CPD Provider Terms & Conditions

AUSactive

Version 2.0

Contents

1. Application of these terms 1
2. CPD Provider Registration Process 1
3. CPD Approval Application Process 2
4. Audit Procedure 3
5. Appeal Rights 4
6. Our obligations 4
7. Your obligations 5
8. Intellectual property 5
9. Withdrawal, suspension and termination7 6
10. Indemnity 7
11. Fees 7
12. Goods and services tax (GST) 7
13. Privacy 8
14. Changes to these terms 8
15. Dictionary and interpretation 9

1. Application of these terms

1.1 By applying, to become a Registered CPD Provider, or for approval for an education or training program, event, module or course (**program**), you accept these terms and conditions as amended from time to time, and agree to be bound by them.

1.2 We have the right to approve or deny your application, and your right to access and use the **Service** is at our discretion.

1.3 If you apply to be, and we register you to be, a Registered CPD Provider, an agreement will be formed between us and you on these terms and conditions (**Agreement**). This will entitle you to use the Service in accordance with this Agreement.

1.4 These terms and conditions are the only terms and conditions upon which we are prepared to register you as a Registered CPD Provider and grant you approval for a program, and will govern your access to and use of the Service to the exclusion of all other terms and conditions.

1.5 If the whole or any part of any clause of this Agreement is illegal or unenforceable, it will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement.

1.6 This Agreement does not create a relationship of employment, agency or partnership between the parties.

1.7 We may subcontract the performance of the whole or any part of our obligations under this Agreement.

1.8 This Agreement is governed by the laws, and the parties submit to the nonexclusive jurisdiction, of the courts of New South Wales, Australia.

2. CPD Provider Registration Process

2.1 We will determine whether you are eligible to be a Registered CPD Provider in conjunction with your application for CPD Approval in respect of a particular program.

2.2 We may give or withhold Registered CPD Provider Registration in our absolute discretion. If we withhold registration we will give you reasons for that decision.

2.3 If we accept your application to be a Registered CPD Provider:

a) we will notify you of our acceptance;

b) your CPD Provider Registration will not activate until an application for CPD Program Approval has been approved under clause 1.3; and

c) your CPD Provider Registration will be for a period of twelve months from the date we activate it, unless we notify you in writing otherwise.

2.4 You must maintain your CPD Provider Registration throughout the entire CPD Approval period to maintain our approval for any Approved CPD Program.

2.5 Your CPD Provider Registration, and our approval of any Approved CPD Program, are personal to you and are not transferable. If you sell, transfer, assign or in any way dispose (**disposal**) of the whole or a substantial part of your business or any Approved CPD Program to a third party (**transferee**), we may exercise any right under clause 9.3 unless you and the transferee:

a) within a reasonable time before the disposal ask us to approve the transferee as a CPD Provider of each Approved CPD Program, and provide us with details of the disposal and any Approved CPD Programs that are affected (**transfer notice**); and

b) we give our approval to the disposal, which we may give or withhold in our absolute discretion.

2.6 You and the transferee must comply with all our reasonable requirements in relation to the disposal, to enable us to assess whether or not to give approval to the disposal. These requirements may include:

a) the transferee applying for CPD Provider Registration;

b) you and the transferee providing details of any changes to Approved CPD Programs;

c) an audit of any Approved CPD Program being carried out before the disposal; and

d) the payment by you or the transferee of any applicable disposal fee and the costs that we incur arising out of the disposal irrespective of whether the disposal proceeds.

3. CPD Approval Application Process

3.1 You may apply for AUSactive CPD Approval for a program. You must apply for approval using our forms and templates, and provide us with all information we request. This is your '**application for CPD Program Approval**'.

3.2 We will only accept your application for CPD program approval if:

a) you have submitted a valid application to become a Registered CPD Provider under clause 2;

b) the program complies with the CPD Approval & Assessment Guide and/or any other guidelines determined by us from time to time (**the Guidelines**);

c) all content and material in the program complies with applicable laws and contains no content or material that is misleading or deceptive or likely to mislead or deceive;

d) you demonstrate that you have in place:

i. a code of ethical practice;

ii. a grievance and appeals procedure, and a position for refunds of course fees,

that is consistent with applicable laws and the Guidelines; and

e) you hold the insurance cover required by this Agreement.

