

Employability Advantage Terms and Conditions

Welcome to Employability Advantage! We provide a one stop shop for users seeking to assess their employability skills, identify any gaps, and access any training required to further build their skills to improve their employability. Please read these terms carefully as they contain important information on how we will provide our platform to you.

1 Our Disclosures

Our complete terms and conditions are contained below, but some important points for you to know before you become a customer are set out below:

- We may amend these Terms, the features of the Platform, your Membership or the Fees at any time, by providing written notice to you.
- Your Membership is subject to a minimum term, as set out in your Account. Without limiting your rights under the Australian Consumer Law, you may only cancel your Membership at the expiry of the minimum term;
- Unless your Membership is terminated in accordance with these Terms, your Membership will roll over on an ongoing basis;
- We will handle your personal information in accordance with our privacy policy, available at <https://www.eca.edu.au/privacy-policy/>;
- To the maximum extent permitted by law, the Fees are non-refundable;
- Our liability under these Terms is limited to us resupplying the Platform to you, or in our sole discretion, to us repaying you the amount of the Fees paid by you to us during the previous 12 months of your Membership;
- We will not be liable for Consequential Loss, any loss that is a result of a Third Party Service, or any loss or corruption of data;
- We may terminate your Membership at any time by giving 30 days' written notice to you; and
- We may receive a benefit (which may include a referral fee or a commission) should you visit certain third-party websites via a link on the Platform or for featuring certain products or services on the Platform.

Nothing in these terms limit your rights under the Australian Consumer Law.

2 Introduction

- 2.1 These terms and conditions (**Terms**) are entered into between Education Centre of Australia Pty Ltd ABN 14 111 918 775 (**we, us or our**) and you, together the **Parties** and each a **Party**.
- 2.2 We provide a cloud-based, software as a service platform where you can assess and improve your employability skills, build your résumé and prepare for interviews (**Platform**).
- 2.3 In these Terms, **you** means the person or entity registered with us as an Account holder.

3 Acceptance and Platform Licence

- 3.1 You accept these Terms by checking the box, clicking "I accept", registering on the Platform, or otherwise using the Platform.
- 3.2 You must be at least 16 years old to use the Platform.
- 3.3 We may amend these Terms at any time, by providing written notice to you. By clicking "I accept" or continuing to use the Platform after the notice or 30 days after notification (whichever date is earlier), you agree to the amended Terms. If you do not agree to the amendment, you may terminate your Membership in accordance with the "Cancellation of Memberships" clause.
- 3.4 We may use APIs including Google Single Sign On. Your use of Google APIs is subject to Google's Additional Terms of Service.
- 3.5 Subject to your compliance with these Terms, we grant you a personal, non-exclusive, royalty-free, revocable, worldwide, non-transferable licence to use our Platform in accordance with these Terms. All other uses are prohibited without our prior written consent.
- 3.6 When using the Platform, you must not do or attempt to do anything that is unlawful or inappropriate, including:
 - (a) anything that would constitute a breach of an individual's privacy (including uploading private or personal information without an individual's consent) or any other legal rights;
 - (b) using the Platform to defame, harass, threaten, menace or offend any person, including using the Platform to send unsolicited electronic messages;
 - (c) tampering with or modifying the Platform (including by transmitting viruses and using trojan horses);
 - (d) using data mining, robots, screen scraping or similar data gathering and extraction tools on the Platform; or
 - (e) facilitating or assisting a third party to do any of the above acts.

4 Employability Advantage Services

- 4.1 In consideration for your payment of the Fees, we agree to provide you with access to the Platform, the support services as detailed in this section, and any other services we agree to provide as set out in your Account.

- 4.2 We agree to use our best endeavours to make the Platform available at all times. However, from time to time we may perform reasonable scheduled and emergency maintenance, and the Platform may be unavailable during the times we are performing such maintenance.
- 4.3 Should you be unable to access the Platform, or should you have any other questions or issues impacting on your use of the Platform, you must place a request via email to eahelpdesk@eca.edu.au. We will endeavour to respond to any support requests in a reasonable period.
- 4.4 You acknowledge and agree that the Platform may be reliant on, or interface with third party systems that are not provided by us (for example, cloud storage providers and internet providers) (**Third Party Services**). To the maximum extent permitted by law, we shall have no Liability for any Third Party Services, or any unavailability of the Platform due to a failure of the Third Party Services.
- 4.5 You acknowledge and agree that data loss is an unavoidable risk when using any software. To the extent you input any data into the Platform, you agree to maintain a backup copy of any data you input into the Platform.
- 4.6 To the maximum extent permitted by law, we shall have no Liability to you for any loss or corruption of data, or any scheduled or emergency maintenance that causes the Platform to be unavailable.

