



UMBRELLA®

eLEARNING ONLINE TRAINING PROGRAMME

TERMS AND CONDITIONS

UMBRELLA WELLBEING LIMITED

1. INTRODUCTION

- 1.1. These Terms and Conditions are the terms on which we will permit you to use and/or access the eLearning Programme via the Platform.
- 1.2. By signing a copy of these Terms and Conditions you agree to be bound by these Terms and Conditions.

2. DEFINITIONS AND INTERPRETATION

- 2.1. **Definitions.** In these Terms and Conditions, unless the context requires otherwise:

Customer means the purchaser, user and/or accessor of the eLearning Programme as set out in Schedule 1 and any reference to "**you**" or "**your**" shall have the corresponding meaning;

Confidential Information means any information of the disclosing party which is disclosed to the receiving party relating to the disclosing party's business, finances, technologies and systems, whether or not such information is identified as confidential when it is disclosed to the receiving party, or is in a material form;

eLearning Programme means Umbrella's eLearning software, together with any Related Materials provided via the Platform;

Intellectual Property means all industrial and intellectual property rights, whether conferred under statute, common law or equity, and includes copyright, patents, trade marks, designs, domain names (including related URLs), rights in databases, formulae, techniques, specifications, technical information, reports, drawings, standards, manuals, know-how and all other proprietary rights whether registered or unregistered anywhere in the world (together with all rights, interest or licence in or to any of the foregoing);

Fees mean the amounts payable by you for access to the eLearning Programme as set in Item 2 of Schedule 1;

GST means goods and services tax within the meaning of the Goods and Services Tax Act 1985;

MySkill means My Skill Limited (a registered New Zealand company, number 905530) which manages the Platform (under licence);

Loss means liability, loss, damage, cost or expense and **Losses** shall be construed accordingly;

Personnel means your employees, independent contractors and officers;

Platform means the online training platform managed by MySkill at www.myskilltraining.co.nz;

Personal Information has the meaning given to that term in section 7 of the Privacy Act;

Privacy Act means the Privacy Act 2020;

Related Materials means any electronic and/or written aids or manuals and confidential activation codes, if any, developed or provided by Umbrella as part of the eLearning Programme;

Subscription Period means the period that you are able to access the eLearning Programme as set out in item 3 of Schedule 1;

Term has the meaning given to that term in clause 12.1;

Terms and Conditions means these terms and conditions;

Umbrella means Umbrella Wellbeing Limited (a registered New Zealand company, number 7628677); and

We means Umbrella and "us" or "our" shall have the corresponding meaning.

2.2. **Interpretation.** In these Terms and Conditions, unless the context indicates otherwise:

- (a) headings are for convenience only and do not affect the interpretation of these Terms and Conditions;
- (b) each defined expression has the meaning corresponding to that definition throughout these Terms and Conditions;
- (c) references to persons include individuals, companies, corporations, partnerships, firms and other entities;
- (d) references to the singular include the plural and vice versa;
- (e) references to a statute includes any legislative instrument or other subordinate legislation made under it and amendments to or replacement of any of them from time to time; and
- (f) the use of the terms **includes** or **including** does not imply any limitations.

3. **eLEARNING PROGRAMME ACCESS**

- 3.1. Access to the eLearning Programme will be via the Platform.
- 3.2. Following signature of these Terms and Conditions, you will provide Umbrella with the relevant Personnel details who are to be granted access to the eLearning Programme. Umbrella will then send those Personnel a direct link to access the eLearning Programme and set up relevant account details via the Platform.
- 3.3. You (and your Personnel) will have access to the eLearning Programme for the Subscription Period (unless terminated earlier) in accordance with these Terms and Conditions.

4. **USE OF PLATFORM AND eLEARNING PROGRAMME**

- 4.1. **Restrictions on Use.** You warrant and agree not to, and you agree not to attempt, assist, authorise or enable anyone else to, whether in whole or part:
 - (a) access the eLearning Programme or any of our associated content (including the Related Materials) without permission;
 - (b) work around any technical limitations in the eLearning Programme and/or the Platform;
 - (c) make use of the eLearning Programme and/or the Platform in a manner not permitted or specified in these Terms and Conditions;
 - (d) copy, adapt, publish, show or otherwise communicate in public, any part of the eLearning Programme and/or the Platform or any of its associated content (including the Related Materials);
 - (e) otherwise transmit, redistribute, resupply, reproduce, decode, decompile, reformat, modify, on-sell or interfere with the eLearning Programme and/or the Platform, and any of the associated content (including the Related Materials);
 - (f) create any derivative works of the eLearning Programme and/or the Platform or any portion of them and associated content (including the Related Materials);
 - (g) without limiting the above, otherwise obscure, circumvent or remove any copyright, trademark or other attribution notices, content protection, rights management, encryption or security technologies used on or for eLearning Programme and/or the Platform and associated content (including the Related Materials); and

(h) use the eLearning Programme to develop a product that is competitive with eLearning Programme.

