE OF WORKPLACE SAFETY TRAINING

www.OnGuardSafetyTraining.com

ACCEPTABLE USE POLICY

The OnGuard Safety Training Pty Ltd Acceptable Use Policy is set out below.

Please read it carefully. If you use the OnGuard 'Software as a Service' ('Service'), you must comply with the Acceptable Use Policy. If you fail to comply, the Provider may suspend or terminate your use of the Service.

The Acceptable Use Policy is designed to ensure that Client use of the Service does not break any laws or interferes with the right of other Clients also to use the Service. The Provider may change this Policy from time to time. You must check the Policy regularly to ensure that you are aware of your obligations at:

www.OnGuardSafetyTraining.com/privacy_policy.htm

1. You must not use the Service in a manner, which interferes with the rights of other users. You must not:
 - (a) provide false user information to the Provider or other users; or
 - (b) gain access to another Client's private information (or attempt to do so).
2. In using the Service, you must not break any laws or infringe the rights of other persons or entity.
3. To detect and deal with breaches of the Acceptable Use Policy, the Provider may take the following actions:
 - (a) it may give details of users who are suspected of breaking any laws in connection with the Service to the police and to other law enforcement agencies;
 - (b) it may implement technical mechanisms to prevent behaviour, which breaches this Policy;
 - (c) it may exercise any rights it has under its contract with the Client whose account is being used in breach of this Policy. Such rights include the right to suspend or terminate the Client's use of the Service;
 - (d) it may take any other action it deems appropriate, including taking action against offenders to recover the costs and expenses of identifying them.

END - ACCEPTABLE USE POLICY



OnGuard Safety Training

MAKING SENSE OF WORKPLACE SAFETY TRAINING

www.OnGuardSafetyTraining.com

INITIAL LICENCE REGISTRATION FORM

		ü Indicate your preferred contact person
School legal trading name (known as the client)		
School postal address		
School phone		
School fax		
School e-mail		
Principal's name		
Principal's e-mail		
Program Administrator's name		
Program Administrator's e-mail		
Business Manager's name (accounts)		
Business Manager's e-mail (accounts)		
Date		

Please note:

- the Program Administrator will usually be recorded as our primary contact.
- Should you wish to nominate someone other than the Program Administrator as our primary contact, indicate your preference with a tick in the last column.

All above details must be completed. If you have any queries please call our administration staff on:

- telephoning the Provider on +61 755226581;
- emailing the Provider at admin@OnGuardSafetyTraining.com; or
- visiting the Provider's "contact us" section on the website at www.OnGuardSafetyTraining.com

END - INITIAL LICENCE REGISTRATION FORM