

End-User Licence Agreement // Protegas Intelligence Training Course Hub [PITCH]

This End User Licence Agreement (**EULA**) provides the terms on which you can access and use the Protegas Intelligence Training Course Hub (PITCH) through ACORN Learning Management System located at <https://training.protegas.com.au> (the **Platform**).

When we say **Protegas, us, we** or **our**, we mean Protegas Australia Pty Ltd ACN 640 235 061. When we say **you** or **your**, we mean the individual user of the Platform.

It is important that you carefully read this EULA. If you do not accept this EULA, as amended from time to time, you will not be permitted to access and/or use the Platform.

1. Acceptance

Prior to accessing or using the Platform by any means, you must:

- (a) acknowledge that you have read and understood this EULA and that you have the authority to enter into a legal agreement with us on your own behalf; and
- (b) acknowledge that you have carefully read, understood and agree to this EULA, as amended from time to time.

If you do not accept this EULA, as amended from time to time, you must not access and/or use the Platform.

2. Acknowledgement

By entering into this EULA, you:

- (a) acknowledge the Platform is hosted and provided by Pursuit Technology Australia Pty Ltd ACN 600 787 139;
- (b) acknowledge your use of the Platform is subject to the Acorn LMS Licence Agreement between Protegas and Pursuit Technology Australia Pty Ltd (**Licence Agreement**) which requires you as an end user of the Platform to comply with its terms; and
- (c) warrant that you will not do anything that will cause Protegas to directly, indirectly, or in any other way, breach or threaten to breach any clause of the Licence Agreement.

3. Term

3.1 Term

Our agreement with you commences on the date that you accept this EULA and continues until terminated in accordance with the terms of this EULA or, until any applicable agreement with your employer or another supporting third party (**your organisation**) in relation to your use of the Platform (**Platform Agreement**), expires or is terminated (**Term**).

3.2 Interdependency

- (a) This EULA is subject to and conditional on the Platform Agreement (where one applies).
- (b) If your organisation breaches any provision of the Platform Agreement (where one applies), we will have the option to automatically terminate the EULA.

4. Accounts

You must have an account to use the Platform, with one unique login per individual. It is your responsibility to create a secure password for your unique login. We accept no liability for any damage or loss of any kind resulting from your failure to comply with this clause 4.

5. Access and Use

- (a) Your access to the Platform will be provided by either yourself or your organisation, either of which is our customer.
- (b) Subject to your compliance with the terms of this EULA and all laws, you are granted a revocable, non-transferable, non-sublicensable, non-assignable, non-exclusive licence to use and access the Platform for the Term strictly for the purposes contemplated by this EULA and any applicable Platform Agreement.
- (c) You must not:
 - (i) use the Platform for any purpose other than that which it is intended and as otherwise specified in this EULA or any applicable Platform Agreement;
 - (ii) interfere with or disrupt the Platform, including by transmitting any viruses, spyware, malware or any other code of a destructive or disruptive nature;
 - (iii) make or distribute copies of the Platform, or electronically transfer the Platform from one device to another or over a network;
 - (iv) alter, digitise, merge, modify, adapt or translate the Platform;
 - (v) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Platform or otherwise reduce the Platform to a human-perceivable form;
 - (vi) sell, transfer, rent, lease, license or sub-license the Platform;
 - (vii) attempt to undermine the security or integrity of our computing systems or networks or, where the Platform is hosted by a third party, that third party's computing systems and networks;
 - (viii) attempt to gain unauthorised access to any materials other than those to which you have been given express permission to access or to the computer system on which the Platform are hosted;
 - (ix) provide or make the Platform available to any other person other than as contemplated by this EULA;
 - (x) undertake any security or penetration testing without our prior written consent;
 - (xi) create accounts with us through unauthorised means, including by using an automated device, script, bot or other similar means;
 - (xii) share your unique log in details with any other person or allow any other person access the Platform using your unique log in details;
 - (xiii) use, misuse the Platform in any way which may impair the functionality of the Platform, or other systems used to deliver the Platform or restrict, or attempt to restrict, another user from using or enjoying the Platform; or
 - (xiv) encourage or facilitate violations of this EULA,
 - (xv) use the Platform for commercial purposes other than the purpose for which it is supplied to you; or
 - (xvi) use the Platform to develop any product having the same primary function as the Platform, for the duration of, and including after expiry or termination of, this EULA and any applicable Platform Agreement.

6. Materials

We may present information and content, including articles, opinions, training and learning materials, interactive learning modules and commentary on the Platform (**Materials**).

The Materials are for your personal, non-commercial use only and may not, without our prior written consent, be:

- (a) resold or redistributed in any material form;
- (b) stored in any storage media; or
- (c) retransmitted via any media.