- 4.2. **General responsibilities and certain functionalities.** You acknowledge and agree that when accessing and using the eLearning Programme and the Platform, you will:
- (a) follow our responsible instructions and only use the eLearning Programme and Platform for lawful purposes;
 - (b) not interfere with your or anyone else's account, or use of the of the eLearning Programme or associated content (including the Related Materials);
 - (c) take all reasonable precautions to prevent unauthorised access to or use of the eLearning Programme (including ensuring passwords are kept secure and confidential); and
 - (d) comply with all applicable laws and not breach our or anyone else's rights.

There may be further functionalities and other responsibilities that will apply to your use of the eLearning Programme and the Platform that may be set out on the Platform and you may be asked to confirm your compliance with these through certain prompts when logging into the Platform and using the eLearning Programme from time to time.

- 4.3. **Use by Personnel.** You must ensure that each of your Personnel that accesses and uses the eLearning Programme and Platform complies with these Terms and Conditions. You are responsible for ensuring Personnel receive a copy of these Terms and Conditions and the relevant privacy statements (as set out in clause 8.1) and that you have each Personnel(s) informed consent before you provide us with their details under clause 3 above in relation to using and/or assessing the eLearning Programme and the Platform (and you will provide us with a copy of such consent on request). A breach of a provision of these Terms and Conditions by any such Personnel is deemed to be a breach of these Terms and Conditions by you.

5. DATA

- 5.1. **Information that you submit:** Without limiting our rights (including as to ownership of our Intellectual Property under clause 10), in relation to any data, information or other material that you submit to us via the eLearning Programme, we may use this data, information or other material, and any other non-personally identifiable data we have collected from you for:
- (a) assisting to provide the eLearning Programme and its associated services in accordance with these Terms and Conditions;
 - (b) better understanding how our users are using the eLearning Programme and to improve, maintain and support the eLearning Programme, the Platform and any related services;
 - (c) complying with the law, regulations and educational and/or health industry requirements;
 - (d) ensuring compliance with these Terms and Conditions and relevant security requirements and protocols for the eLearning Programme and Platform; and
 - (e) our research purposes to understand system/sector level data (which we may use to create and publish our own aggregated reporting).
- 5.2. **Confirmation.** You warrant that you have the necessary rights to provide, use and submit any data, information or other material that you have submitted to us as part of clause 5.1 and your access to the eLearning Programme and that you have obtained all required consents to provide such data, information and material to enable Umbrella to possess, store and use any data, information and material in accordance with these Terms and Conditions. Any personal information submitted or collected by us from you will be dealt with in accordance with clause 8.

6. FEES

- 6.1. **Fees.** In consideration of providing you access to the eLearning Programme, you agree to pay the Fees in accordance with this clause 6 and any terms set out in Schedule 1. The amount of the Fees may be subject to change if the number of Personnel accessing the eLearning Programme as part of your subscription is going to change. We will discuss any Fee changes with you before confirming any changes to the number of Personnel accessing the eLearning Programme.
- 6.2. **Invoicing and Payment:**
- (a) Invoices raised by Umbrella in relation to the Fees must be paid in full on or before the 20th day of

the month following invoicing.

- (b) The Fees are exclusive of all applicable taxes and you will pay any additional applicable tax in addition to the Fees. Umbrella may invoice you for the amount of applicable taxes and you must pay that amount to Umbrella in accordance with this clause 6.2.

6.3. **Overdue amounts:**

- (a) Any Fees not paid when due will accrue interest at 2% per month from the due date until paid by you.
- (b) Umbrella may suspend providing access to the eLearning Programme and suspend the licence granted to you under these Terms and Conditions if any portion of an invoice is not paid when due. Umbrella will not be obliged to resume providing access to the eLearning Programme until the outstanding invoice is paid.
- (c) In the event of a dispute in relation to an invoice, you must pay the undisputed portion to Umbrella in accordance with clause 6.1.

7. **WARRANTIES**

7.1. Each party warrants to the other party that:

- (a) it has the legal right and authority, and has taken all necessary actions, to enter into and perform its obligations under these Terms and Conditions;
- (b) these Terms and Conditions constitute a binding obligation which is enforceable against it in accordance with their terms; and
- (c) it has obtained all necessary consents required for it to perform its obligations under these Terms and Conditions.

