



Partners in Progress

Product Terms of Use

Partners in Progress

The website located at: partnerinprogress.org (**Website**) is owned, controlled and operated by Partners in Progress (CBN 667000008) (**we, our, us or Partners in Progress**).

The terms of use below (**Terms of Use**) apply to access and use of the Products (defined in Part B below) by you (**you, your or User**), available via the Website.

The Products are available for you to access and use, conditional on your acceptance of the Terms of Use. By checking that you agree to the Terms of Use when registering a User Account (defined below), or by accessing any Products subject to the Terms of Use, you agree to be legally bound by the Terms of Use. If you do not accept the Terms of Use, you must not create a User Account or access the Products.

You should familiarise yourself with the Terms of Use before creating a User Account or accessing any Products. If you have any questions about the Terms of Use, you can contact us at: dc@partnerinprogress.org

PLEASE CAREFULLY NOTE THE FOLLOWING ABOUT THE TERMS OF USE:

- Your rights to access and use the Products may be subject to payment of the Fee.
- Products may only be used for the Purposes (as defined below).
- Your ability to hold us responsible for any loss or damage you may suffer from using the Products may be significantly restricted.
- Our liability to you for any loss or damage you may suffer from using the Products may be significantly restricted.
- Subject to any rights which you may have as a Consumer or otherwise at law which cannot be excluded under contract, your use and access of the Products is on an "as is" basis and is entirely at your own risk.
- You are solely responsible for compliance with all laws and regulations applicable to your use of the Products.
- There are restrictions that apply to your use of the Products, and 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 from your breaching the Terms of Use.
- We may change the Terms of Use at any time. Notice of any variations will be displayed on the Website and notified to you via your User Account. Any Products accessed by you after the effective date of variation of the Terms of Use will be bound by the Terms of Use as varied.

A: TERMS

1. Application of Terms of Use

- 1.1. You agree to be legally bound by the Terms of Use when you do any of the following:
 - a. check that you agree to the Terms of Use when registering a User Account; or
 - b. access any of our Products where notice is provided to you that the Terms of Use will apply to such access.
- 1.2. Your access to, and use of, the Products, is subject to all conditions specified in the Terms of Use.

2. User Account

- 2.1. In order to access the Products, you may be required to create a User Account.
- 2.2. You will be required to create a unique password to obtain access to your User Account (Password). You are responsible for maintaining the confidentiality of your Password. You must immediately notify us of any suspected misuse of your Password.
- 2.3. You must not transfer your User Account to any other person or allow access to your User Account by another person unless expressly authorised by us.
- 2.4. We are not liable for any Loss or Claim related to your failure to maintain the security of your Password or User Account.
- 2.5. You agree that we may send emails to your nominated email address for your User Account for the purpose of providing you with notifications regarding the Products or Website.
- 2.6. If you'd like us to delete your User Account, please contact us at: dc@partnerinprogress.org outlining your request.

3. Products

- 3.1. We will provide access to the Products which you have requested, subject to the Terms of Use and payment of the Fee (if applicable).
- 3.2. We may accept or reject your request to purchase access to the Products (where a Fee is payable) at our discretion. If we reject your request to purchase, we will notify you of that rejection and refund any Fees paid which are related to your request to purchase.
- 3.3. The Products may be hosted on, and accessible via, a third-party platform (Hosting Platform). Your use and interactions with the Hosting Platform are governed by the terms of use or similar agreement in place which governs using and accessing these platforms (Hosting Platform TOU). You agree to comply with the Hosting Platform TOU, as applicable.

