RTOSafe Terms of Service

RTO SAFE ABN 53 682 738 576

1. Background

Thank you for visiting our Terms of Service (**Agreement**), we are **RTO SAFE ABN 53 682 738 576** (**RTOSafe, we, our, us** and other similar terms). We provide a compliance platform for Registered Training Organisations (**RTOs**) which we refer to as RTOSafe (**RTOSafe**).

This Agreement outlines the terms and conditions associated with your use of RTOSafe. It is your obligation to ensure that you have read, understood and agree to the most recent terms available on our Website.

2. Disclaimers

2.1 Not a backup service

You acknowledge and agree that while RTOSafe stores the files and information you upload, it does not offer data backup services. You are solely responsible for creating and maintaining backups of any data you upload to RTOSafe, as you consider necessary.

2.2 Use of Language Models and artificial intelligence

This Agreement contains disclaimers with respect to the use of artificial intelligence and are set out in clause 10. You are solely responsible for confirming the outputs and recommendations generated using artificial intelligence through RTOSafe.

2.3 Exclusion of warranties

You acknowledge and agree that RTOSafe is merely a tool designed to assist RTOs to efficiently identify potential compliance gaps. However, the use of or reliance on RTOSafe does not guarantee that your organisation will achieve compliance with relevant legislation, standards or regulatory requirements. Exclusion of warranties relating to reliance on outputs generated by RTOSafe and compliance with applicable standards, legislation and regulatory requirements, are set out in clause 14.

3. Agreement

3.1 Accepting this Agreement

By creating an account for RTOSafe, you agree to comply with and be legally bound by the terms and conditions of this Agreement. If you do not agree to these terms, you have no right to continue using RTOSafe.

You must not use RTOSafe if you are not able to form legally binding contracts or are under the age of 18. If you create an Account on behalf of your employer or any other entity, you represent and warrant you hold authority to enter into this Agreement on behalf of that entity and that the entity will comply with the obligations contained herein.

3.2 About this Agreement

Throughout the Agreement we use some capitalised words and phrases, like the word Agreement. These capitalised words and phrases are defined throughout this Agreement and in clause 19.1. They aid to clarify the terms and conditions. Please feel free to email us at hello@rtosafe.com.au if you have any questions.

3.3 Special Conditions

This Agreement may contain Special Conditions as set out in a bespoke Subscription Package. Special Conditions operate as terms in addition to terms contained in this Agreement.

If there is any inconsistency between any Special Condition and any other term contained in this Agreement the effect of the Special Condition prevails over any inconsistent term to the extent of that inconsistency.

4. Licence

4.1 Licence

We grant you a non-transferrable, non-exclusive and revocable licence to access RTOSafe, for the Subscription Period, subject to the terms and conditions of this Agreement.

4.2 Licence Conditions

The grant of the licence to access RTOSafe in clause 4.1 is subject to and conditional upon you purchasing, and maintaining a subscription to, one of our Subscription Packages.

4.3 Our right to suspend

We reserve the right to limit or suspend your licence to access RTOSafe if you fail to pay the Subscription Fee, or if in our reasonable opinion, you are in breach of a material term of this Agreement. Suspending your account will not constitute a breach of this Agreement by us, nor will it alter your obligation to pay the Subscription Fee.

5. Term

5.1 Subscription Period

This Agreement will commence when you create an Account for RTOSafe and will continue for the Subscription Period or until the date of termination of this Agreement in accordance with clause 17.

5.2 Automatic renewal

If this Agreement is not terminated in accordance with clause 17, at least 7 days prior to the expiry of the then current Subscription Period, this Agreement will automatically renew for a period equal to the current Subscription Period.

6. Payment

We will provide you with a tax invoice for any Subscription Fees, which will be automatically deducted from your Account at the beginning of each Subscription Period. Where no automatic deduction can be effected, you must pay our invoice within 14 days of the date of the invoice.