5 Accounts

- 5.1 You must register on the Platform and create an account (**Account**) to access the Platform's features.
- 5.2 You must register for an Account using your Google account (**Social Media Account**). If you sign in to your Account using your Social Media Account, you authorise us to access certain information on your Social Media Account including but not limited to your name, email address, current profile photo and other basic information.
- 5.3 All personal information you provide to us will be treated in accordance with our Privacy Policy.
- 5.4 You acknowledge and agree that we may integrate certain third party software into the Platform to provide additional features and functionality on the Platform (**Third Party Software**). You acknowledge and agree that we may share your personal information with the providers of Third Party Software to the extent necessary to make the features of the Platform available. By agreeing to these Terms, you consent to the disclosure of your personal information in line with this clause 5.4 and our Privacy Policy.
- 5.5 You agree to provide and maintain up to date information in your Account and to not share your Account password with any other person. Your Account is personal and you must not transfer or provide it to others.
- 5.6 You are responsible for keeping your Account details and your username and password confidential and you will be liable for all activity on your Account, including purchases made using your Account details. You agree to immediately notify us of any unauthorised use of your Account.
- 5.7 When you create an Account, you must also select a membership (**Membership**). You may choose between different tiers of Membership with different services and different membership periods as set out on our Platform.

6 Memberships

- 6.1 Your Membership may begin with a free trial which grants you access to some of the features of the Platform. The free trial period of your Membership will last for the period specified on the Platform. We determine free trial eligibility in our sole discretion and we may limit eligibility to prevent free trial abuse. We reserve the right to revoke the free trial and suspend your Account at any time in the event that we determine that you are not eligible. Free trials are only available for new Account holders. If you do not cancel during the free trial period, we will charge your chosen payment method for the Membership you have chosen and its corresponding membership fee (**Fees**) on the following day after your free trial ends (**Payment Date**).
- 6.2 If you choose a pay as you go Membership, and unless your Membership is terminated in accordance with these Terms, your Membership will roll over on an ongoing monthly basis. During the term of your Membership, you will be charged the same Fees on an ongoing monthly basis from the Payment Date. Without limiting your rights under the Australian Consumer Law, you may not cancel your Membership until the expiry of the minimum period for which you have made a commitment to, as set out in your Account (**Minimum Term**).
- 6.3 You may opt for a Membership which requires upfront payment in accordance with the offers available on the Platform. You acknowledge and agree that, to the maximum extent permitted by law, any Fees paid by you upfront are non-refundable.
- 6.4 The payment methods we offer for the Fees are set out on the Platform. We may offer payment through a third-party provider for example, Stripe. You acknowledge and agree that we have no control over the actions of the third-party provider, and your use of the third-party payment method may be subject to additional terms and conditions.
- 6.5 You must not pay, or attempt to pay, the Fees by fraudulent or unlawful means. If you make a payment by debit card or credit card, you warrant that you are authorised to use the debit card or credit card to make the payment.
- 6.6 You agree that we may set-off or deduct from any monies payable to you under these Terms, any amounts which are payable by you to us (whether under these Terms or otherwise).
- 6.7 **Changes to your Membership:** If you wish to change your Membership (for example, by upgrading to a different Membership tier), you must provide notice to us via email that you wish to vary your Membership at least [48 hours]

before the next Payment Date. If you vary your Membership and the Fees increase, the increased Fees will apply on the next Payment Date, and you will have access to the additional Membership features on the next Payment Date.

6.8 To the extent permitted by law, the Fees are non-refundable and non-cancellable once paid.

6.9 We may need to change what is available as part of your Membership (for example, the inclusions, exclusions, updated features) from time to time. If we change what is available as part of your Membership, we will provide you with 30 days' notice of the change. After 30 days, we will apply the changes to your Membership. If the changes substantially and adversely affect your enjoyment of the Membership, you may cancel your Membership in accordance with the 'Cancellation of Memberships' clause.

6.10 We may need to change the Fees from time to time. If we change the Fees, we will provide you with 30 days' notice of the change. After 30 days, we will apply the updated Fee to your Membership. If the updated Fee is not acceptable to you, you may cancel your Membership in accordance with the 'Cancellation of Memberships' clause.