4. Intellectual Property

- 4.1. The Intellectual Property subsisting in the Products (AT IP) is exclusively owned and controlled by us or our third-party licensors, and is protected by Australian and international law governing intellectual property rights. The AT IP remains the exclusive property of us or our third-party licensors.
- 4.2. We provide you with a non-exclusive, non-sublicensable, revocable, worldwide and non-transferrable licence to use the Products:
- a. for the following purposes only (collectively, the Purposes):
 - i. accessing and viewing the Products on your electronic device for personal use;
 - ii. transferring copies of the Products between your electronic devices for personal use;
 - iii. printing a hard copy of the Products (insofar as this is possible) for personal use;
 - iv. where you are a member of an educational institution, causing the Products to be viewed by students and other members of your educational institution. This is by sending electronic copies of the Products to those students and other members, or printing hard copies of the Products (insofar as this is possible) to provide to those students and other members;
 - v. where you are a member of a workplace, causing the Products to be viewed by other members within your workplace or organisation. This is by sending copies of the Products to those members, or printing hard copies of the Products (insofar as this is possible) to provide to those members;
 - vi. embedding or reproducing any content from the Products (Embedded Content) into separate documents and materials which you create (Embedded Materials), provided that you:
 - A. do not modify the Embedded Content;
 - B. only use the Embedded Materials in the same way as the Products may be used under this clause 4.2; and
 - C. where the Embedded Materials are not for personal use only, credit Partners in Progress as the author of the Embedded Content in the Embedded Materials, using the following form: "© Partners in Progress, content downloaded from partnerinprogress.org, used with permission". The credit must appear directly underneath where any Embedded Content appears in the Embedded Materials.
 - b. for the Products where a Fee is payable, for the period of time noted on the section of our Website where information for the relevant Products is displayed (if any).
- 4.3. We may add or vary the Purposes for specific Products (Varied Purposes). Where this applies, the Varied Purposes will be outlined where information for the relevant Products is displayed on our Website. To the extent there is any inconsistency between the Varied Purposes and the Purposes, the Varied Purposes will prevail to the extent of any

inconsistency.

- 4.4. Any third parties that are provided with access to, or copies of, the Products or Embedded Materials by you, as permitted by the Purposes, may only use the Products or Embedded Materials for the Purposes. You will be responsible and liable under the Terms of Use for any misuse of Products by these third parties.
- 4.5. Subject to clauses 4.2, 4.3 and 4.4, you are not permitted to save, download, reproduce, publicly show, display, copy, alter, conceal, adapt, perform, transmit, broadcast, sell, license or otherwise exploit any AT IP (including by authorising third parties to do any of these things) unless you have our express prior written authorisation. Any unauthorised use of AT IP by you is strictly prohibited.
- 4.6. If you would like to use Content outside of the Purposes, please make a licensing request to: dc@partnerinprogress.org including the following information:
 - a. a description of the Products which you wish to licence;
 - b. a description of the purposes for which you'd like to use the Products; and
 - c. the duration for which you require the licence.

5. Fees

- 5.1. Fees can be paid through the functionality provided on the Website for credit card payment (which may be via an ecommerce payment provider), or by requesting an invoice from us for the Fee.
- 5.2. If you request an invoice, once it has been paid, we will send you an email (to the nominated email address for your User Account) with a hyperlink to access the Products you have requested, and/or enable access to the Products you have requested via your User Account. If you pay via the Website, your User Account will be provided access to the Products you have requested.
- 5.3. If we use a third-party ecommerce payment provider to process payment of Fees, your use of that platform to pay the Fees is governed by the applicable terms of service for that payment provider.
- 5.4. You are not entitled to a refund of the Fee paid to access to the Products, for change of mind reasons.

6. Disclaimers

- 6.1. We provide access to the Products on an "as is" basis. To the extent permitted by law, we do not provide any representations, guarantees or warranties to you that the Products will be suitable or fit for any purpose.
- 6.2. We are not responsible, and disclaim any legal responsibility or liability to you, for the

following:

- a. ensuring that the Products are complete, accurate, reliable, up to date and always available;
- b. any content which can be accessed through hyperlinks in the Products to third-party websites, or any third-party information or content which appears in the Products (Third-Party Content). All Third-Party Content is the responsibility of its author or publisher, and we do not endorse, support, represent or guarantee the accuracy, completeness or reliability of that content.