7. Third party marketplace partners

- (a) Through the Platform you may be able to access and use applications and content from our third party marketplace partners (**Partners**) made available to you through the Platform (**Partner Apps and Content**). If you access or use any Partner Apps and Content, you acknowledge and agree that you have read and accepted the Partner's Terms of Use and Privacy Policy.
- (b) Partner Apps and Content are provided as a convenience to you and the option to access Partner Apps and Content is not an endorsement of that Partner App or Content. We are not responsible for the content or material contained in any Partner Apps or Content.

8. Data

8.1 General

- (a) We do not claim ownership of any data you upload or enter into the Platform. Instead, you grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable licence to use the data for the purposes of providing you support and performing our obligations under the EULA, to develop trends, run analytics and for other internal purposes incidental to the provision of the Materials and the Platform at our sole discretion.
- (b) You acknowledge that pursuant to the Licence Agreement, Pursuit Technology Australia Pty Ltd will have access to any data you upload or enter into the Platform for the purposes of Licensing the Platform to us. However, Pursuit Technology Australia Pty Ltd's rights to your data are limited to access and possession only and do not grant Pursuit Technology Australia Pty Ltd any licence whatsoever to use your data.

8.2 Data security

- (a) We will take all commercially reasonable steps to implement, maintain and enforce security procedures and safeguards to protect the security, confidentiality and integrity of the Platform from unauthorised access or use by a third party or misuse, damage or destruction by any person.
- (b) However, given the nature of the internet, we do not guarantee and cannot ensure the security of the Platform and we expressly exclude liability for any such loss, however caused.
- (c) We recommend you take proactive means to protect your computer system from potential hazards by installing firewalls, anti-virus software and other security applications.
- (d) You must immediately notify us of any unauthorised use of your passwords or any other breach of security, as a result of which we may reset your password and you must take all other actions that we reasonably deem necessary to maintain or enhance the security of our computing systems and networks and your access to the Platform.

8.3 Prohibited content

You must not upload any data to the Platform:

- (a) unless you hold all necessary rights, licences and consents to do so;
- (b) that would cause you or us to breach any law, regulation, rule, code or other legal obligation;

- (c) that we consider inappropriate, discriminatory, defamatory, offensive, abusive, indecent, illegal or disparaging;
- (d) that would bring us into disrepute; or
- (e) that infringes the rights, including intellectual property rights, of any third party.

8.4 Disclosure of your data

We may disclose information contained in your data to law enforcement or government bodies upon their request without further notice to you.

9. Privacy

- (a) For the purposes of this clause 9:
 - (i) **Personal Information** has the meaning prescribed by section 6 of the *Privacy Act 1998* (Cth); and
 - (ii) **Privacy Laws** means the *Privacy Act 1988* (Cth), the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth), and any other legislation, principles, industry codes and policies relating to the handling of Personal Information.
- (b) We may collect the personal information you provide us when using the Platform, for the purposes of providing the Platform.
- (c) We will handle your personal information in accordance with our Privacy Policy, which is available <https://www.protegas.com.au/privacy.pdf> and on our website.
- (d) Each party must:
 - (i) comply with all Privacy Laws; and
 - (ii) not do any act, engage in any practice, or omit to do any act or engage in any practice that would cause the other party to breach or be taken to breach any Privacy Law.

10. Intellectual Property

- (a) We own or are the licensee of all rights, title and interest (including intellectual property rights) in the Platform and to the Materials (including all text information and content, graphics, logos, type forms and software) made available to you on the Platform (collectively, **Platform Content**). Your use of and access to the Platform does not grant or transfer any rights, title or interest to you in relation to the Platform Content.
- (b) You must not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, commercially exploit, reverse engineer, create derivative works from, transfer, or sell any Platform Content or any other material in whatever form contained within the Platform.
- (c) Subject to your compliance with the terms of this EULA, we grant you a non-exclusive, non-transferable, non-sublicensable and revocable licence to use the Platform strictly for the purpose contemplated by this EULA.

11. Open Source Code

To the extent that the Platform uses any open source or third-party code that may be incorporated into the Platform, such access to the open source code is provided subject to the terms imposed by the licensor of that open source code. You acknowledge and agree that any open source code is made available "as is", without any warranty from us.

12. No warranties

- (a) We provide no warranty that any result or objective can or will be achieved or attained at all as a result of your use of the Platform or that the Platform will be free from errors, defects, viruses, bugs or continuously available.

- (b) We hereby exclude all other express and implied conditions and warranties in relation to the Platform and this EULA, except those conditions or warranties that cannot be excluded by law.
- (c) Nothing in this EULA is intended to have the effect of contracting out of any applicable provisions of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**Australian Consumer Law**) or any equivalent Act of any State or Territory of Australia except to the extent permitted by such Acts.