Unless expressed otherwise, Subscription Fees are quoted in Australian Dollars and are exclusive of GST, withholding taxes, duties and charges imposed or levied in Australia, or overseas, in connection with this Agreement. You are responsible for payment of all taxes and any bank fees and charges applied by the payment gateway provider, which you choose to use.

7. Trial Services

We may make RTOSafe available to you free of charge, solely on a demonstration or trial basis (**Trial Services**). Trial Services are made available to you for the purpose of evaluating the software only.

Unless otherwise specified, the trial period commences from the date you create a trial Account and terminates in 30 days (**Trial Period**). Access to Trial Services will automatically end at the expiration of the Trial Period and the Subscription Fee will apply thereafter, unless either party terminates this Agreement according to clause 17.

We provide the Trial Services "as is" and without warranty or indemnity, to the extent permitted by law, and all other terms of this Agreement otherwise apply.

8. Requirements for use

8.1 Access

You acknowledge and agree RTOSafe will only be accessible using the internet, by users with a valid Account and will not be available "locally" from your own servers or devices.

In order to make full use of any mobile application version of RTOSafe, you must allow your device access to certain services. If you refuse to grant access to those mobile device services, the mobile version of that RTOSafe may not function as anticipated, or at all.

8.2 Support

Support for RTOSafe is provided in accordance with the support arrangements as set out on our website and may vary from time to time.

8.3 Outages and system maintenance

If it is necessary to interrupt your use of RTOSafe, we will endeavour to provide you with reasonable notice (where possible) of when, and the anticipated duration for which, RTOSafe will be unavailable.

You acknowledge access to RTOSafe may be changed, interrupted or discontinued for many reasons, some of which are beyond our control and during routine maintenance there may be updates to RTOSafe which may change the interface and manner in which in functions.

To the maximum extent permitted at law, we are not liable for any loss, foreseeable or not, arising from: any temporary interruption to access, planned or not, and any such interruptions will not constitute a breach by us of these terms.

9. Your use of RTOSafe

9.1 Usage Restrictions

You acknowledge and agree that the features made available to you are limited to those which are contained in the Subscription Package which you procured, taking into consideration any specific Usage Restrictions made known to you at the time of procurement. You acknowledge and agree that if you wish to make use of alternative or new features of RTOSafe, you may be required to upgrade to an alternative Subscription Package and/or agree to additional terms of service through a separate written agreement executed with us.

9.2 Standards versions

RTOSafe should only be used to check compliance against the version of the standards which it is stated to support. Legacy standards may not be supported and there may be a delay between the release of new standards and the incorporation of those standards into RTOSafe.

You are solely responsible for confirming that you are checking compliance against the appropriate standards set from the original source material.

9.3 Registering an Account

In order to use RTOSafe, you are required to provide us with Personal Information and create an Account with us.

You agree to provide any information reasonably requested by us for the purpose of setting up your Account. You warrant that all of the information you provide to us is accurate and complete in all respects, you will inform us by updating your Account details whenever any such information changes and you will not provide false or misleading information.

We reserve the right to reject any new Account in our absolute discretion.

9.4   Account security

Maintaining the security of your Account is important to ensuring your Personal Information, and that data which we process on your behalf, remains safe. We work hard to keep RTOSafe secure and we ask you to contribute.

You agree not to request or allow another person to create an Account on your behalf, for your use, or for your benefit, except that an authorised employee or agent may create an Account on behalf of your business. You also agree not to disclose your Account security credentials to another person or permit them to access your Account. You are responsible for the activities undertaken using your Account which occur via RTOSafe, whether such activities are authorised by you or not.

9.5   Lawful use of RTOSafe

You undertake not to upload, store or access any data on RTOSafe if such access or storage would infringe a person's Intellectual Property right, breach any Privacy Law or breach any other law or applicable code (including any common law, statute, delegated legislation, rule or ordinance of the Commonwealth, or a State or Territory).

