

# General Service Terms and Conditions

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## 1. Definitions and interpretation

### 1.1 Definitions

The following terms are defined in this Agreement as follows or as set out in the Schedule.

**Agreement** means this agreement and any annexures, schedules and items thereto.

**ATT** means AU Tutoring Pty Ltd (ACN 660 001 892) trading as 'Affordable Tutoring Tasmania'.

**ATT Services** means the service of providing the ATT Platform.

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Tasmania, Australia.

**Commencement Date** means that date that the User signs up to the Platform for the ATT Services.

**Confidential Information** includes any information marked as confidential and any information received or developed by ATT during the term of this Agreement, which is not publicly available and relates to processes, equipment and techniques used by ATT in the course of ATT's business including all information, data, drawings, specifications, documentation, source or object code, designs, construction, workings, functions, features and performance notes, techniques, concepts not reduced to material form, agreements with third parties, schematics and proposals and intentions, technical data and marketing information such as customer lists, financial information and business plans.

**Fees** mean all fees payable to ATT by the User including any relevant bank fees, processing fees, fees associated with dishonoured direct debits and other fees or charges relating to any payment transaction between the User and ATT.

**Group Classes** means a lesson provided by Tutors where multiple students to join one class, and which is denoted as a group class on the Platform.

**GST** means the goods and services tax payable under the GST Law.

**GST Law** means *A New Tax System (Goods and ATT Services Tax) Act 1999* (Cth) and related legislation passed by the Federal Government.

**Intellectual Property** includes all present and future copyright (including photographs and graphics, including drawings, designs, illustrations) and neighbouring rights, all proprietary rights in relation to inventions, registered and unregistered trade marks, confidential information (including trade secrets and know-how) registered designs, and the right to apply for a grant of registration of any of the foregoing.

**Lesson Price** means the agreed hourly (or pro-rata per hour) price for Tutoring Services provided by a Tutor (plus applicable GST) and paid or payable to ATT by a Student.

**Moral Right** has the meaning given to it in the *Copyright Amendment (Moral Rights) Act 2000* (Cth) and includes rights of integrity of authorship, rights of attribution of authorship and similar rights that exist or may come to exist anywhere in the world.

**Personnel** means an employee, contractor, officer or agent of ATT.

**Platform** means the ATT website at <https://www.affordabletutoringtasmania.com/> including its subdomains and any other website that we operate from time to time.

**Policies** means any of ATT's policies as notified to the User from time to time.

**Related Body Corporate** has the same meaning as it has in the *Corporations Act 2001* (Cth).

**Student** means

- (a) a person who uses the ATT Platform to seek or receive Tutoring ATT Services; or
- (b) in circumstances where such a person is under 18 years of age, both the person who seeks or receives ATT Services and, where applicable, that person's parent or legal guardian (being the parent or legal guardian who has acknowledged and agreed to be bound by this User Agreement).

**Termination Date** means the date of termination of this Agreement in accordance with its terms or as a result of the Agreement being terminated on such other terms as are mutually agreed between the parties.

**Tutor** means a person that provides, or seeks to provide, ATT Services to a Student.

**Tutoring Services** means tutoring and related services offered or rendered to Students, including but not limited to private or Group Classes, Courses lessons, coaching, teaching, mentoring and lesson preparation.

**User or you** means the person who has signed up to use or access the ATT Platform, whether as a Student or otherwise.

## 1.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Agreement;
- (b) a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure, as the case may be, of this Agreement;
- (c) a reference to any legislation includes subordinate legislation and all amendments, consolidations or replacements from time to time;
- (d) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity;
- (e) the words "includes" and "including" or words of similar effect are not words of limitation;
- (f) no clause of this Agreement shall be interpreted to the disadvantage of a party merely because that party drafted the clause or would otherwise benefit from it;
- (g) a reference to a party includes the party's successors, assigns and persons substituted by novation;
- (h) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (i) a reference to time and date is to local time and dates in Tasmania, Australia; and
- (j) unless specified otherwise, a reference to "\$" or "dollars" refers to Australian dollars.

## 1. Application of this Agreement

- 1.1 This Agreement constitutes the terms and conditions upon which the User agrees to adhere to in consideration for its use of the Platform. These terms form a binding legal agreement between ATT and the User.
- 1.2 This Agreement commences on the Commencement Date and continues for as long as the Seller uses the Platform unless terminated earlier in accordance with this Agreement.

