

INDUSTRY TRAINING AUSTRALIA PTY LTD T/A INTEGRATED INFORMATION SERVICE

TERMS OF USE

(DECEMBER 2018)

PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE USING THIS PLATFORM.

The Australian Apprenticeships and Traineeships Information Service (**AATIS** or **Platform**), which is delivered across several elements: www.aapathways.com.au (**Website**), our various downloadable mobile software applications (**Applications**); or our various interactive contact points (**Sessions**), is controlled and operated by Industry Training Australia Pty Ltd trading as Integrated Information Service (ABN 16 079 822 503) (**we, us, our**).

These terms and conditions (**Terms of Use**) apply to use of the Platform by you (the **User, you** or **your**).

Please contact us if you have any questions – call 1800 338 022 or email privacy@aatis.com.au.

BY ACCESSING OR USING THE PLATFORM, YOU AGREE TO THESE TERMS OF USE AS IF YOU HAD SIGNED AN AGREEMENT WITH US.

IF YOU DO NOT AGREE, YOU SHOULD STOP ACCESSING OR USING THE PLATFORM IMMEDIATELY.

IF YOU ARE A MINOR, BY ACCESSING AND USING THE PLATFORM, YOU ACKNOWLEDGE THAT WE ARE PROVIDING YOU WITH A FREE SERVICE AND YOU RECEIVE AN EDUCATIONAL BENEFIT FROM THIS SERVICE.

Funding for the Platform and the AATIS project is provided to us by the Commonwealth of Australian (**Commonwealth**) represented by and acting through the Department of Education and Training (**Department**).

The Platform is available for you to use conditional on your acceptance of these Terms of Use and our Privacy Policy located at <https://www.aapathways.com.au/privacy> which is incorporated into these Terms of Use by reference and sets out how we collect, handle and use your Personal Information.

We reserve the right to amend these Terms of Use at any time. Notice of any amendments will be displayed on the Platform. The continued use of the Platform by you following such amendments to these Terms of Use will constitute acceptance of those amendments by you.

IMPORTANT - PLEASE READ:

- Your ability to hold us responsible for any loss or damage that you may suffer from accessing or using the Platform may be significantly restricted.
- Our liability for any loss or damage that you may suffer from accessing or using the Platform may be significantly restricted.
- If you are a Consumer, the Platform Services come with Consumer Guarantees.
- If you are a Consumer, nothing in these Terms of Use (including, without limitation, the disclaimers of liability contained in clause 6 and limitations of liability contained in clause 7) is intended to limit or exclude your Consumer Guarantees.
- Subject to any rights which you may have as a Consumer or otherwise at law, your use and access of the Platform is provided on an “as is” basis and entirely at your own risk.
- You are solely responsible for compliance with all laws and regulations applicable to your use of the Platform.

- There are restrictions that apply to your use of the Platform (see clause 5), and there are significant consequences if you do not comply with such restrictions.
- You may be required to compensate us for any loss or damage that we may suffer as a result of a breach by you of these Terms of Use.
- By accepting these Terms of Use, you consent to how we collect, handle and use your personal information in accordance with our Privacy Policy located at <https://www.aapathways.com.au/privacy>.

1. DEFINITIONS

The following definitions apply in these Terms of Use:

“ACL” means the Australian Consumer Law, being Schedule 2 of the Competition and Consumer Act 2010 (Cth).

“Consumer” means a User who views, accesses and uses the Platform in Australia, and:

- a. the amount payable for the Platform Services does not exceed \$40,000;
- b. the Platform Services provided are of a kind ordinarily acquired for personal, domestic or household use or consumption; or
- c. is a “Consumer” as defined under Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

“Consumer Guarantees” means the consumer guarantees afforded to a Consumer of the Platform Services under the ACL.

“Content” means all content on the Platform including without limitation text, photographs, logos, names, designs, information, Personal Information, financial information, data, drawings, URL links, video recordings and audio recordings.

“Intellectual Property” means all intellectual property and quasi-intellectual property rights (past, present and future) conferred by law (whether registered or unregistered) including without limitation business names, trade marks, patents, designs, copyright, trade secrets, computer programs, databases, inventions, moral rights and all proprietary rights and all other intellectual property defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation (July 1967).

“Personal Information” is information that can be used to reasonably identify an individual.

“Platform Services” means any services provided by us via or in relation to the Platform from time to time.

“Privacy Act” means the *Privacy Act 1988* (Cth) as amended from time to time.

“Privacy Policy” means the privacy policy for the Platform as amended or updated from time to time, a copy of which can be found on the following webpage: <https://www.aapathways.com.au/privacy>

“User Account” has the meaning provided in clause 3(a) of these Terms of Use

“User Content” means any Content shared via, or submitted or uploaded to, the Platform by a User, including (without limitation) logos and informational content.