9.6   Conduct which is expressly prohibited

You may only acquire and make use of RTOSafe for the sole purpose of conducting compliance checks with the supported RTO standards. You must not use or include any part of RTOSafe in any service bureau or fee generating service offered to third parties.

You must not:

(a)   in any way tamper with, hinder or modify RTOSafe;

(b)   use RTOSafe directly or indirectly for any activity or transmit any information or material unlawfully, or which is obscene, indecent, uses offensive language, defames, abuses, harasses, stalks, threatens, menaces or offends any person;

(c)   knowingly transmit any viruses or other disabling features to or via RTOSafe;

(d)   use any screen capture, data mining, robot, crawler or similar data gathering, reproduction or data extraction tools to collect information from RTOSafe or our website for any purpose including the sending of unsolicited emails, soliciting our or another user's clients or duplicating the content of RTOSafe;

(e)   intentionally disable or circumvent any protection or disabling mechanism of RTOSafe;

(f)   install or store any software applications, code or scripts on or through RTOSafe;

(g)   use RTOSafe in any way which could be reasonably expected to interfere with or damage our systems, any other operator's systems, or another user's enjoyment of RTOSafe;

(h)   gain access to parts of RTOSafe that you are not authorised or entitled to access under your Subscription Package;

(i)   use the RTOSafe in connection with a breach of any law in Australia or the jurisdiction in which you operate; or

(j)   attempt, facilitate or assist another person to do any of the above acts.

10.   Language Models and artificial intelligence

We use Language Models within RTOSafe to assist with RTO compliance-related functions including but not limited to conducting high-level compliance gap analysis.

You acknowledge and agree that the use of any Language Model within RTOSafe, carries a statistical degree of uncertainty and its capability is limited to and reflective of the training data.

Language Models do not fully grasp contextual nuances or derive information from authoritative and verified sources. As such, the production of Hallucinations is common in results derived from Language Models.

The outputs provided through RTOSafe including gap analysis, are intended to be used only as indicative, high-level recommendations to support your compliance efforts. You must not rely on outputs generated by artificial intelligence tools as an authoritative source of information or definitive assessments of compliance.

You acknowledge and agree that the results of artificial intelligence may produce errors including:

(a)   false positives – such as where the model has identified compliance, but the compliance standard has not been met; and

(b)   false negatives – such as where the model has identified a gap in compliance, but the compliance standard has in fact been met.

You are responsible for verifying all gap analysis, references and any other recommendations provided by RTOSafe against the original source material made available by the relevant regulatory authority and applicable legislation, standards and regulatory requirements, to ensure your compliance obligations are duly met.

11.   Privacy

You agree and consent to us handling your Personal Information in accordance with our Privacy Policy. We may amend our Privacy Policy in our sole discretion. If we amend our Privacy Policy, we will post the new version on our Website.

The Parties acknowledge and agree they will:

(a)   notify the other party of any unauthorised access, use, modification, disclosure or other misuse of any Personal Information collected or accessed in connection with this Agreement as soon as practicable after becoming aware of such activity; and

(b)   provide reasonable assistance to the other party in the investigation, assessment and containment of any data breach associated with this Agreement.

12.   Confidentiality

12.1   Confidentiality

A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information.

Notwithstanding any other provision of this clause 12, a party may disclose the terms of this Agreement to its related companies, solicitors, auditors, insurers and accountants.

Each party will take all reasonable steps to ensure that its employees, agents, and any sub-contractors engaged for the purposes of the Agreement do not make public or disclose the other party's Confidential Information.

A party will not be in breach of this clause 12 in circumstances where it is legally compelled to disclose the other party's Confidential Information.

12.2   Permitted Disclosures

We may disclose information, including, but not limited to, your Personal Information or a transmission made using RTOSafe, in order to comply with a court order, subpoena, summons, discovery order, warrant, statute, regulation, governmental request, to protect our legal rights,

prevent harm to persons or where such disclosure is necessary to the proper operation of a RTOSafe (**Permitted Disclosures**).

