

# Chartered Accountants Leadership Academy Standard terms and conditions - Businesses Effective from October 2009

## 1. This Agreement

This Agreement is a contract between us. It sets out the terms and conditions on which you will be provided access to the Chartered Accountants Leadership Academy website.

This Agreement is conditional on your meeting Deloitte Touche Tohmatsu's internal requirements.

This Agreement will be binding on the parties upon the provision of the Passwords to you.

## 2. Term

Unless this Agreement is terminated earlier, this Agreement is for the Term.

## 3. Right to use the Website

3.1 We grant to you the non-exclusive, non-transferable right to use the Website for the Term for the purpose of allowing your Authorised Users to access the Content and engage in an online community, subject to the terms of this Agreement.

3.2 The Chartered Accountants Leadership Academy online community (**Online Community**) allows your Authorised Users to interact with other Authorised Users and may include those of other member organisations using discussion boards, online forums and other collaboration tools. Your Authorised Users must use the Online Community for business only and strictly in accordance with the terms of this Agreement.

3.3 We will provide you with the Passwords following your payment of the Fees.

3.4 We may change the Website or the Content on it at any time without notice to you.

3.5 You may transfer the access rights granted to one Authorised User to another one of the executives or senior members with our prior written consent such consent not to be unreasonably withheld. We will not be required to reimburse you any Fees paid to us if we do not consent to the access rights granted to that Authorised User being transferred to another user.

3.6 You must not:

- (a) distribute, market, rent, lease, change, modify, adapt, translate, disassemble, merge or reverse engineer or decompile the whole or any part of the Website, excluding the Content, or create derivative works based on the whole or any part of the Website;
- (b) use the Website or any part of it for any purpose other than as expressly authorised by this Agreement; or
- (c) copy, reproduce or print out the Website, excluding the Content, by any means.

3.7 You acknowledge and agree that the Website and the Content on it:

- (a) is designed to be used only by an Authorised User and strictly in accordance with this Agreement;
- (b) is not, and is not represented as, a substitute for professional or legal advice regarding any training obligations you may have;
- (c) is provided as a tool to assist you to offer training to your people and connect business leaders. It does not consider your specific objectives, situation or needs; and
- (d) may be modified or enhanced as advised by us from time to time;

(e) may be suspended, modified or amended from time to time so any routine or emergency maintenance can be carried out. We will take reasonable steps to make the Website available to you again as soon as possible if it is suspended or unavailable.

## 4. Personal Information and privacy

4.1 We may collect Personal Information about you, your Representatives or your clients when we provide the Chartered Accountants Leadership Academy and the Website to you. Some of this Personal Information will also be supplied to Deloitte Touche Tohmatsu, the operator of the Website. If we do, you agree to work with us to ensure that we both meet any obligations we may each have under the Privacy Act including, where relevant, notifying the individual to whom the Personal Information relates of who we are and how we propose to use their information. Where you provide us with any Personal Information, you confirm that you have collected this Personal Information in accordance with the Privacy Act, that you are entitled to provide this Personal Information to us and that we may use and disclose this Personal Information for the Purpose. We will handle Personal Information in accordance with the Privacy Act.

4.2 You acknowledge that Deloitte Touche Tohmatsu will have access to all information on and concerning the Website, and your use of the Website, for the purposes of managing and maintaining the Website.

## 5. Intellectual Property

5.1 We or third parties own and retain all title, copyright and other proprietary rights in the Website, the Content on it and each component of both.

5.2 You acknowledge that the Website incorporates Intellectual Property owned by third parties.

5.3 Except as expressly described in this Agreement, you do not acquire any Intellectual Property rights or any other rights in respect of:

- (a) the Website, the Content or any part of either; and
- (b) our Intellectual Property or the Intellectual Property of any third party which is incorporated in the Website.

5.4 You acknowledge that the trade marks which appear on the Website are owned by us and other third parties and use of these trade marks by you will infringe Intellectual Property rights.

5.5 You must notify us immediately of becoming aware of any suspected infringement or alleged infringement by an Authorised User or any one else of the Intellectual Property rights in the Website. You agree to co-operate with us in relation to any suspected or alleged misuse or infringement involving your Authorised Users.

5.6 You acknowledge that the information contained on the Website contains Confidential Information which is confidential and secret and that we and others may suffer commercial or other loss and damage by its unauthorised disclosure. You agree to keep the Confidential Information and any part of it, as well as the Passwords, confidential and will not disclose or provide it or in any other way communicate it or make it available to any person (other than your Authorised Users). You will take or cause to be taken all such precautions as may be necessary to maintain the confidentiality of the Confidential Information and to prevent its disclosure.