2. INTELLECTUAL PROPERTY AND LICENCE TO USE

2.1 Intellectual Property

- (a) The Intellectual Property subsisting in any aspect of the Platform including without limitation text, graphics, artwork, logos, software, trade marks, designs, copyright, compilations, algorithms, source code, video recordings and audio recordings, as well as the structure, layout, user interface and “look and feel” of the Platform (**Platform IP**), is owned, controlled and/or licenced by us and/or our third party affiliates, licensors and/or licensees, and is protected by Australian and international law governing Intellectual Property rights.
- (b) We acknowledge that some of the Platform IP has been licenced to us by the Commonwealth as part of the Commonwealth’s funding of this Platform (**Commonwealth IP**) and is otherwise subject to such contractual terms between us and the Commonwealth. Ownership of Commonwealth IP remains with the Commonwealth at all times.
- (c) The Platform IP may include third party content which is subject to that third party's terms and conditions of use.

2.2 Licence to Use Platform

- (a) Subject to these Terms of Use, we agree to grant you a limited, personal, non-exclusive, non-transferable, conditional and revocable licence to view, access and use the Platform.
- (b) We may terminate the licence provided to you under clause 2.2(a) at our sole discretion when you breach these Terms of Use or for any other reason.

2.3 Licence to use Platform IP

- (a) Subject to the terms of these Terms of Use, we hereby grant you a limited, personal, non-exclusive, non-transferable, conditional and revocable licence to download, display, print, reproduce or hyperlink to the Platform IP in unaltered form for non-commercial purposes only. Any use of the Platform IP under this licence must acknowledge the source of the Platform IP as "The Australian Apprenticeship and Traineeship Information Service, funded by the Australian Government Department of Education and Training". All other rights are reserved.
- (b) We may terminate the licence provided to you under clause 2.3(a) at our sole discretion when you breach these Terms of Use or for any other reason.

2.4 Licence to use User Content

- (a) You hereby grant us a non-exclusive, royalty-free, transferable, sub-licensable and worldwide licence to reproduce, exploit or otherwise use, copy, process, adapt, modify, publish, transmit, exploit, display and distribute any User Content which you share via, or submit or upload to, the Platform, in any and all media.
- (b) Subject to the rights granted to us under clause 2.4, you will otherwise retain exclusive ownership and/or control of any Intellectual Property subsisting in any User Content which you share via, or submit or upload to, the Platform.

3. USER ACCOUNT

- (a) In order to access certain features or services offered through the Platform, you may be required to open a user account (**User Account**). When opening a User Account, you will be required to create a unique password to obtain access to your User Account (**Password**). You may also be required to provide, or be given by us, other credentials relating to your User Account (**User Credentials**).
- (b) You are solely responsible for maintaining the security and confidentiality of any information you hold relating to your User Account, including your Password and User Credentials, and for any and all activity that occurs under your User Account, including activity that occurs as a result of your failing to keep this information secure and confidential.
- (c) You must notify us immediately of any unauthorized use of your User Account, Password, or User Credentials, or any other breach of security.
- (d) You may be held liable for losses incurred by us or any other User of or visitor to the Platform due to someone else using your User Account, Password or User Credentials, as a result of your failing to keep your account information secure and confidential.
- (e) You agree to not transfer your User Account to any other person or allow access to your User Account by another person, unless expressly authorised by us or these Terms of Use.
- (f) Subject to 3(e) above, you may not use anyone else's User Account, Password or User Credentials at any time without the express permission and consent of the holder of that User Account, Password or User Credentials. We cannot and will not be liable for any loss or damage arising from your failure to comply with these obligations.
- (g) Without limiting any other rights which we may have to communicate with you, you agree that we may send e-mails to the nominated e-mail address for your User Account for the purpose of receiving any notifications from and regarding the Platform.
- (h) We maintain the right in our sole unfettered discretion to refuse to register a User Account, or to terminate or suspend a User Account.

4. PRIVACY

- (a) When operating the Platform, we will collect, handle and use your Personal Information in accordance with our Privacy Policy. By agreeing to these Terms of Use, and your continued use of the Platform, you warrant that you have read our Privacy Policy and consent to how we collect, handle and use your Personal Information in accordance with our Privacy Policy.