## 2. Agreement

- 2.1 The User acknowledges and agrees that its use of the ATT Services is governed by this Agreement together with ATT's applicable policies.
- 2.2 ATT provides the ATT Platform only to enable Tutors to offer Tutoring Services, and for Users to purchase the Tutoring Services, in accordance with this Agreement.
- 2.3 The User agrees that the Platform is merely an online marketplace which facilitates the connection between Users and Tutors. ATT will charge a service fee based on a percentage of the fees earned by a Tutor when they provide Tutoring Services to a User(s).
- 2.4 The User acknowledges and agrees that ATT is neither a party to any agreement entered into between a User and a Tutor nor does ATT have any control over the Tutoring Services or the conduct of Tutors and other Users of Platform and disclaims all liability in this regard.
- 2.5 Any meetings (virtual or otherwise) between Users, Tutors or any other third parties and any purchases of Tutoring Services provided by Tutors are done at the parties' sole risk.
- 2.6 Users acknowledge and agree that an in person meetings conducted are the sole responsibility and risk of the User and ATT has no liability or responsibility to ensure such locations are risk free for Users.
- 2.7 If a User/Student is under 18 years of age, a parents or legal guardian must enter this Agreement on their behalf and both User/Student and their parents/legal guardians will need to ensure compliance with this Agreement.

## 3. ATT Services

- 3.1 Details about the Tutoring Services available for purchase by a User will be listed on the ATT Platform, including, but not limited to, the subject, topic, number of sessions, mode of conduct, and time slots of the lectures and pricing and related rules and financial terms.
- 3.2 Users understands and agree that any hourly rates charged for Tutoring Services will depend on the rates of the individual Tutor and subject to change based on Tutor's rates. ATT is paid a commission charged to the Tutor for services of facilitating the availability of the Platform and related services.

- 3.3 Once a User and Tutor agree to the terms of Tutoring Services (namely price, date, time and location), the Student and Tutor must schedule the lesson on the ATT Platform.
- 3.4 The User will determine the time and place for the performance of the Tutor Services when scheduling a the Tutoring Services via the Platform by using the available 'Location' filter, which may be either a physical location or online.
- 3.5 Upon request of ATT, the User must provide all information requested or otherwise required by ATT to enable ATT to perform the ATT Services (**Student Information**) within the time frame specified by ATT, or if no time frame is specified, within a reasonable time not being more than two (2) weeks after ATT makes such request. ATT will not be liable for any losses or claims in relation to its reliance on, the accuracy of or any errors in such information and data.
- 3.6 The User may schedule Tutoring Services via the Platform in accordance with the following steps and system:
- (a) **Step 1:** The User initially selects the Subject/Language and timeslot;
    - (i) When selecting the timeslot above, Users may select a duration between 15 – 120 minutes. Each duration will be set in accordance with the duration the Tutor is able to hold a Lesson for which is to be set via the Platform.
  - (b) **Step 2:** The User will then be able to select the quantity of Tutoring Services it wishes to schedule, which may include scheduling multiple Tutoring Services at once.
    - (i) The Tutor is able to set the associated price for each Tutoring Services via the Platform including offering discounted rates for 'slabs' of Tutoring Services i.e. the scheduling of multiple Tutoring Services at once.
    - (ii) The User may also choose the 'Recurring Buy' option. If this option is enabled, the Tutoring Services selected will be automatically scheduled every four (4) weeks. Payments will be automatically debited from its wallet balance on the Platform.
  - (c) **Step 3:** The User will then be able to select the applicable date and time for the Lesson.
  - (d) **Step 4:** The User will then select the applicable payment method and confirm payment of the price at which point the Tutoring Services will be scheduled.
- 3.7 ATT will not be responsible for any losses, claims or expenses arising out of or in connection with:
- (a) any breach by the User, of this Agreement, including failure by the User to notify ATT directly of any errors, inaccuracies, misleading representations;
  - (b) any delay in the performance of the Tutoring Services, including where the User fails, or delays in, providing information or data requested by ATT; and
  - (c) any consequential or indirect losses caused by the provision of ATT Services or in any way connected with this Agreement.