## 6. Our Fees

6.1 We may review the Fees where:

- (a) there is a change in the scope of the content available on the Website; or
- (b) you do not pay the Fees within three months of the date of us providing confirmation to you that you have the approval of the Website operator to access and use the Website.

6.2 You agree to pay us the Fees for access to the Website in accordance with this Agreement.

6.3 Unless we state otherwise, our Fees exclude GST. You agree to pay any GST imposed on us, now or in the future, in relation to this Agreement. Where GST is payable on any taxable supply made under this Agreement, you agree that the Fee payable for this supply

will be increased by an amount equivalent to the GST payable by us in respect of that supply.

6.4 Unless we agree with you otherwise in writing, you must pay the Fees annually in advance for the Term, upon our confirmation that your application using the Registration Form has been approved and accepted. If you wish to re-subscribe to the Website after the initial Term, additional fees will be payable annually in advance, within 21 days of receipt of our invoice, for each further annual subscription. You agree to pay any undisputed portions of an invoice even if there is a dispute between us about that invoice or another invoice. Where amounts remain due and unpaid we may charge you interest at an annual rate of 2% over the Bill Swap Rate published in the Australian Financial Review on the date payment is due.

6.5 Without limiting any other rights we may have, we are entitled to suspend or terminate your access to the Website, in whole or part, or to retain or withhold any Information we may hold in relation to your use or access to the Website if you do not pay our invoices on time.

## 7. What you agree to do

7.1 In addition to any responsibilities you may have that are set out in the Letter, you are responsible for:

- (a) paying our Fees;
- (b) procuring any software or applications which you require to use or view the Website;
- (c) complying with the terms of this Agreement, and ensuring that each Authorised User is provided with, agrees to and complies with the terms of use of the Website as contained in this Agreement. You are liable for the acts, omissions or negligence of each of your Authorised Users as if they were your acts, omissions or negligence;
- (d) ensuring that only Authorised Users have access to and use the Website;
- (e) ensuring that no more than the agreed number of Authorised Users access the Website;
- (f) notifying us if you want to increase the number of Authorised Users;
- (g) ensuring that the Passwords and the Confidential Information are kept confidential and used appropriately;
- (h) all electronic communications and other information entered through or under the Passwords;
- (i) ensuring that each Related Body Corporate to whom your rights under this Agreement extend agrees to comply with the terms of this Agreement. You are liable for the acts, omissions or negligence of each Related Body Corporate as if they were your acts, omissions or negligence;
- (j) using and undertaking all training on the Website;
- (k) notifying us if you or a Related Body Corporate become an audit client of Deloitte Touche Tohmatsu;
- (l) ensuring that you comply with all laws, including any data protection or privacy laws in using the Website;
- (m) all equipment and software which is used to access the Website; and
- (n) ensuring that the Website is used only in connection with your internal business purposes and for no other purpose.

## 8. Our responsibility to you

8.1 We are not responsible:

- (a) if you or an Authorised User fail to operate or use the Website correctly or in accordance with any User Guide which is made available to you;
- (b) if any equipment or software including any browser or server software operated by a third party fails;
- (c) if a computer virus enters your system as a result of the Website;
- (d) for the telecommunications systems or internet service provider which you will use to access the Website or any failure of the telecommunications system; or
- (e) for any errors in the Website or in any of its Content.

8.2 We are not responsible to you for and will not be liable for:

- (a) any Loss, damage or injury (including without limitation any loss of profit, occurrence of any liability, indirect or consequential loss, damage or injury or loss of opportunity) arising from the non-supply, supply or use of the Website or in relation to any person's use of or reliance on the Website or any of the Content;

- (b) any damage to equipment, hardware, programs or data, whether stored or used with the Website or otherwise, including the costs of repairing such equipment or hardware and the costs of recovering such programs or data; or
- (c) any defect, failure or other deficiency in the Website or the operation of the Website caused by or contributed to by use of the Website in conjunction with any equipment, configuration or network or in any environment exceeding or otherwise inconsistent with the Website; or
- (d) any Loss, or failure to provide access to the Website as a result of any delay,

whether arising out of any breach of this Agreement and whether arising under contract, tort or statute.

8.3 We make no representations or warranties either express or implied:

- (a) in relation to the quality, merchantability, performance or fitness for a particular purpose of the Website;
- (b) that the Website will meet your requirements;
- (c) that your operation of the Website will be uninterrupted or error-free or that any errors or defects in the Website will be corrected; or
- (d) regarding the interoperability, compatibility or coexistence of the Website with your operating system or particular network environment or hardware.