5. RESTRICTIONS & CODE OF CONDUCT

- (a) Your access to, and use of, the Platform is subject to all conditions specified in these Terms of Use.
- (b) You must comply, and are solely responsible for complying, with all laws and regulations applicable or relevant to the use of the Platform (**Laws**). You must also comply with all applicable or relevant regulations, industry and professional codes of conduct and other relevant laws when using the Platform (**Industry Regulations**). We do not guarantee that your proposed or actual use of the Platform complies with Laws and Industry Regulations that may apply to your activities on the Platform.
- (c) You agree that you will not:

- (i) Use the Platform for any purpose that is illegal, unlawful or prohibited by these Terms of Use;
 - (ii) Interfere or attempt to interfere with, or obtain or attempt to obtain unauthorised access to, the proper working of the Platform or any Content, including (without limitation) through:
 - (A) hacking or use of any "deep-link", "page-scrape", "robot", "spider" or other automatic device, program, algorithm, methodology, script or bot, or any similar or equivalent manual process;
 - (B) destructive transmission of viruses, malware or any code or other conduct of a disruptive or destructive nature;
 - (C) reverse engineering, circumventing, damaging, disassembling, attempting to discover the source code; or
 - (D) other illegitimate means;
 - (iii) contact Users for the purpose of sending unsolicited offers, advertisements, spam, junk e-mails;
 - (iv) contact Users for the purpose defaming, abusing, threatening or defrauding Users;
 - (v) impersonate any entity or falsely claim an affiliation with any person or entity;
 - (vi) scrape or otherwise obtain any data from the Platform for any purpose or use any Content to spam third parties;
 - (vii) attempt to gain unauthorized access to any portion or feature of the Platform, or any other systems or networks connected to the Platform or to any of our servers, or to any of the services offered on or through the Platform, by hacking, password "mining" or any other illegitimate means;
 - (viii) take any action that imposes an unreasonable or disproportionately large load on the infrastructure of the Platform or our systems or networks, or any systems or networks connected to the Platform;
 - (ix) use any device, software or routine to interfere or attempt to interfere with the proper working of the Platform or any transaction being conducted on the Platform, or with any other person's use of the Platform; or
 - (x) forge headers or otherwise manipulate identifiers in order to disguise the origin of any message or transmittal you send to us on or through the Platform or any service offered on or through the Platform. You may not pretend that you are, or that you represent, someone else, or impersonate any other individual or entity.
- (d) We retain the right (without providing any notice to you) to remove, block, edit or monitor your usage of the Platform at our sole discretion.

6. DISCLAIMERS

- (a) Clauses 6(c) to 6(g) (inclusive) do not act to disclaim our liability in respect of the Consumer Guarantees.
- (b) Nothing in this Terms of Use is intended to impose obligations on, or make any representations on behalf of, the Commonwealth (whether directly or indirectly) with respect to the Platform.

- (c) To the extent permitted by law (either by legislation or contract), we do not guarantee or warrant that:
 - (i) the Platform or any content, service or feature of the Platform will be error free. Although we make every reasonable effort to maintain current and accurate information, you should be aware that there is still the possibility of inadvertent errors and technical inaccuracies;
 - (ii) the Platform or any content, service or feature of the Platform will be uninterrupted;
 - (iii) any defects on or with the Platform will be corrected;
 - (iv) your use of the Platform will provide specific results;
 - (v) any files of other data you download from the Platform will be free of viruses, contamination or other destructive features; or
 - (vi) your use of the Platform will not infringe the Intellectual Property rights of a third party.
- (d) You acknowledge and agree that the Platform is intended to provide general information in summary form and the Platform as a whole is intended for general educational and informational use only. Users should consider their specific circumstances and seek professional advice prior to acting, omitting to act, or making any decisions, on the basis of the Platform or any third party content accessed from this Platform. It is the User's responsibility to evaluate the accuracy, currency, completeness and relevance of the Platform for their own use.
- (e) The Platform and its results are delivered on an 'as is' and 'as available' basis. All information provided on the Platform is subject to change without notice.
- (f) We reserve the right to introduce additional functions and services on the Platform and to alter existing functions or services on the Platform at any time without notice to Users.
- (g) The Platform may integrate with or host hyperlinks to third party web services, or host third party information or content within the Platform. All third party content hosted on the Platform is the responsibility of its author, and we do not endorse or represent the views or opinions contained therein. We are not responsible for any material contained on third party web services that is hosted on the Platform in any way, and any dealings between you and third parties is your sole responsibility.