13. Dispute Resolution

- (a) The parties must use their reasonable endeavours to resolve through negotiation all disputes, conflicts (including, without limitation, conflicts of interest) differences or questions between them arising out of or in connection with this EULA.
- (b) If, within 14 calendar days of one party notifying the other party of a dispute, the dispute cannot be resolved following negotiation between the parties, either party may refer the dispute for mediation to the Resolution Institute and it must be conducted in accordance with the Mediation Rules of the Resolution Institution or the parties may appoint a mediator by mutual agreement. During such mediation, both parties may be represented by a duly qualified legal practitioner.
- (c) Each party agrees to submit to such mediation as a precondition to the commencement of litigation. The place of mediation will be Brisbane, Australia, or otherwise via an online meeting software provider.

14. Termination

- (a) You may terminate this EULA at any time by ceasing to use or access the Platform or closing your account within the Platform.
- (b) We may terminate this EULA immediately where you breach the terms of the EULA or the Licence Agreement and it is not capable of being remedied or you have failed to remedy a breach within 14 days of notice of the breach, or, your organisation ceases to be provided access to the Platform.
- (c) If you terminate this EULA due to our breach of this EULA or any applicable Platform Agreement, you:
 - (i) will not be required to make any payment in respect of the Materials not yet supplied on the effective date of termination; and
 - (ii) may recover from us all money paid for Materials, or part of the Materials, not yet supplied.
- (d) After exercising your rights under this clause 14(c), you must pay the net amount outstanding to us.
- (e) Your right to use the Platform and access any Platform Content immediately ceases and the licences granted by us under the EULA terminate immediately on termination of this EULA.

15. Limitation of liability

- (a) To the fullest extent permitted by law, we are not liable to you for any losses, damages, liabilities, claims and expenses incurred by or arising out of or in connection with your use of or inability to use the Platform, Material or your data except to the extent that such loss arises from a third-party claim against you alleging that the Platform infringes their intellectual property rights.
- (b) To the fullest extent permitted by law, our total aggregate liability for all claims relating to this EULA is limited to the total fees payable under the agreement with us and your organisation for the previous 12 months.

16. Indemnity

You agree to indemnify us for all losses, damages, liabilities, claims and expenses (including reasonable legal costs) incurred by us arising out of or in connection with:

- (a) the use of the Platform, Material or your data, including but not limited to any modification (whether done with our consent or otherwise), which causes the Platform to infringe on any third party rights;

- (b) any negligent act or omission; and
 - (c) any breach of the EULA, the Licence Agreement or any rights of third parties,
- by you or anyone directly or indirectly authorised or allowed to use or access the Platform by you.

17. Updates and amendments to the Platform and these Terms

- (a) The terms and conditions of this EULA apply to any updates, supplements, add-on components or internet-based service components of the Platform that we may provide to you or make available to you after the date you use/access the Platform, unless we provide other terms along with the update, supplement, add-on component or internet-based service component.
- (b) You acknowledge that from time to time as we determine it necessary or desirable to do so we may update any aspect of the Platform.
- (c) You acknowledge that, in the event of an update of any aspect of the Platform or for such other reasons as we may determine, we may amend this EULA, in whole or part, in our sole discretion by providing notice to you.
- (d) Any amendments to this EULA will be effective immediately upon notifying the revised terms to you. By continuing to use the Platform following any amendments, you will be deemed to have agreed to such amendments.

18. General

- (a) A notice, consent, approval, waiver or other communication provided in connection with this EULA must be in writing. A notice may be given by hand delivery, post or by email and is effective upon receipt.
- (b) Where the terms of this EULA conflict with any applicable Platform Agreement between us and your organisation, the Platform Agreement will prevail.
- (c) You must not assign or otherwise deal with all or any part of its rights or obligations under the EULA without our prior written consent (which may not be unreasonably withheld but which may be given subject to reasonable conditions). We may assign or otherwise deal with any of our rights or obligations under the EULA without your prior consent.
- (d) If any provision is unenforceable or invalid, it will be ineffective to the extent it is unenforceable or invalid, without affecting the validity or enforceability of the remaining provisions of the EULA.
- (e) Termination or expiration in whole or in part of the EULA does not affect those provisions and those obligations of a party which by their very nature survive termination, including clause 10 (Intellectual property), clause 13 (Dispute resolution), clause 15 (Limitation of Liability), clause 16 (Indemnity), and clause 18(f) (Governing law and jurisdiction).
- (f) This Agreement is governed by the laws in force in Queensland, Australia and the parties submit to the exclusive jurisdiction of the courts of Queensland, Australia.

Protegas Australia Pty Ltd ACN 640 235 061

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