7.2. Except as expressly and specifically provided in these Terms and Conditions and without limiting other terms, including clause 9, you acknowledge that:

- (a) the Platform and eLearning Programme are provided on an "as-is" "where-is" basis and we make no warranties that the eLearning Programme, the Platform and associated content (including Related Materials) are error free, fit for a particular purpose or that any defects will always be corrected (except to the extent that any such warranties may not be lawfully excluded);
- (b) although we have industry standard security tools, the internet is never completely secure and we don't guarantee security of the Platform, eLearning Programme or other content that we provide to you;
- (c) you assume sole responsibility for results obtained from the use of the eLearning Programme, and for conclusions drawn from such use. Umbrella shall have no liability for any damage caused by errors or omissions in any information provided by you in connection with the eLearning Programme; and
- (d) in agreeing to these Terms and Conditions, you have not relied on any representation, warranty, term or condition other than as expressly set out in these Terms and Conditions and any conditions, warranties or other terms implied by statute or common law are excluded from these Terms and Conditions to the fullest extent permitted by law.

8. **PRIVACY**

8.1. You acknowledge that through the course of you using the eLearning Programme you (and your Personnel) will provide and make available Personal Information to us, and:

- (a) Umbrella will collect, use and store that Personal Information in accordance with its privacy statement which is available at www.umbrella.org.nz/privacy-statement;
- (b) MySkill will have access to the Personal Information for the purposes of administering the Platform and assisting Umbrella in providing the eLearning Programme and will collect, use and store that Personal Information in accordance with its privacy statement available at _

https://www.myskilltraining.co.nz/pluginfile.php/58326/mod_resource/content/3/MySkill_Privacy_Statement_-_2022.pdf.

- 8.2. In providing the eLearning Programme and the Platform, and in accordance with the terms set out in the privacy statements referred to in clause 8.1, we will at all times comply with the requirements of the Privacy Act and any other applicable laws relevant to the possession and/or use of any Personal Information, and will not do anything that will, or is likely to cause you to, breach the Privacy Act.
- 8.3. In addition to the above, you acknowledge and agree that Umbrella and MySkill may access or disclose information about you in order to:
 - (a) comply with the law or any legal proceedings served on it;
 - (b) enforce and investigate any potential breaches of these Terms and Conditions or any other unauthorised use of the eLearning Programme and Platform; or
 - (c) protect the rights, property, or safety of Umbrella and MySkill or their employees, contractors and agents.
- 8.4. We will adopt such security systems and procedures, as are reasonable in the circumstances, to protect your Personal Information that comes into our possession, or under our control, from loss and unauthorised access, use, modification and disclosure. If we disclose Personal Information to a third party agent or contractor in accordance with the terms of our privacy statement, we will ensure that the agent or contractor has security systems and procedures that are of a comparable standard. We will promptly notify you in the event of any unauthorised access or disclosure of your Personal Information and where reasonably possible, we will consult and cooperate with you in formulating a response.
- 8.5. You will comply with the provisions of the Privacy Act and any other applicable Laws in your collection, use and storage of any Personal Information that we are authorised to disclose to you. In accordance with and without limiting clauses 5.2 and 7.1(c), you warrant that you have obtained all required consents to enable us to possess, store and use any Personal Information as required for the proper performance of the eLearning Programme and Platform and otherwise in accordance with these Terms and Conditions and our privacy statement, including any Personal Information that relates to, or is provided by, your Personnel. In relation to any Personal Information that we may receive directly from your Personnel as part of the eLearning Programme and Platform, we will not disclose such Personal Information to you without the prior written consent of the applicable individual.
- 8.6. Notwithstanding any other provision of these Terms and Conditions, in providing the eLearning Programme, Umbrella will at all times comply with the obligations of the New Zealand Psychologists Code of Ethics 2003 (as amended, replaced or superseded from time to time) and you acknowledge and accept that Umbrella's obligations under that code may take precedence over our obligations to you under these Terms and Conditions.