7. LIABILITY

- (a) Clauses 7(b), 7(d) and 7(e), do not apply in respect of the Consumer Guarantees.
- (b) Your use of, and reliance on, the Platform is entirely at your own risk, subject to any other rights you have under the Australian Consumer Law.
- (c) We exclude our liability to you for all types of loss:
 - (i) resulting from your use of or reliance on the Platform however incurred (whether based in negligence or any other tort, contract, statutory liability or otherwise); and
 - (ii) including (without limitation) for any lost profit, lost opportunity, lost revenue, lost data, losses resulting from security failure or computer viruses, and
 - (iii) any indirect or consequential loss, and

we do not exclude our liability in relation to breach of any obligation, condition, warranty or guarantee (including the Consumer Guarantees or otherwise under the ACL), which if excluded:

- (iv) would be a breach of statute;
 - (v) would be a breach of the Commonwealth contract which we are party to; and
 - (vi) would cause any part of these Terms of Use to be void (**Non-Excludable Conditions**).
- (d) Subject to the application of any Non-Excludable Conditions, you hereby release us from all claims and we are not responsible nor liable for any injury, illness, direct or indirect damage, loss (financial, reputational or otherwise) or consequential, exemplary or aggravated damages arising from any of the following matters:
- (i) your use of, or inability to use, the Platform;
 - (ii) any failure by us or other third parties to provide any information, service, feature or functionality via the Platform;
 - (iii) any unauthorised submission of information to the Platform;
 - (iv) statements or conduct of any third party using the Platform;
 - (v) use of third party services in conjunction with the Platform by you;
 - (vi) any communication or interaction between Users via the Platform, whether online or offline;
 - (vii) where you fail to comply with any Laws or Industry Regulations when using the Platform; and
 - (viii) where you fail to comply with any Laws, Industry Regulations or the Privacy Act when dealing with Personal Information in connection with the Platform.
- (e) If we are able to limit your remedy for a breach of any Non-Excludable Conditions, then our liability for breach of any Non-Excludable Conditions is limited to one or more of the following at our option:
- (i) for goods, the replacement of the goods or the supply of equivalent goods, the repair of such goods, the payment of the cost of replacing the goods or acquiring equivalent goods, or the payment of the cost of having the goods repaired; and
 - (ii) for services, the supply of the services again, or the payment of the cost of having services supplied again.

8. CAPACITY AND INDEMNITY

- (a) You warrant to us that you have the full capacity to agree to be legally bound by these Terms of Use either on your own behalf or as a legal guardian on behalf of a minor.
- (b) As a condition of using the Platform, you must indemnify us against all direct, quantifiable and reasonable loss and/or damage suffered by us (whether based in negligence or any other tort, contract, statutory liability or otherwise) as a direct result of you breaching a term of these Terms of Use, or otherwise from your use of Platform or the Platform Services.

9. TERMINATION

- (a) We may terminate your access to the Platform at any time, at our sole discretion and without notice to you, if we have reason to believe that you have failed to comply with these Terms of Use, or for any other reason.
- (b) You may terminate these Terms of Use by ceasing to use the Platform and requesting your User Account to be deleted in writing to us (sent to privacy@aatis.com.au). Upon ceasing use of the Platform and deletion of your User Account, you will no longer have access to the functionality of the Platform that requires a User Account.
- (c) Notwithstanding clauses 9(a) and 9(b), any Personal Information or non-personal statistical information collected under these Terms of Use and the Privacy Policy may continue to be stored, used or disclosed within the scope of the purposes described in the Privacy Policy.

10. JURISDICTION & CHOICE OF LAW

- (a) Unless otherwise notified in writing by us, these Terms of Use are governed by and construed in accordance with the laws of the State of Victoria, Australia without giving effect to any conflict of laws principles.
- (b) Unless otherwise notified in writing by us, any claim, cause of action or dispute arising out of these Terms of Use will be resolved exclusively in the courts of Victoria, Australia, and where applicable, the Federal Court of Australia or Federal Circuit of Australia, and you agree to submit to the personal jurisdiction of such courts for the purpose of litigating such claims.

11. MISCELLANEOUS

- (a) We reserve the right to perform maintenance of the Platform (whereby the functionality of the Platform may not be accessible for a certain period of time) without notice to you.
- (b) We may, from time to time, assign our rights under these Terms of Use to a third party at our sole discretion. We will also have the right to novate these Terms of Use to a third party, with your written consent, which is not to be unreasonably withheld.
- (c) The rights and obligations under these Terms of Use, which by their nature would reasonably continue beyond the expiration of termination of these Terms of Use, will survive the expiration of termination of these Terms of Use. Without limiting the generality of the foregoing, clauses 2, 6, 7 and 8 will survive the termination of these Terms of Use.
- (d) In the event that any one or more of the provisions contained in these Terms of Use (or part thereof) would, for any reason, be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions of these Terms of Use and the offending provision will be severed or if not capable of being severed, these Terms of Use shall be construed as if such offending provisions had never been contained herein.
- (e) The fact that a party fails to do, or delays in doing, something the party is entitled or obligated to do under these Terms of Use, does not amount to a waiver of any obligation of, or breach of obligation by, any other party.
- (f) You agree that no agency, joint venture, employee-employer, partnership or other similar relationship is created between you and us by virtue of these Terms of Use.