3.3 We may give or withhold approval to an application for CPD program approval in our absolute discretion. If we withhold approval we will give you reasons for that decision.

3.4 If we accept your application for CPD program approval we will notify you of the approval and the period of the approval (**CPD Approval period**).

3.5 You must notify us of any changes to an Approved CPD Program and provide us with such information as we require in relation to those changes.

3.6 If you wish to renew approval for an Approved CPD Program, you must apply before the expiry of the CPD Approval period for that Approved CPD Program. You will comply with our renewal requirements which may change from time to time (and may include a requirement that the Approved CPD Program undergo an audit in accordance with clause 1.4). We may in our absolute discretion require you to re-apply for approval.

4. Audit Procedure

4.1 We may, and you allow us to, carry out an audit of an Approved CPD Program at any time during the CPD Approval period for the Approved CPD Program.

4.2 Without in any way limiting clause 4.1, we may audit an Approved CPD Program where:

a) there have been material and relevant changes to industry standards, the CPD Approval Evidence Guide or any other criteria communicated by us from time to time;
b) we consider that the Approved CPD Program no longer meets all of the requirements set out in clause 3.2;

c) when we receive a complaint about the Approved CPD Program; or

d) when you notify us of a change to the Approved CPD Program in accordance with clause 3.5

4.3 You and your Personnel will provide us with all necessary assistance and any means of access which we (or our authorised Personnel) require to enable us to carry out a proper audit of an Approved CPD Program.

In particular, you will:

a) provide to us all material that is relevant to the audit within the timeframe requested;

b) allow us (or our authorised Personnel) to participate in the Approved CPD Program, free of charge, and without identifying the AUSactive participant to the presenter, assessor or other participants; and

c) authorise us (or our authorised Personnel) to enter and remain on your premises during business opening hours to conduct an inspection to ascertain whether a breach of this Agreement has occurred or is occurring.

4.4 If our audit discloses that the Approved CPD Program no longer meets all the requirements set out in clause 3.2:

a) we may give you notice requiring you to make changes to the Approved CPD Program that we consider are necessary to ensure that the

Approved CPD Program continues to meet all those requirements;

b) we will give you a reasonable period of time to make those changes and our notice will stipulate the date by which the changes must be made;

c) we may require you to, and you must, pay to us our costs of conducting the audit;

d) additional fees may apply to change the Approved CPD Program; and

e) you have a right to appeal against our decision in accordance with clause 5.

4.5 If you:

a) do not make the required changes by the stipulated date under clause 4.4; and

b) choose not to exercise your right to appeal our decision under clause 5, or have exhausted your right to appeal under clause 5.5,

we may by notice in writing to you suspend, withdraw or cancel our approval of the Approved CPD Program.

5. Appeal Rights

5.1 If you receive notice from us that we have decided:

a) to deny your application for CPD Program Approval; or

b) that your Approved CPD Program no longer meets all the requirements set

out in clause 3.2 as a result of an audit under clause 4,

you may give us notice to the effect that you wish to appeal against our decision (**appeal notice**).

5.2 The appeal notice must:

a) be in writing and given to us no later than 10 business days after the date of the notice of our decision under clause 5.1;

b) set out the grounds for your appeal; and

c) be accompanied by payment of any appeal fee that we may stipulate from time to time.

5.3 Within a reasonable period of time after we received an appeal notice that complies with clause 5.2, we will commence the process of carrying out a second assessment of the subject matter of our decision. We will then complete the second assessment and provide you with a written decision on your appeal as soon as reasonably practicable (**appeal decision**).

5.4 The appeal decision is final and binding on you and you have no further rights of appeal from an appeal decision.

5.5 If the appeal decision:

a) upholds our original decision:

i. relating to an audit of an Approved CPD Program, clause 4.4 (except for paragraph e)) and clause 4.5 apply; or

ii. relating to an application for CPD Program Approval, the original decision prevails and will be applied; or

b) overturns or varies our original decisions, the appeal decision prevails and will be applied.