9. LIMITATION OF LIABILITY AND INDEMNITY

- 9.1. To the extent permitted by Law, Umbrella will not be liable to you or any third party (whether in contract, tort (including negligence), equity or otherwise) for any special, incidental, indirect or consequential loss, or any loss of data, profits, revenue, business opportunity, or damage to good will, of any kind arising out of or in connection with these Terms and Conditions (including your use of the eLearning Programme or the Platform), regardless of the cause of such Loss or whether you have been advised of the possibility of such Loss.
- 9.2. Without limiting clause 9.1 and to the extent permitted by Law, Umbrella's aggregate liability in respect of all Losses incurred by you under or in connection with these Terms and Conditions (whether in contract, tort (including negligence) or otherwise) in any 12-month period shall in no event exceed the sums paid by you to Umbrella during the 12 month period prior to the applicable claim that relate to the Losses being claimed.

10. INTELLECTUAL PROPERTY

- 10.1. **Acknowledgements by You.** You acknowledge and agree that:
 - (a) MySkill is the licensee of the Platform (including all Intellectual Property in the Platform), and you

expressly disclaim any ownership rights (including any updates, modifications, improvements) to the Platform and the relevant Intellectual Property;

- (b) Umbrella is the owner of the eLearning Programme (including all Intellectual Property in the eLearning Programme, the Related Materials and any other content contained in or related to in the eLearning Programme), and this will remain Umbrella's exclusive property including any updates, modifications or improvements to such property (whether such updates, modifications or improvements are developed by you, MySkill or Umbrella);

10.2. **Warranties and not to be a Party.** You warrant that anything given (including any instructions) by you to us in relation to the Platform and the eLearning Programme shall not infringe, or cause us to infringe, the Intellectual Property rights of any third party. You will not challenge or contest Umbrella's rights, or do anything that may adversely affect the validity or enforceability of Umbrella's rights, under clause 10.1(b).

10.3. **Licence to you:** Subject to your compliance with these Terms and Conditions, during your Subscription Period with Umbrella, Umbrella grants you a limited, non-exclusive, non-transferable and revocable license to use the eLearning Programme for your internal educational business purposes with your Personnel only. These rights will come to an end at the end of the Term, your Subscription Period and/or if we stop providing the eLearning Programme or Platform (whichever is earlier). Under no circumstance will the licenses under this clause include the ability or rights for you to copy, modify, distribute and otherwise use or communicate our Intellectual Property and any relevant materials (including providing it to any other persons or entities, for commercialisation or otherwise).

11. CONFIDENTIALITY

11.1. **Confidentiality Obligation.** You acknowledge that we may exchange Confidential Information in the course of providing the eLearning Programme and the Platform. Subject to clause 11.2, any receiving party of Confidential Information will keep confidential, and will not disclose to any other person, the Confidential Information of the disclosing party.

11.2. **Exceptions.** Notwithstanding clause 11.1, the receiving party may disclose the Confidential Information of the disclosing party to another person if:

- (a) the disclosure is authorised in writing by the disclosing party;
- (b) the disclosure is required by law;
- (c) the Confidential Information already is, or becomes, public knowledge, other than as a result of a breach of these Terms and Conditions; or
- (d) the disclosure is made to the receiving party's officers, employees or professional advisers, to the extent required to obtain the benefits of, and perform its obligations under, these Terms and Conditions.

12. TERM AND TERMINATION

12.1. **Term.** These Terms and Conditions will commence on signature or acceptance by you in accordance with clause 1.2 and continue until the end of your Subscription Period unless otherwise terminated in accordance with this clause 12 ("**Term**").

12.2. **Termination by You.** You may terminate these Terms and Conditions and your access to the eLearning Programme at any time by providing Umbrella with 30 days' notice in writing.

12.3. **Termination or suspension by Umbrella.** Umbrella may, at its discretion, immediately terminate these Terms and Conditions and your access to the eLearning Programme, and/or disable or suspend your access to (or any part of your access to eg a specific user's/Personnel's account) the eLearning Programme, upon written notice to you if:

- (a) it is reasonably necessary for operational, technical or security reasons;
- (b) Umbrella has reasonable grounds to believe that your account is being used fraudulently or to break the law;
- (c) you commit a material breach of these Terms and Conditions that is reasonably capable of being

remedied, but has not been remedied within 20 working days after receiving a notice from Umbrella requiring you to remedy the relevant breach;

- (d) you commit a material breach of these Terms and Conditions which is not capable of being remedied;
- (e) without limiting the above, Umbrella reasonably believes that you are downloading, copying or other using the eLearning Programme (or its related content) in an unauthorised manner (including in a manner that is in breach of clauses 4, 5 or 10.3);
- (f) a Default Event (as described in clause 12.4) occurs in respect of you.