By agreeing to these terms you hereby consent to share User Content with third party service providers, including for processing through Language Models.

You acknowledge and agree, we have no obligation to inform you if Permitted Disclosures are made.

13. Intellectual Property

13.1 Intellectual Property in RTOSafe

We warrant we own or have a licence to use the Intellectual Property in RTOSafe.

You must not do any of the following, assist anyone to do any of the following or permit any person over whom you have effective control to:

(a)   create an adaptation or translation of all or part of any of RTOSafe in any way;

(b)   use RTOSafe in a manner which may infringe any other persons Intellectual Property;

(c)   incorporate all or part of RTOSafe in any other webpage, site, application or other digital or non-digital format; or

(d)   except to the extent that reproduction occurs automatically through its ordinary use, directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, content, architecture, or algorithms contained in RTOSafe.

13.2 User Content

If you provide us with content, including, without limitation, text, files, documents, photos, images, audio, video, code and any other materials (**User Content**). Your User Content stays yours. This Agreement does not transfer ownership of User Content to us.

When you provide User Content, you grant us a non-exclusive, worldwide, perpetual, royalty-free, sublicensable, transferable right and license to use, host, store, reproduce, modify, create derivative works of (such as those resulting from translations, adaptations or other changes we make so that User Content works better with RTOSafe), communicate and process, including via Language Models, User Content for the purposes of allowing us to provide, improve and protect RTOSafe. You waive any claims against us relating to any moral rights or similar rights worldwide that you may have in the User Content.

You represent that you own all rights to your User Content or otherwise have (and will continue to have) all rights and permissions to legally use, share, display, transfer and license your User Content to the extent that it is used within RTOSafe.

14. Warranties

We aim to provide the best possible user experience, however, subject to the Non-excludable Conditions, we make no warranties or guarantees that RTOSafe is fault free, regarding RTOSafe' fitness for any particular purpose which we have not expressed, or regarding your access to, or the results of your access to, the RTOSafe including its correctness, accuracy, timeliness, completeness, reliability or otherwise.

To the fullest extent permitted at law, we expressly disclaim all warranties that the use of RTOSafe will guarantee compliance or satisfy any regulatory, statutory or legal requirements applicable to your organisation.

You warrant that you:

(a)   will verify the accuracy and adequacy of any output including gap analysis generated by RTOSafe;

(b)   confirm any decisions, actions, or omissions made in reliance on RTOSafe's outputs including gap analysis, against source materials; and

(c)   are solely responsible for conducting the final assessment of outputs including gap analysis generated through RTOSafe.

15.   Limitation of Liability

15.1   Implied Conditions

We expressly exclude all conditions, warranties and other terms which might otherwise be implied by any law, regulation, statute, common law or law of equity except any Non-excludable Condition.

15.2   Exclusion of Liability

Subject to the Non-excludable Conditions, we exclude all other liability for any costs, including consequential losses, suffered or incurred directly or indirectly by you in connection with this Agreement, including:

(a)   RTOSafe being temporarily inaccessible for any reason;

(b)   incorrect or corrupt data, lost data, or any inputs or outputs of RTOSafe;

(c)   computer virus, trojan and other malware in connection with RTOSafe;

(d)   security vulnerabilities in RTOSafe or any breach of security that results in unauthorised access to, or corruption of data;

(e)   negligence arising from our activities or that of our service providers;

(f)   any unauthorised activity in relation to RTOSafe;

(g)   statistical uncertainties and Hallucinations produced or otherwise associated with any Language Model;

(h)   your failure to confirm the outputs including any compliance gap analysis generated by RTOSafe, against authoritative sources, such as those made available by the Australian Skills Quality Authority;

(i)   the occurrence of an Event of Force Majeure; or

(j)   any act or omission by you, your personnel, your associates or any related body corporate under or in relation to this Agreement.