7 Our Intellectual Property

7.1 You acknowledge and agree that we own or license all Intellectual Property Rights in any Intellectual Property or content (including copyright and trademarks) available on the Platform, the Platform itself, and any algorithms or machine learning models used on the Platform (**Our Intellectual Property**).

7.2 We authorise you to use Our Intellectual Property solely for your personal use. You must not exploit Our Intellectual Property for any other purpose, nor allow, aid or facilitate such use by any third party. You may only access Our Intellectual Property on your personal device, and you may not use Our Intellectual Property for any commercial purpose.

7.3 You must not, without our prior written consent:

(a) copy, in whole or in part, any of Our Intellectual Property;

(b) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of Our Intellectual Property to any third party; or

(c) breach any intellectual property rights connected with the Platform, including (without limitation) altering or modifying any of Our Intellectual Property, downloading Our Intellectual Property, causing any of Our Intellectual Property to be framed or embedded in another website, or creating derivative works from any of Our Intellectual Property.

7.4 Nothing in the above clause restricts your ability to publish, post or repost Our Intellectual Property on your social media page or blog, provided that:

(a) you do not assert that you are the owner of Our Intellectual Property;

(b) unless explicitly agreed by us in writing, you do not assert that you are endorsed or approved by us;

(c) you do not damage or take advantage of our reputation, including in a manner that is illegal, unfair, misleading or deceptive; and

(d) you comply with all other terms of these Terms.

7.5 This clause will survive the termination or expiry of your Membership.

8 Your Data

8.1 You own all data, information or content you upload into the Platform (**Your Data**), as well as any data or information output from the Platform using Your Data as input (**Output Data**). Note that Output Data does not include the Analytics (as described below).

8.2 You grant us a limited licence to copy, transmit, store, backup and/or otherwise access or use Your Data and the Output Data to:

(a) communicate with you (including to send you information we believe may be of interest to you);

(b) supply the Platform to you and otherwise perform our obligations under these Terms;

(c) diagnose problems with the Platform;

(d) enhance and otherwise modify the Platform;

(e) perform Analytics; and

(f) develop other services, provided we de-identify Your Data.

8.3 You agree that you are solely responsible for all of Your Data that you make available on or through the Platform. You represent and warrant that:

(a) you are either the sole and exclusive owner of Your Data or you have all rights, licences, consents and releases that are necessary to grant to us the rights in Your Data (as contemplated by these Terms); and

(b) neither Your Data nor the posting, uploading, publication, submission or transmission of Your Data or our use of Your Data on, through or by means of our Platform will infringe, misappropriate or violate a third party's intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

8.4 You acknowledge and agree that we may monitor, analyse and compile statistical and performance information based on and/or related to your use of the Platform, in an aggregated and anonymised format (**Analytics**). You acknowledge and agree that we own all rights in the Analytics, and that we may use the Analytics for our own internal business purposes, provided that the Analytics do not contain any identifying information.

8.5 We do not endorse or approve, and are not responsible for, any of Your Data.

8.6 You acknowledge and agree that the Platform and the integrity and accuracy of the Output Data is reliant on the accuracy and completeness of Your Data, and the provision by you of Your Data that is inaccurate or incomplete may affect the use, output and operation of the Platform.

8.7 This clause will survive the termination or expiry of your Membership.

9 Warranties

9.1 You represent, warrant and agree that:

(a) you will not use our Platform, including Our Intellectual Property, in any way that competes with our business;

(b) there are no legal restrictions preventing you from entering into these Terms;

(c) all information and documentation that you provide to us in connection with these Terms is true, correct and complete; and

(d) you have not relied on any representations or warranties made by us in relation to the Platform (including as to whether the Platform is or will be fit or suitable for your particular purposes), unless expressly stipulated in these Terms.

10 Australian Consumer Law

10.1 Certain legislation, including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010 (Cth)*, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the provision of the Platform by us to you which cannot be excluded, restricted or modified (**Consumer Law Rights**).

10.2 If the ACL applies to you as a consumer, nothing in these Terms excludes your Consumer Law Rights as a consumer under the ACL. You agree that our Liability for the Platform provided to an entity defined as a consumer under the ACL is governed solely by the ACL and these Terms.

10.3 Subject to your Consumer Law Rights, we exclude all express and implied warranties, and all material, work and services (including the Platform) are provided to you without warranties of any kind, either express or implied, whether in statute, at law or on any other basis.