12.4. **Default Event.** Each of the following events will be a Default Event for the purposes of clause 12.3:

- (a) an application or an order is made, or a resolution is passed, for your bankruptcy or dissolution, and that application, order or resolution is not dismissed, stayed or otherwise suspended within 10 working days;
- (b) you cease, or threaten to cease, to carry on all or substantially all of your business;
- (c) a liquidator, provisional liquidator, receiver or receiver and manager, voluntary administrator of a deed of company arrangement, is appointed to all or any part of your business or assets;
- (d) you make any composition or arrangement or assignment with, or for the benefit of, your creditors; or
- (e) you become, or are deemed to be, insolvent.

12.5. **Consequences of termination.** In the event of termination of your use of the eLearning Programme by you under clause 12.2 or Umbrella under clause 12.3:

- (a) Umbrella will be entitled to retain any prepayment of Fees and may require you to pay any further fees that are owed in relation to your Subscription Period;
- (b) your rights under these Terms and Conditions will come to an end and you will need to delete, destroy and/or return (as requested by us) any content and Intellectual Property that you may still hold;
- (c) as part of such termination (or any disablement under clause 12.3), Umbrella may (but is not obligated to) keep your account open but in an inactive state where your information cannot be accessed (but in case you want to activate it in the near future); and
- (d) any Personal Information will be held in accordance with our privacy statements and if you would like to delete your account(s) (and any relevant Personnel accounts) permanently then please contact Umbrella and/or MySkill directly.

12.6. **Survival.** Following termination or expiry of these Terms and Conditions, the provisions of clauses 7, 8, 9, 10, 11 and 13, together with other provisions that are by their nature intended to survive, will remain in effect.

13. MISCELLANEOUS

13.1. **Disputes.** If a dispute arises in relation to these Terms and Conditions, you will discuss this in good faith with Umbrella in order to agree an appropriate course of action to resolve the dispute.

13.2. **Force Majeure.** A party will not be liable for any failure or delay in complying with any obligation under these Terms and Conditions, if:

- (a) the failure or delay arises directly from a cause reasonably beyond that party's control;
- (b) that party gives written notice of the occurrence or event to the other party; and
- (c) that party uses all reasonable endeavours to overcome or mitigate the effects of the event.

13.3. **Rights and Remedies.** The rights, powers and remedies in these Terms and Conditions are cumulative and are in addition to any rights, powers or remedies provided at law or in equity, unless specifically stated otherwise. Each party may pursue any remedy that it is entitled to pursue by law.

13.4. **Variation.** Umbrella may amend or replace these Terms and Conditions from time to time. Umbrella will notify you in advance of any such change and give you an opportunity to agree to such changes. By continuing to use the Platform and the eLearning Programme following notification of any changes, you will

be deemed to have agreed to the amended terms and conditions. If you do not agree to the changes, you should notify us at www.umbrella.org.nz and cease to use the Platform and eLearning Programme.

- 13.5. **Assignment.** You may not assign or otherwise transfer any of your rights or obligations under these Terms and Conditions to any other person without Umbrella's prior written consent.
 - 13.6. **Entire Agreement.** These Terms and Conditions record the entire agreement and understanding between us in relation to the subject matter of these Terms and Conditions, and supersedes and cancels all previous understandings or agreements (whether written, oral or both) between us relating to that subject matter.
 - 13.7. **Third Party Rights.** The parties agree that for the purposes of Subpart 1 of Part 2 of the Contract and Commercial Law Act 2017, clauses 4 (Use of Platform and eLearning Programme), 7 (Warranties), 8, (Privacy), 9 (Limitation of Liability and Indemnity), 10 (Intellectual Property) and 12.5 (Consequences Of Liability) are entered into for the benefit of and are enforceable by MySkill.
 - 13.8. **Further Assurances.** You will promptly sign all documents and perform any other acts that may be reasonably required to give effect to the provisions and intent of these Terms and Conditions.
 - 13.9. **Governing Law.** These Terms and Conditions are governed by and construed in accordance with New Zealand law. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the New Zealand courts in connection with these Terms and Conditions.
 - 13.10. **Waiver.** Umbrella will not be deemed to have waived any provision of these Terms and Conditions unless that waiver is in writing and signed by Umbrella. Any such waiver will not be, or deemed to be, a waiver of any other right under these Terms and Conditions. Any failure or delay by Umbrella to enforce any provision of these Terms and Conditions will not be considered to be a waiver of that provision.
 - 13.11. **Severability.** If any provision of these Terms and Conditions is held to be illegal, invalid or unenforceable, then (to the maximum extent permitted by law) that provision will be severed from these Terms and Conditions, and this will not affect the validity or enforceability of the other provisions of these Terms and Conditions.
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