6. Our obligations

6.1 In consideration for you carrying out your obligations under this Agreement we will provide you with the following services (referred to as **the Service**) while you are a Registered CPD Provider:

a) publish your details as a Registered CPD Provider and your Approved CPD Programs on the CPD Directory;

b) enable you to access and use our CPD Brand in accordance with clause 1.8;

c) recognise CPD Points (continuing professional development points) for Registered AUSactive Professionals who undertake your Approved CPD Programs in accordance with the relevant approval; and

d) keep all documents and program material you have provided to us for the purpose of CPD Approval confidential and secure.

7. Your obligations

7.1 To maintain your CPD Provider Registration and/or approval for an Approved CPD Program, you must:

a) strictly comply with the terms of this Agreement;

b) only deliver the Approved CPD Program with such content and material that was approved by us under clause 3;

c) at all times ensure that the Approved CPD Program complies with, and is not in any way inconsistent with, the Guidelines and clause 3.2;

d) comply with all applicable laws, regulations, codes of conduct and any instructions, directions, requirements and requests made by any Authority in relation to the delivery of an Approved CPD Program;

e) act in accordance with the highest standards of ethics, professionalism and business practice, and you will provide prompt, efficient, professional and courteous service to participants of the Approved CPD Program; and

f) not conduct yourself in a manner that damages or is likely to damage our goodwill and reputation or the goodwill and reputation of any of our associates or related parties, the CPD Brand, the Intellectual Property or the CPD Business;

g) not disparage us, other Registered CPD Providers or the CPD Business;

h) immediately advise us if you receive:

i. any notice or communication from any A uthority relating to the Approved CPD Program in which it is claimed that there has been non-compliance with any laws, regulations or codes of conduct;

ii. any complaint from a customer in relation to the Approved CPD Program;

iii. any information about a matter that could harm or affect our goodwill and reputation or the goodwill and reputation of other Registered CPD Providers, the CPD Intellectual Property or the CPD Business; and

i) at all times during the CPD Approval period, maintain complete, true and accurate records in accordance with all applicable laws.

7.2 Subject to our rights, and your obligations, under this Agreement in relation to your CPD Provider Registration and the approval of programs, we agree that we will have no control or influence over you with respect to the conduct of your business.

8. Intellectual property

8.1 We acknowledge that you are the owner of the intellectual property in the content of a program which is developed by you (including content of an Approved CPD Program that you develop or any changes required by us).

8.2 You acknowledge that:

a) we are the owner of the CPD Intellectual Property and any changes or improvements to the CPD Intellectual Property;

b) you do not obtain any interest in the CPD Intellectual Property; and

c) you do not have a right to use the CPD Intellectual Property except for the CPD Brand, and your right to use the CPD Brand comes from this Agreement.

8.3 We grant you a limited, royalty-free, nonexclusive licence to use the CPD Brand in Australia for the sole purpose of promoting

and delivering an Approved CPD Program in accordance with this Agreement.

8.4 The licence to use the CPD Brand is granted only if you:

a) use the CPD Brand in the manner specified by us in the CPD Branding and Advertising Guidelines;

b) do not make changes to or interfere with the CPD Brand;

c) do not register or seek to register any of the CPD Brand; and

d) do not use the CPD Brand, the words "continuing professional development" or the acronym "CPD" or derivatives of those words or that acronym in your corporate name or business name, or in any trade mark or service mark.

8.5 We may change, add to, or discontinue the use of any of the CPD Brand.

8.6 We will give written notice to you of any changes proposed under clause 8.5 and you will comply with the notice at your own cost, within the reasonable timeframe specified by us.

9. Withdrawal, suspension and termination

9.1 A Default Event occurs if you:

a) fail to carry out any provision of this Agreement, the failure is capable of being remedied, and you do not remedy that failure within the period of time specified in a written notice from us specifying the failure and requiring it to be remedied;

b) fail to comply with any material obligation, undertaking or warranty under this Agreement and that failure is not, on any reasonable or economic basis, capable of remedy; or

c) are subject to an Insolvency Event.

9.2 If a Default Event occurs, or we have reasonable grounds to suspect a Default Event has occurred or is likely to occur:

a) we may, at any time:

i. remove any information about your Approved CPD Program from the CPD Directory; and

ii. withdraw your licence to use the CPD Brand under clause 1.8; and

b) you must, at our request, immediately stop using the CPD Brand and remove all material from any website and promotional literature that associates your business and/or your Approved CPD Program with us or the CPD Business,

without in any way limiting our other rights and remedies under this Agreement or at law.