8.4 To the maximum extent permitted by law, any conditions or warranties imposed by or implied under any law on us are excluded. Our total liability for any breach of a term, condition or warranty implied by law and which cannot be excluded is limited, at our election to either providing the goods (or equivalent goods) and/or services again or paying the cost of acquiring equivalent goods or services.

8.5 Where the law requires it, our liability to you will not be limited. In all other cases, our liability to you for any Loss or causes of action arising in relation to this Agreement, including for negligence is limited to the amount that is one times our Fees.

8.6 In either case, we will only be liable to you for that proportion of the total Loss that we have caused or to which we have contributed.

## 9. Your feedback

We value your feedback. We aim to obtain, either formally or informally, a regular assessment of our performance and will always be pleased to hear any suggestions as to how our service can be improved. If you wish to provide feedback, please contact the National Customer Service Centre at [service@charteredaccountants.com.au](mailto:service@charteredaccountants.com.au).

## 10. Termination

10.1 We may terminate an Authorised User's access to the Website immediately if that Authorised User breaches any of the terms of this Agreement.

10.2 Either of us may terminate this Agreement:

- (a) at any time by giving the other 30 days written notice; or
- (b) immediately and without notice if the other becomes insolvent or otherwise ceases to carry on business.

10.3 We may terminate this Agreement immediately and without notice if:

- (a) you or a Related Body Corporate or an Authorised User breach any term of this Agreement;
- (b) we are unable to continue to provide the Website to you for any reason; or
- (c) there is a change of circumstances beyond our reasonable control (such as auditor independence or regulatory related developments) that prevents us from providing the Website to you.

10.4 If this Agreement is terminated:

- (a) your right, and the right of your Authorised Users, to use the Website is revoked from the time of termination of the Agreement and we will immediately suspend your access, and your Authorised Users' access to the Website;
- (b) you agree to pay us the Fees for access and any expenses we have incurred up to the date of termination;
- (c) where relevant, each of us will return to the other any documents or property of the other that it has, except that we may retain one copy of all Information to allow us to satisfy our professional obligations and record keeping requirements; and

(d) due to an issue of auditor independence, we will provide you with a pro-rata rebate of any prepaid Fees.

10.5 The expiration or termination of this Agreement does not affect any accrued rights of either of us or any provision of this Agreement that continues to apply.

10.6 The provisions of this Agreement that survive its termination include those relating to clause 5, *Intellectual Property*; clause 8, *Our responsibility to you*; clause 11, *Dispute resolution*.

## 11. Dispute resolution

11.1 Each of us agrees to:

- (a) use reasonable endeavours to resolve any dispute that arises in connection with this Agreement by mediation before bringing a legal claim or starting legal proceedings against the other; and
- (b) comply with the Australian Commercial Disputes Centre Guidelines in relation to any mediation that may occur.

11.2 Nothing in this clause 11, *Dispute resolution*, prevents either of us from seeking any equitable relief in relation to our rights under this Agreement.

## 12. Relationship between the parties

We are engaged as an independent contractor. Neither of us is an agent or representative of or has the authority to bind the other. Neither of us will act or represent ourselves, directly or by implication, as an agent of the other or in any manner assume or create any obligation on behalf of, or in the name of, the other. This Agreement is not intended and will not be taken to constitute a partnership, agency, employment, joint venture or fiduciary relationship between us.

## 13. Entire agreement

13.1 This Agreement is the entire agreement between us. It supersedes all prior communications, negotiations, arrangements and agreements, either oral or written between us in relation to its subject matter.

13.2 Any changes to this Agreement must be agreed to in writing by both of us.

## 14. Assignment

You may not transfer, assign or novate this Agreement without our prior written consent. We may transfer or assign this Agreement without restriction.

## 15. Electronic communication

Each of us agrees that we may communicate with each other electronically. You acknowledge that electronic transmissions are inherently insecure, can be corrupted or intercepted, may not be delivered and may contain viruses. Neither of us is responsible to the other for any loss suffered in connection with the use of e-mail as a form of communication between us.

## 16. Severability

If any of the terms of this Agreement are not legally enforceable then that term or the relevant part of it will be ignored, but in all other respects this Agreement will have full effect.

## 17. Governing law

This Agreement is governed by the laws of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in that State.

## 18. General

18.1 A waiver by one of us of a breach by the other party of any term of this Agreement does not operate as a waiver of another term or a continuing breach by the other of the same or any other term of this Agreement.