#### 4. Account Registration

- 4.1 In order to access certain features of the Platform, Users must register an account with ATT. A Tutor is also registered and maintains an account (**ATT Account**) for providing services through the Platform.
- 4.2 Upon registration, Tutors on the Platform are required to confirm that they are Australian residents with working rights in Australia and hold a valid Working with Vulnerable People Check (or equivalent in the state or territory which they are providing the Tutoring Services). However, the User acknowledges and agrees that while some efforts will be made to verify the authenticity of a Tutors Working with Vulnerable People Check, it is the sole responsibility of the Tutor to hold up to date and valid Working with Vulnerable People Checks. Users agree that they are solely liable for verifying a Tutor's Working with Vulnerable People Check themselves prior to engaging the Tutor for Tutoring Services. A User's ATT Account will be created based upon the personal information provide to us at registration.
- 4.3 At registration of the ATT Account, you will be directed to top up money to use for the purchase of Tutoring Services on a digital wallet (**Digital Wallet**). This Digital Wallet is an account on your Platform that allows Users to store money and make electronic transactions with Tutors for Tutoring Services.
- 4.4 No User may not have more than one (1) active ATT Account.
- 4.5 All Users agree to provide accurate, current and complete information during the registration process and to update such information to keep it accurate, current and complete. ATT reserves the right to suspend or terminate any ATT Account and access to the Platform and ATT Services if more than one (1) ATT Account is created, or if any information provided during the registration process or thereafter proves to be inaccurate, fraudulent, not current, incomplete, or otherwise in violation of this Agreement.

4.6 Each User is responsible for safeguarding their password and agrees that it will not disclose the password to any third party and that it will take sole responsibility for any activities or actions under its ATT Account, whether or not such actions have been authorised. All Users agree to immediately notify ATT of any unauthorized use of its ATT Account.

4.7 You may receive, be entitled to, provided, gifted or granted credits for Tutoring Services following registration on the Platform from other Users, Tutors or ATT. All credits are non-refundable or convertible into cash and can only be used or claimed by being used to offset the cost of a paid lesson with a Tutor on the Platform.

## 5. User obligations

5.1 The User agrees to:

- (a) comply with this Agreement (including all ATT policies incorporated by reference) and all applicable laws and regulations;
- (b) only post accurate information on the Platform;
- (c) ensure that it is aware of any laws that apply to it as a Student or Tutor or User, or in relation to accessing or using the Platform or obtaining the Tutoring Services (including those around child safety as outlined in our Child Safety Policy [[Tasmania](#)][[Victoria](#)]);
- (d) ensure the provision of Tutoring Services are monitored by a parent, guardian or teacher particularly if the Student classified as a minor (under 18);
- (e) obtain access to a computer with the latest version of the browser, a camera and microphone, and reasonable internet access;
- (f) only communicate with the ATT tutor/s through the ATT Platform and communication systems; and
- (g) comply with ATT's policies and procedures as updated by ATT from time to time.

5.2 The User agrees that it will not:

- (a) not share any private contact information, unless Tutoring Services is to take place in-person at a User's household;
- (b) engage in unlawful, obscene, harassing, intimidating, threatening, predatory or stalking conduct, or conduct that may fall under one of the aforementioned categories;
- (c) disclose or share the ATT Account password or login information for the ATT Platform with any party;
- (d) use the Platform in a manner that may affect, damage, disrupt, impair, disable, interfere with or prevent the reliability and performance of the Platform, or interfere with or attempt to interfere with any other user's use of the Platform;
- (e) copy or impersonate any other person or entity, or misrepresent any of your details including your image (for example by using only arcuate and current photos), name, age, identity, affiliation, connection or association with, any other person or entity;
- (f) use the Platform to promote or solicit involvement in or, support of a political platform, religion, cult, or sect;
- (g) post a person's personal information or images without express permission;
- (h) solicit or engage in any illegal or unlawful activity;
- (i) use the Platform to redirect users to other websites or encourage users to visit other websites;
- (j) use the Platform for any phishing, trolling or similar activities;
- (k) defraud, scam, hack, swindle or deceive other users of the Platform;
- (l) harvest or collect email addresses or other contact information of other users from the Services by electronic or other means or use the Services to send, either directly or indirectly, any unsolicited bulk e-mail or communications, unsolicited commercial e-mail or communications or other spamming or spamming activities;
- (m) circumvent, disable or otherwise interfere with security-related features of the Services or features that determine whether the User is acting in accordance with this Agreement;
- (n) attempt to access any Platform or area of the website that the User is not authorised to access;
- (o) allow third parties to access and use the Platform via the User's ATT Account;
- (p) collect or solicit another person's personal information or images for commercial, inappropriate or unlawful purposes;