9.3 If a Default Event occurs we may, in our absolute discretion, by giving notice to you:

a) suspend your CPD Provider Registration for a specified period pending an investigation by us (in which case approval of any of your Approved CPD Programs are also suspended for the same period); or

b) terminate this Agreement, cancel your CPD Provider Registration and withdraw approval for all of your Approved CPD Programs.

9.4 You may terminate this Agreement if you give us 30 days' notice of such termination for any reason whatsoever.

9.5 On termination of this Agreement:

a) unless this Agreement expressly provides otherwise, all rights, benefits and authorisations granted by each party to the other under this Agreement will cease;

b) you must immediately stop using the CPD Brand and remove all material from any website and promotional literature that associates your business and/or your Approved CPD Program with us or the CPD Business;

c) each party must immediately return to the other party all documents and materials containing Confidential Information and any other property owned by the other party;

d) the obligations of the parties will cease but the following clauses continue: clauses 1.4, 1.5, 1.6, 1.7, 1.8 (General provisions), 0 (Intellectual Property, but not the right to use the CPD Brand), 9.5 (Consequences of Termination), 0 (Indemnity), 0 (Privacy) and 0 (Dictionary and Interpretation);

e) accrued rights or remedies of either party are not affected; and

f) we will not refund the fees and charges paid by you.

10. Indemnity

10.1 You will be solely responsible for, and will indemnify us and keep us indemnified in respect of:

a) any claims or demands made or any legal proceedings commenced by any person which arises out of your conduct of an Approved CPD Program or your relationship with your customers, suppliers and other persons with whom you deal; and

b) any loss and expense suffered or incurred by us arising directly or indirectly from any breach of this Agreement by you, unless caused by us or our Personnel.

11. Fees

11.1 You agree to pay us the fees and charges that are specified in your application, or as otherwise published by us from time to time.

11.2 The fees and charges referred to in clause 11.1 must be paid on time and in the manner specified by us.

11.3 The fees and charges referred to in clause 11.1 are non-refundable unless otherwise prevented by law, or permitted under another clause in this Agreement.

11.4 You acknowledge and agree that:

a) we will not commence assessing your application;

b) we will not register you as a Registered CPD Provider or grant you CPD Approval for a program; and

c) we may suspend, withdraw or cancel your CPD Provider Registration and/or approval for any Approved CPD Program,

if you do not pay the fees and charges in accordance with this Agreement.

12. Goods and services tax (GST)

12.1 In this clause:

a) **'GST'** means GST as defined in the A New Tax System (Goods and Services Tax) Act 1999 as amended from time to time (**GST Act**) or any replacement or other relevant legislation and regulations; and

b) words used in this clause which have a particular meaning in the **'GST law'** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires.

12.2 Unless GST is expressly included, the consideration expressed to be payable under any other clause of this Agreement for any supply made under or connection in with this Agreement does not include GST.

12.3 To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply, and is payable at the same time.

12.4 Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Agreement.

12.5 Each party warrants to the other party that it is registered for GST at the time this Agreement is entered into and will promptly notify the other party if this ceases to be the case.

13. Privacy

13.1 You must:

a) disclose to, or allow us to access, such Personal Information (including Personal Information relating to your customers) as is necessary to enable us to provide the Service;

b) ensure that we and each of our Personnel are entitled to collect, use, store and disclose that Personal Information in accordance with this Agreement, so as to enable us to provide the Service; and

c) not do anything, and must ensure that your Personnel do not do anything, that would cause us or our Personnel to be in breach of a Privacy Law.

13.2 Each party must, with respect to Personal Information that it receives from the other party in connection with this Agreement or the Service:

a) protect the confidentiality of that Personal Information;

b) comply with all applicable Privacy Laws; and

c) implement policies and procedures to protect the privacy and security of that Personal Information.

13.3 You acknowledge and agree that we may use, and disclose to third parties (including your customers and potential customers), information relating to the status of your CPD Provider Registration, any application for CPD Program Approval and any of your Approved CPD Programs. We may disclose this information on the CPD Provider Registration pages of our website.

14. Changes to these terms

14.1 Unless otherwise prevented by law, we may, by at least 30 days' notice to you, alter or vary this Agreement.

14.2 You may terminate this Agreement if you are not satisfied with any variation under clause 14.1 and you give us notice of such termination within 30 days after we gave you notice of the variation.