7. Exclusions and Limitations of Liability

- 7.1. If you are a Consumer, the provision of our Products comes with consumer guarantees under the Australian Consumer Law (Consumer Guarantees), being Schedule 2 of the Competition and Consumer Act 2010 (Cth) (ACL). If you are a Consumer, nothing in the Terms of Use is intended to limit or exclude your Consumer Guarantees.
- 7.2. Except for liability in relation to breach of any obligation, condition, warranty or guarantee (including the Consumer Guarantees or otherwise under the ACL), the exclusion of which under a contract would contravene any statute or cause any part of the Terms of Use to be void (Non-Excludable Conditions):
 - a. your use and access of, and reliance on, our Products is entirely at your own risk; and
 - b. to the extent permitted by law, we (including our Representatives) exclude our liability to you for all types of Loss resulting from your use of, access of, or reliance on, our Products however incurred (whether based in negligence or any other tort, contract, statutory liability or otherwise), including (without limitation) for any lost profit, lost opportunity, lost revenue, lost data, losses resulting from security failure or computer viruses, or any direct, indirect or Consequential Loss.
- 7.3. If we are able to limit your remedy for a breach of any Non-Excludable Conditions, then our liability for a breach of any Non-Excludable Conditions is limited to one or more of the following at our option:
 - a. 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
 - b. for services, the supply of the services again, or the payment of the cost of having services supplied again.
- 7.4. Subject to the application of any Non-Excludable Conditions, you hereby release us and our Representatives from any Loss, Claim or other liability that you suffer or incur (whether based in negligence or any other tort, contract, statutory liability or otherwise) which arises from, or is connected with, any of the following:

- a. your use and access of, or inability to use or access, the Products;
- b. your reliance on any Products or Third-Party Content; and
- c. accessing hyperlinks to third-party websites through the Products.

8. Indemnity

- 8.1. You agree to indemnify us and our Representatives, and must keep us and our Representatives indemnified, against any Loss or Claim that we or our Representatives suffer on incur (whether based in negligence or any other tort, contract, statutory liability or otherwise) that arises from, or is connected with, your breach of any term of the Terms of Use.
- 8.2. This indemnity in clause 8.1 is a continuing obligation, independent from the other obligations under the Terms of Use, and continues after the Terms of Use expires or is terminated.

9. Privacy Policy

When providing our Products, we will collect, handle and use any Personal Information in accordance with our Privacy Policy.

10. Termination

- 10.1. The Terms of Use may be terminated:
 - a. by mutual written agreement;
 - b. by a party, if the other party breaches a term of the Terms of Use which is not capable of remedy, or which is capable of remedy and has not been remedied within 14 days of receiving written notice (which, for notice sent to us, must be sent to: dc@partnerinprogress.org with the subject line "Notice of Breach") from the non-breaching party detailing the extent of the breach.
- 10.2. For the avoidance of doubt, the use of Products other than for the Purposes (or Varied Purposes where applicable), and any breach of clauses 4 or 5 by you, is considered a breach of the Terms of Use which is not capable of remedy and will provide us with the right to immediately terminate the Terms of Use with you under clause 10.1(b).
- 10.3. Any rights and obligations under the Terms of Use, which by their nature would reasonably continue beyond the expiration or termination of the Terms of Use, will survive the expiration or termination of the Terms of Use. Without limiting the clauses that will survive, the parties agree clauses 6, 7, 8, 10 and 11 survive the expiration or termination of the Terms of Use.

11. Jurisdiction & Choice of Law

These Terms will be governed by and construed in accordance with the laws of Victoria, Australia.