- (q) use any programs, scripts, bots or other automated technology to scrape or access the Platform or hijack user accounts or log-in sessions;
- (r) embed, frame, include or imitate any part of the Platform on another website, application or other platform, without our prior written authorisation;
- (s) use any kind of code, program or device containing reference to the Platform in order to direct any person to any other website for any purpose;
- (t) use robots, data mining or similar data gathering or extraction methods or otherwise collect any pictures, descriptions, data or other content from the Platform;
- (u) attempt to mislead others as to the origin of any information through the Platform by copying, forging or manipulating identifiers such as headers, footers or signatures;
- (v) use automated methods or processes to use or access the Platform or create user accounts;
- (w) attempt to, or actually gain, unauthorised access to our Platform, the server on which our Platform is stored or any server, computer or database connected to our Platform;
- (x) cause harm to our Platform by hacking, phishing, introducing viruses, trojans or other programs, scripts or material that may be malicious or technologically harmful to us, our website, Platform or other users of the Platform; or
- (y) use the Platform other than for their intended purpose.

## 6. Fees

- 6.1 The User may use funds in their Digital Wallet to purchase Tutoring Services by selecting Tutoring Services they would like to purchase.
- 6.2 The fees for the Tutoring Services will be as selected, depending on the Tutor's various fees and will be displayed at checkout, and once purchased the fees plus any applicable taxes or duties will be deducted from the Users Digital Wallet.
- 6.3 The fees for Tutoring Services will be calculated based on the tutor rates (as tutors demand different rates based on their skill and experience). For this reason, there could be different rates for the same Tutoring Services.
- 6.4 Upon purchase of any Tutoring Services, the User authorises ATT and its relevant payment processors to obtain payment from the User for the Tutoring Services from the Digital Wallet and if there is a deficit, from the User's authorised payment provider (including, without limitation, ongoing subscription fees plus relevant taxes and duties) and to store payment information and any other information related to the payment or provision of the ATT Services as outlined in its [Privacy Policy](#).
- 6.5 The User hereby appoints ATT as its authorised limited payment collection agent for the sole purpose of accepting and collecting payments from Users through its third party payment processor and gateway, namely Stripe, and remitting a portion of those payments to the Tutor in accordance with its Tutor Agreement (**Limited Payment Agent**). The User acknowledges and agrees that in ATT's capacity as a Limited Payment Agent:
- (a) payments received from Users shall be considered and viewed as having been made directly to the Tutor;
  - (b) the User's payment obligation to the Tutor is satisfied upon receipt of the payment by Stripe; and
  - (c) all payment services in relation to the withdrawal of funds on the Platform are performed by Stripe.
- 6.6 The User acknowledges and agrees that ATT's role as a Limited Payment Agent is limited to the functions and obligations as set out in clause 6.5 above and it does not act for the Tutor in relation to any other matter. To the maximum extent permitted by law, in the event that the payment is not received by Stripe from the User due to any technological or other error, ATT expressly excludes any and all liability from such an occurrence.
- 6.7 The User agrees that ATT is entitled to and will deduct a commission plus the full amount of any Tutoring Services purchased by a User but not booked with the Tutor, or not completed by the Tutor, or not used within the expiry period of the Subscription Package (**ATT Fees**) for the provision of the Tutoring Services.
- 6.8 If any payment due to ATT is not paid by the due date, ATT reserves the right to suspend or cancel the ATT Services without notice, including the right to delete the User's account and any content affiliated with the ATT Services and the User must pay ATT for any costs or expenses incurred due to or in connection with the non-payment or breach of this Agreement, including but not limited to any legal, enforcement or collection costs and ATT may charge interest of 10% p.a. on any unpaid overdue amounts.
- 6.9 It is a material term of this Agreement that all Tutoring Services provided by a Tutor to a Student are scheduled on and paid for through the ATT Platform.