15.3   Limits to liability associated with goods and services

Where a Non-excludable Condition is deemed to apply, to the fullest extent possible under the law, we limit our liability for any breach to:

(a)   in the case of goods: the re-supply of the goods or payment of the cost of the re-supply of the goods, or the replacement or repair of the goods or payment of the cost of replacement or repair of the goods; and

(b)   in the case of services: the resupply of the services or the payment of the cost of having the services resupplied.

16.   Dispute Resolution

A party claiming a dispute has arisen under this Agreement (**Dispute**) must give written notice to the other party specifying the nature of the Dispute. The parties must submit themselves to the dispute resolution procedure set out in this clause 16. before commencing any legal proceedings.

If the parties cannot resolve the Dispute between themselves within 30 days then either party may require the Dispute to be referred for mediation. The mediation must be undertaken in accordance with the Resolution Institute Mediation Rules, within the jurisdiction of the Agreement and, unless otherwise agreed between the parties, using a mediator nominated by the Resolution Institute. If the Dispute is not resolved within 30 days of the mediation commencing either party may commence proceedings in respect of the Dispute.

Each party must pay its own internal and legal costs in relation to complying with this clause 16. The mediator's costs are to be shared equally.

The parties acknowledge and agree this clause 16 does not apply to the recovery of any debt or prevent a party from instituting proceedings for the purposes of seeking urgent injunctive or similar interim relief from a court.

17.   Termination

17.1   Termination notice

You may terminate this Agreement by sending us a Cancellation Notice or cancelling your subscription via a facility which is made available in your Account. Either option satisfies the requirements for termination to be provided in writing.

17.2   Termination for convenience

Either party may terminate this Agreement by providing the other party notice in writing. Termination will take effect, at the end of the then current Subscription Period.

17.3   Termination for cause

Either party may terminate this Agreement if the other party commits a material breach of this Agreement and the breach is incapable of being remedied or if the breach is capable of being remedied, the party in breach has failed to remedy the breach within 14 days after the receipt of notice to remedy.

17.4   Actions upon termination

Upon termination you will no longer have access to your Account or data.

You are solely responsible for extracting any data you require from RTOSafe prior to termination. At your request, we will permanently erase any data including User Content associated with your Account. However, where you request the erasure of your User Content, we will retain information as necessary for our legitimate business interests, to comply with the law, prevent fraud, collect fees, resolve disputes, troubleshoot problems, assist with investigations or requests by government, a court of law, or law enforcement authorities, enforce this Agreement and take other actions permitted by law.

18.   General

Assignment - Neither party may assign, encumber, declare a trust over or otherwise create an interest in its rights under this document without the other party' consent, which must not be unreasonably withheld.

Entire Agreement - This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.

Governing law - The laws of Queensland govern this Agreement. The parties submit to the exclusive jurisdiction of courts exercising jurisdiction there.

Notices - The parties agree all notices, disclosures and other communications that are provided in accordance with this clause, satisfy any legal requirement that such communications be in writing. Any communication under or in connection with this Agreement:

(a)   which we send to you, will be sent to the email address provided to us in your Account and by accepting these terms you give your consent to receive communications from us by email; and

(b)   which you send, must be either delivered or posted by prepaid post to our registered office or sent by email to our email address set out at clause 3.2.

Relationship - Nothing in this Agreement is intended to create or be construed as creating a relationship of agency, joint venture or partnership between any of the parties.

Severability - Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change its intended effect.

Variations to this Agreement - We may vary this Agreement by giving one month written notice to you. If you do not accept the terms of the variation, you may terminate your subscription in accordance with clause 17.1.The variation takes effect at the beginning of the next Subscription Period.