18.2 To the extent permitted by law, we disclaim all warranties, either express or implied, in relation to the provision of the Website other than any written warranty made in this Agreement.

18.3 The rights and remedies in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

## 19. Reading this Agreement

In this Agreement:

- (a) headings are for convenience only and do not affect how this Agreement is interpreted;
- (b) the singular includes the plural and conversely;
- (c) if a word is defined its other grammatical forms have a corresponding meaning;
- (d) the use of words such as *includes* or *including* to introduce a list does not limit what may be included in that list;
- (e) the word person includes an entity, a firm, a body corporate, an unincorporated association or an authority;
- (f) a reference to this Agreement or an act or instrument is to this Agreement, or that act or instrument as amended, varied, novated or replaced from time to time; and
  - (i) a reference to dollars or \$ means Australian dollars.

## 20. Definitions

In this Agreement the following words have the meanings set out below:

**Authorised Users** means those of your Representatives who you have notified to us as the senior executives or personnel who will have access to the Website, as contemplated by this Agreement, the maximum number of which is indicated in the Registration Form.

**Chartered Accountants Leadership Academy** means the interactive product and Content offered by us via the Website.

**Confidential Information** means and includes:

- (a) The terms of this Agreement and the details of the Chartered Accountants Leadership Academy;
- (b) any information or material which is proprietary to or deemed to be proprietary to a party;
- (c) any Intellectual Property and methodologies and technologies that:
  - (i) you use in your business, and to which we are exposed in the course of providing the Chartered Accountants Leadership Academy; or
  - (ii) we use to provide the Chartered Accountants Leadership Academy;
- (d) trade secrets;
- (e) any information designated as confidential by either of us;
- (f) any Content we provide to you; and
- (g) any information acquired by either of us solely as a result of this Agreement,

but excludes any information that:

- (h) is or becomes publicly available, except by a breach of this Agreement;
- (i) is disclosed to either of us by a third party provided that the recipient reasonably believes the third party is legally entitled to disclose such information;
- (j) was known to either of us before we received it from the other;
- (k) is developed by either of us independently of any disclosures previously made by the other; or
- (l) is disclosed with the other's prior written consent.

**Content** means the content and materials loaded on the Website from time to time and includes, but is not limited to:

- (a) Learning content including management modules, certificate courses, inspiring CEO stories, lecture presentations or seminars, and industry business insights;
- (b) Online communities;
- (c) Peer directories;
- (d) Discussion forums; and
- (e) Other collaborative or learning tools.

**Fees** means the fees for access to the Website as stated in, or calculated in accordance with, the Registration Form.

**GST** has the meaning given to it under *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Information** means any information, documents, materials, facts, instructions or Confidential Information provided to us by you or your Representatives or anyone else at your request whether via the Website or otherwise.

**Intellectual Property** means all industrial and intellectual property rights throughout the world and includes rights in respect of copyright, patents, trade marks, designs, trade secrets, know-how, our Confidential Information and circuit layouts in the Website or any of its content.

**Loss** means any direct, indirect or consequential losses, any liabilities, claims, damages, costs or expenses (including interest

where applicable), judgment or order however caused or arising as a result of this Agreement or access to the Website.

**Passwords** means the unique user IDs, passwords, access numbers account numbers and other access details that allow you and your Authorised Users to access and use the Website.

**Personal Information** has the meaning given to it in the Privacy Act.

**Privacy Act** means the *Privacy Act 1998* (Cth).

**Registration Form** means the form completed by you as part of your application to access and use the Website.

**Related Body Corporate** has the meaning given to it in the section 50 of the Corporations Act 2001 (Cth).

**Representative** means any officer, employee, consultant, agent, contractor or subcontractor of either of us, who is involved in the activities to which this Agreement relates and in your case, includes a partner.

**Term** means the period commencing on the date that we first provide you with access to the Website and ending on the date which is 1 year after this date.

**User Guide** means any training material, user guidance or other user documentation provided in relation to the Website, whether on the Website or otherwise.

**Website** means the online learning and networking site offered by us via an internet portal, which allows users to undertake certain training and courses and to join the Online Community.

**Website Terms of Use** means the terms and conditions for the website which each Authorised User accepts when accessing or using the Website.

**We, us** and **our** means The Institute of Chartered Accountants in Australia and any of its Representatives.

**you** and **your** means you and your Representatives or advisers and, where applicable, each of your Related Bodies Corporate and their Representatives or advisers.