## **7. Cancellations**

- 7.1 If the Tutor or Student is unwell or is unable to attend the Lesson for any reason, then in the event no re-scheduling of Lessons is to occur, cancellations of Lessons will occur as follows:
- (a) if the Tutor provided the User at least 24 hours' prior notice, then the User will receive a full refund or credit to Digital Wallet (at ATT's election);
  - (b) if the User provides the Tutor at least 6 hours' prior notice, then the User will receive a full refund for the relevant Tutoring Services; or
  - (c) if the User does not provide the Tutor at least 6 hours' prior notice, then the User will forfeit the relevant portion of the Tutoring Services.
- 7.2 Notwithstanding clause 7.1 above if the parties wish to re-schedule a Lesson, then this may occur at a mutually agreed time and place in accordance with this Agreement.
- 7.3 The Users must work with and communicate with ATT, in good faith, for ATT to process refunds, which may include wholly or partially deducting funds from payments owed to the Tutor.

## **8. GST**

- 8.1 Words used in this clause 8 that have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context indicates otherwise.
- 8.2 Unless expressly stated otherwise, the consideration for any supply under or in connection with this Agreement is exclusive of GST.
- 8.3 To the extent that any supply made under or in connection with this agreement is a taxable supply (other than any supply made under another agreement that contains a specific provision dealing with GST), the amount payable by the recipient is the consideration provided under this agreement for that supply (unless it expressly includes GST) plus an amount (additional amount) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.
- 8.4 The recipient must pay the additional amount at the same time as the consideration to which it is referable, and upon the issue of an invoice relating to the supply.
- 8.5 Whenever an adjustment event occurs in relation to any taxable supply to which clause 8.3 applies:
- (a) the supplier must determine the amount of the GST component of the consideration payable; and
  - (b) if the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- 8.6 If either party is entitled under this agreement to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with this agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent that the cost or expense is the consideration for a creditable acquisition made by the party being reimbursed or indemnified, or by its representative member.

## **9. Reporting misconduct**

- 9.1 If any User is acting or has acted inappropriately on or in relation to any aspect of the Platform, including but not limited to anyone who
- (a) engages in child related offence or behavior;
  - (b) engages in conduct contrary to the ATT Child Safety Policy;
  - (c) engages in offensive, violent or sexually inappropriate behaviour; or
  - (d) engages in any other disturbing conduct,
- you should immediately report such person to the appropriate authorities and then to ATT.
- 9.2 You understand and agree that ATT is not responsible or liable for undertaking any investigation in relation to any Tutor before they are admitted to the Platform, including criminal checks, Working with Vulnerable People Checks, verification of qualification held, or any character or other checks of the suitability of a Tutor to perform the Tutoring Services. You understand and agree that you are solely responsible for conducting any appropriate background checks and obtaining references, licenses, certifications, or proof of Working with Vulnerable People Checks prior to engaging a Tutor to perform Tutoring Services. You further understand and agree that you are solely responsible for making your own evaluations, decisions and assessments about choosing a Tutor. You agree to assume all risks and you agree to expressly release, indemnify and hold harmless ATT from any and all loss, liability, injury, death, damage, or costs arising or in any way related to the Tutors and Tutoring Services.

## 10. Licence

- 10.1 Subject to your compliance with this Agreement, ATT grants you a limited non-exclusive, non-transferable license to create user account and use the Platform on your computer that you own or control and run such Accounts solely for your own personal use
- 10.2 By providing or sending to us, uploading, publishing, transmitting or making available any data, content or other material to us (**User Content**), you agree to grant us, our affiliates, licensees and successors a non-exclusive, royalty-free, perpetual, irrevocable, worldwide and fully sub-licensable right to use, communicate, reproduce, modify, adapt, publish, publicly perform, translate, create derivative works from, distribute and display in any form, any such content, including but not limited to text, images, videos, graphics, audio and photographs without attribution, including for the purpose of completing your Order.
- 10.3 By uploading, publishing, transmitting or making available any User Content to us, you warrant and represent to us that:
- (a) you hold all the intellectual property rights to the User Content and have the authority to upload or make available the User Content and licence the User Content to us;
  - (b) our use of the User Content will not infringe or violate any third-party rights, including but not limited to defamation, intellectual property rights, moral rights and privacy rights and will not give rise to an obligation to make any payment to a third party;
  - (c) any User Content you provide within or in relation to the Services is accurate, complete, not false and not misleading;
  - (d) the disclosure and use of the User Content to us will not cause harm to any other user or third party, or violate their rights including any patent, trade mark, trade secret, copyright or other intellectual property or proprietary right (such as User Content that contains copyrighted material without permission) or right to privacy;
  - (e) our use of the User Content will not breach the security of our Services, us or our users by containing viruses, Trojan horses, worms or other harmful or disruptive scripts, code, programs or content;
  - (f) our disclosure and use of the User Content does not violate this Agreement or other policies, or any applicable law, rule or regulation;
  - (g) the User Content does not contain any obscene, pornographic, profane, sexually oriented, threatening, defamatory, abusive, offensive, indecent, harassing, inflammatory, inaccurate, misrepresentative, fraudulent or illegal content including any racist, bigoted, hateful or violent content;
  - (h) the User Content does not promote or cause harm or intimidation of any kind against any group or individual;
  - (i) our disclosure and use of the User Content does not violate the privacy of any other person by containing visual or audible representations of another person without his or her express written consent or violate their data protection or privacy rights;
  - (j) our disclosure and use of the User Content will not bring us into disrepute; and
  - (k) the User Content does not contain, promote or enable illegal or unlawful activities.