14.3 If you terminate this Agreement under clause 14.2, clause 9.5 (except for paragraph f)) applies. We may refund the whole or part of the fees and charges we consider reasonable having regard to your particular circumstances.

15. Dictionary and interpretation

15.1 In this Agreement:

Agreement has the meaning ascribed to that term in clause 1.3.

Approved CPD Program means any education or training program, event, module course or assessment, in whatever form, in respect of which we have given CPD Approval in accordance with clause 3.

Authority means any statutory government, industry or regulatory body.

CPD Approval means approval of a program by us under clause 2.

CPD Approval and Assessment Guide means the guide developed by us which outlines the material required to support an application for CPD Approval, including the CPD Approval Assessment Criteria, contained in http://ausactive.org.au/cpd-approval-guide

CPD Approval period has the meaning ascribed to that term in clause 3.4.

CPD Brand is limited to the words, tagline and logos set out in the CPD Branding and Advertising Guidelines.

CPD Branding and Advertising Guidelines means the guidelines contained in http://ausactive.org.au/cpd-branding

CPD Business means our business in developing and marketing our unique methods and system of reviewing, approving and denying applications for CPD Program Approval and applications for CPD Provider Registration.

CPD Directory means our directory of CPD programs Australia-wide.

CPD Intellectual Property includes:

a) the trademarks, trade names or logos owned or licensed by us which we authorise you to use for an Approved CPD Program;

b) all intellectual property rights in the corporate name "AUSactive";

c) any registered or unregistered product or service names owned or licensed by us;

d) all copyright in the materials, documents, programs or other items provided to you as part of the CPD Business or the CPD Brand;

e) all trade mark, copyright, designed or other intellectual property rights owned or licensed by us relating to the CPD Business;

f) our website and domain name; and

g) all inventions and discoveries made by us.

CPD Provider Registration means an applicant who has been approved by us to be CPD Provider in accordance with clause 2.

Confidential Information of a party means any information of or relating to the party that:

a) is by its nature is confidential;

b) is designated as confidential; or

c) the other party knows or ought to know is confidential, and includes:

d) information comprised in or relating to any intellectual property of the party or its related bodies corporate;

e) information relating to the business, financial position, operations or affairs of the party or its related bodies corporate; and

f) information relating to the Personnel, policies and strategies of the party or its related bodies corporate.

Guidelines mean the guidelines set by us including the current version of the:

a) AUSactive Professional Scope of Practice;

b) AUSactive Professional Code of Ethical Conduct;

c) AUSactive Exercise Guidelines, where relevant to CPD Program content;

d) CPD Approval & Assessment Guide and

e) CPD Branding and Advertising Guidelines

Insolvency Event means:

a) being an insolvent under administration or insolvent (each as defined in the Corporations Act);

b) having a controller (as defined in the Corporations Act) appointed;

c) being in receivership, in receivership and management, in statutory management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent);

d) being otherwise unable to pay debts when they fall due; or

e) having something with the same or a similar effect happen under the laws of any jurisdiction.

Personal Information means all information about a person that is 'personal informationn' as defined in the *Privacy Act 1988* (Cth) which is collected or held by any of the parties in connection with this Agreement or the Service.

Personnel of a party are the employees, officers, consultants, contractors, representatives and agents of the party.

Privacy Laws means the *Privacy Act 1988* (Cth) and any other laws that regulate the collection and use of Personal Information in Australia.

Registered CPD Provider means an applicant that has been approved by us pursuant to clause 1.2.

Service has the meaning referred to in clause 6.

you, your or derivatives of any of those terms, means the applicant set out in your application to the Service.

we, us, or derivatives of any of those terms, means AUSactive Limited (ABN 51 131 422 403) of PO Box 6453 Alexandria NSW 2015, New South Wales.

15.2 A reference to any legislation or statutory instrument or regulation in this Agreement is a reference to that legislation or statutory instrument or regulation as amended or replaced from time to time.

15.3 No provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision.

15.4 If a party consists of more than 1 person, this agreement binds each of them separately and any 2 or more of them jointly.

15.5 An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.

15.6 A party, which is a trustee, is bound both personally and in its capacity as a trustee.