The parties submit to the non-exclusive jurisdiction of the courts of Victoria, including (without limitation), the registries of the Federal Court of Australia and Federal Circuit Court of Australia located in Victoria, for the purpose of litigating any Claims arising out of the Terms of Use. Jurisdiction & Choice of Law

12. Miscellaneous

- 12.1. The Terms of Use contain the entire agreement between the parties in relation to its subject matter.
- 12.2. We may change the Terms of Use at any time. Notice of any variations will be displayed on the Website and notified to you via your User Account. A reasonable notice period will be given prior to any variations to the Terms of Use becoming effective. Any new Products accessed by you after the effective date of variation of the Terms of Use will be bound by the Terms of Use as varied. If you do not agree to the Terms of Use as varied, you should not access any new Products.
- 12.3. A waiver by any party of any term or condition of the Terms of Use in any instance will not be deemed or construed as a waiver of such term or condition for the future, or of any subsequent breach thereof.
- 12.4. Any term, condition or warranty not expressly stated in the Terms of Use that may otherwise be implied into the Terms of Use is excluded.
- 12.5. If any provision of the Terms of Use is determined for any reason to be unenforceable or invalid, that provision will be read down to the extent of such unenforceability or invalidity, or if not capable of being read down, then it will be deemed severed from the Terms of Use and will not affect the validity and enforceability of any remaining provisions.
- 12.6. In the Terms of Use:
 - a. singular includes the plural and vice versa;
 - b. words such as including or for example do not limit the meaning of the words preceding them;
 - c. an obligation or liability assumed by, or a right conferred on, two or more parties binds or benefits them all jointly and severally;
 - d. a reference to the Terms of Use, includes the Terms of Use as assigned, novated, altered, supplemented or replaced from time to time;
 - e. a reference to a statute includes regulations and other instruments under it, and consolidations, amendments, re-enactments or replacements of any of them; and
 - f. the Terms of Use should not be construed to the disadvantage of a party because the party was responsible for the preparation of the Terms of Use or any part of it.

B: DEFINITIONS

- A. The following definitions apply in the Terms of Use:
- i. "Claim" means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature.
 - ii. "Consequential Loss" means special, incidental, indirect or consequential loss or damage, and loss of revenue, anticipated savings, profits, goodwill, reputation, interest or business.
 - iii. "Consumer" means a User who obtains the Products in Australia, and:
 - a. the amount payable for requesting the Products does not exceed \$100,000;
 - b. the Products are of a kind ordinarily acquired for personal, domestic or household use or consumption; or
 - c. falls within the definition of "Consumer" under Schedule 2 of the Competition and Consumer Act 2010 (Cth).
 - iv. "Fee" means the fee payable to us to access the specific Products which you have requested.
 - v. "Loss" means loss, damage, liability, charge, expense, payment or cost of any nature or kind, including Consequential Loss and all legal and other professional costs (calculated on an indemnity basis).
 - vi. "Intellectual Property" means all intellectual property and proprietary rights (whether registered or unregistered, present or future), including business names, trademarks, copyright, domain names, websites, patents, patent applications, designs, plant varieties, circuit layouts, discoveries, inventions, improvements, databases, logos, technical data, photographs, video recordings, sound recordings, drawings, trade secrets, confidential information, know-how, research data and any other physical or digital media or similar intellectual property rights, and any other intangible proprietary assets arising from intellectual activity.
 - vii. "Personal Information" is as defined in the Privacy Policy.
 - viii. "Privacy Policy" means the "Privacy Policy" for Partners in Progress as amended or updated from time to time, located at:
 - ix. "Products" means educational, teaching, curriculum, information and other products or materials which Partners in Progress distributes that are available to access, view and/or download on the Website:
 - a. with a User Account; or
 - b. without a User Account, and notice is displayed on the Website that the Terms of Use applies to your access, viewing and/or downloading of those materials.
 - c. The materials may be comprised of video recordings, audio recordings, text, underlying source and object code, photographs, graphics and/or logos.

- x. "Representatives" means, in relation to a party, its officers, directors, employees, contractors, consultants, agents, members and other authorised representatives.
- xi. "User Account" means an account for a User of the Website which can be registered on the Website.