19.   Definitions and interpretation

19.1   Definitions

Unless the terms and conditions of the Agreement state otherwise, the following expressions used in this Agreement have the following meanings:

Account or RTOSafe Account means the username and access credentials used when you access RTOSafe.

Agreement means these terms and conditions and any document incorporated into them by reference.

Cancellation Notice means a notice sent by either party, in accordance with clause 17, requesting the termination of this Agreement.

Confidential Information means information that is by its nature confidential, including but not limited to information relating to either party's personnel, policies, practices, clientele, business strategies, Intellectual Property rights, the system operations associated with RTOSafe and security credentials. But does not include information already rightfully known to the receiving party at the time of disclosure by the other party or in the public domain other than as a result of a disclosure in breach of its obligations of confidentiality under this Agreement.

Event of Force Majeure means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, health epidemic, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a computer virus, trojan, malware, a ransomware attack or other malicious code.

Hallucination means any false or misleading information presented as fact by Language Models.

Intellectual Property means all present and future rights conferred by statute, common law or equity (and all moral rights) in or in relation to business names, domain names, circuit layouts, computer code, confidential information, copyright, designs, formulas, inventions, knowhow, patents, plant varieties, recipes, trade marks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

Language Model means the output of a machine learning or other artificial intelligence platform consisting of machine-readable data trained or trainable from data inputs, tailored to understanding and generating natural language text.

Non-excludable Condition means any guarantee, condition or warranty (such as the consumer guarantees implied by the *Competition and Consumer Act 2010* (Cth)), which cannot by law be excluded.

Payment Terms mean the requirement to make payment immediately on commencement of this Agreement and each subsequent Renewal Date in accordance with the Subscription Package selected.

Personal Information means information or an opinion about an identifiable individual (not a company), whether or not that information or opinion is true or in a material form.

Privacy Law means both the privacy laws in the jurisdiction in which you operate and the *Privacy Act 1988* (Cth) incorporating the Australian Privacy Principles.

Privacy Policy means the privacy policy available on our Website as amended by us from time to time.

Renewal Date means a date equal to one Subscription Period, after the beginning of the then current Subscription Period.

Subscription Fee means the periodic price for RTOSafe Subscription Package which you sign up for.

Subscription Package means either:

(a)   the subscription package you select when you sign up to use RTOSafe through the options advertised on our website from time to time and (if applicable) any additional terms and conditions you may execute with us to access new features; or

(b)   a bespoke subscription package provided to you in writing by us.

Subscription Period means the period of time attached to the Subscription Package which you subscribe to.

Usage Restrictions means any limits to the use of RTOSafe as set out in the Subscription Package you procured.

You or your means the person or entity using RTOSafe.

Us, we or our means RTO SAFE ABN 53 682 738 576.

Website means the website located at https://www.rtosafe.com.au/, https://www.rtosafe.au/ and any of its subdomains.

19.2   Interpretation

Unless the terms and conditions of the Agreement explicitly state otherwise, the Agreement will be interpreted as follows:

(a)   a reference to a party includes that party's permitted assigns, administrators, successors, executors, legal representatives and any novated party;

(b)   any reference to a trustee includes any substituted or additional trustee;

(c)   unless used for the usual grammatical purpose, inverted commas around a term indicate industry jargon that will be interpreted according to how that term would be understood by an individual with expertise in the relevant industry;

(d)   "including", "includes" or any derivation of those words does not limit the matter in question to the things specifically mentioned in the applicable context;

(e)   where a term is defined, other grammatical forms of that term will be taken to have the same meaning;

(f)   headings are for convenience and will not affect interpretation;

(g)   words in the singular will be taken to include the plural and also the opposite;

(h)   when any kind of legislative instrument is referenced, the reference will be taken to be that instrument as updated or substituted for by the legislative body;

(i)   a reference to a party's conduct includes omissions as well as acts; and

(j)   if a party is described as having discretion in a matter, the discretion in that matter will be interpreted as sole and absolute.