10.4 This clause will survive the termination or expiry of your Membership.

11 Liability

11.1 Despite anything to the contrary, to the maximum extent permitted by law:

(a) you agree to indemnify us for any Liability we incur due to your breach of the Acceptance and Platform Licence clause and the Intellectual Property clause of these Terms;

(b) neither Party will be liable for Consequential Loss;

(c) each Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party or any of that Party's personnel, including any failure by that Party to mitigate its losses; and

(d) our aggregate liability for any Liability arising from or in connection with these Terms will be limited to us resupplying the Platform to you or, in our sole discretion, to us repaying you the amount of the Fees paid by you to us during the previous 12 months of your Membership.

11.2 This clause will survive the termination or expiry of your Membership.

12 Termination

12.1 **Cancellation of Memberships:** You may not cancel your Membership until the expiry of the Minimum Term. If you cancel your Membership because we have changed the Membership inclusions and the change has a substantial and adverse impact on you, or we have changed the Fees, then the termination of the Membership will be immediate, and we will refund you for any Fees that you have paid upfront but have not been used on a pro-rata basis.

12.2 We may terminate your Membership at any time by giving 30 days' written notice to you (**Termination for Convenience**).

12.3 A Membership will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:

(a) the other Party (**Defaulting Party**) breaches a material term of these Terms and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or

(b) the Defaulting Party is unable to pay its debts as they fall due.

12.4 Should we suspect that you are in breach of these Terms, we may suspend your access to the Platform while we investigate the suspected breach.

12.5 Upon expiry or termination of your Membership:

(a) we will remove your access to the Platform and your Account and Your Data, along with any Output Data will be deleted;

(b) you agree that other than where termination is due to our Termination for Convenience or our breach of these Terms, and to the maximum extent permitted by law, any payments made by you to us (including any Fees) are not refundable to you;

(c) where we terminate your Membership for any reason other than a Termination for Convenience, you also agree to pay us our reasonable additional costs directly arising from such termination.

12.6 Where termination is due to our Termination for Convenience or our breach of these Terms, we agree to refund you for any prepaid unused Fees on a pro-rata basis.

12.7 Termination of a Membership will not affect any rights or liabilities that a Party has accrued under these Terms.

12.8 This clause will survive the termination or expiry of your Membership.

13 General

13.1 **Assignment:** Subject to the below clause, a Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

13.2 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with these Terms, to a debt collector, debt collection agency, or other third party.

13.3 **Disputes:** A Party may not commence court proceedings relating to a dispute without first meeting with the other Party to seek (in good faith) to resolve the dispute, failing which the Parties agree to engage a mediator to attempt to resolve the dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

13.4 **Entire Terms:** Subject to your Consumer Law Rights, these Terms contains the entire understanding between the Parties and the Parties agree that no representation or statement has been made to, or relied upon by, either of the Parties, except as expressly stipulated in these Terms, and these Terms supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.

13.5 **Force Majeure:** To the maximum extent permitted by law, we shall have no Liability for any event or circumstance outside of our reasonable control.

13.6 **Governing law:** These Terms are governed by the laws of New South Wales. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

13.7 **Notices:** Any notice given under these Terms must be in writing addressed to us at the details set out below or to you at the details provided in your Account. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

13.8 **Privacy:** Each Party agrees to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.

13.9 **Publicity:** You agree that we may advertise or publicise the fact that you are a user of our Platform, including on our website or in our promotional material.

13.10 **Severance:** If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions in these Terms.

13.11 **Third party sites:** The Platform may contain links to websites operated by third parties. Unless we tell you otherwise, we do not control, endorse or approve, and are not responsible for, the content on those websites. We recommend that you make your own investigations with respect to the suitability of those websites. If you purchase goods or services from a third party website linked from the Platform, such third party provides the goods and services to you, not us. We may receive a benefit (which may include a referral fee or a commission) should you visit certain third-party websites via a link on the Platform (**Affiliate Link**) or for featuring certain products or services on the Platform. We will make it clear by notice to you which (if any) products or services we receive a benefit to feature on the Platform, or which (if any) third party links are Affiliate Links.

14 Definitions

- 14.1 **Consequential Loss** includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.
- 14.2 **Intellectual Property** means any domain names, know-how, inventions, processes, trade secrets or confidential information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.
- 14.3 **Intellectual Property Rights** means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.
- 14.4 **Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a party to these Terms or otherwise.

For any questions or notices, please contact us at:

Education Centre of Australia Pty Ltd ABN 14 111 918 775

Email: eahelpdesk@eca.edu.au

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