## 11. Our Rights and liability in relation to User Content

- 11.1 ATT retain the right, at any time without reason or notice, to pre-screen, review, control, monitor, reject, delete or edit User Content, however we are not obliged to do so.
- 11.2 You agree that we may require you to remove, amend or delete User Content and that you must comply with such requirement within one (1) days' written notice to you.
- 11.3 You acknowledge and agree that we do not control, take responsibility for, or assume any liability for, any content submitted by you, or other users of the Services or any third parties, and that we are not liable for content of other users or any third party content you may encounter. You agree to release us and our agents and officers and employees from any such claims or liability and acknowledge that the User Content submitted by you or other users, as well as any other information or materials available through the Services may have copyright protection whether or not it is identified as being copyrighted.

## 12. Intellectual Property

- 12.1 For the purposes of clarity, the User owns any and all right, title and interest in and to, including copyrights, trade secret, patent and other intellectual property rights, with respect to any copy, photograph, advertisement, music,

lyrics, or other work or thing created by ATT or at 'ATT's direction for User pursuant to this Agreement and utilised by User.

12.2 The User grants to ATT, a royalty free, perpetual, non-exclusive licence with the right to grant sub-licences reproduce, use and alter the User's brand, name, trade marks, logos, course names and information and similar information (**User IP**), for the provision of the ATT Services (**Licence**). This may include using the User IP in marketing material, advertisements and communication with the public, and acting as the User's agent for the purposes of digital marketing under this Agreement.

12.3 The User warrants and represents and undertakes to ATT that:

- (a) neither the execution of this Agreement nor the performance by the User of its obligations, or the use or exploitation by ATT of the licence will cause it to be in breach of any agreement of which it is a party or is subject;
- (b) the User has and for the duration of this Agreement will continue to own, full right and title to the User IP and has the right to grant the licence granted under this Agreement;
- (c) the use and licence for use by the User of the User IP, does not and will not, infringe any patent, trade mark, registered design, copyright or similar or other industrial commercial property rights of any person nor give rise to payment by ATT of any royalty to any third party or to any liability to pay compensation; and
- (d) all information supplied to ATT by the User is and will be true, accurate, reliable and up to date.

12.4 The User agrees to indemnify ATT fully against all damages, losses, liabilities, claims, costs and expenses which ATT incur either directly or indirectly as a result of any breach of this clause 9 by the User.

12.5 ATT is entitled, during the Term, to advertise and hold the User out as a client of ATT. ATT is granted a licence in accordance with clause 12.2 to use User IP, including the marketing content and client Trade Marks, in all marketing, advertisements and other activities conducted by ATT to promote ATT.

12.6 This clause will survive the termination or expiry of this Agreement.

### **13. Termination**

13.1 Termination for convenience

13.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect.

13.3 ATT may terminate or suspend this Agreement with immediate effect, for any reason in its sole discretion, with written notice to the User.

13.4 Notwithstanding anything to the contrary in this Agreement, the Termination of the ATT Account and this Agreement does not affect any contract for Tutoring Services between a Student and Tutor and any Tutoring Services scheduled via the Platform must be paid and completed via the Platform before termination.

13.5 ATT may, at its absolute discretion terminate any legal relationship that has been formed between Students and Tutors.

### **13.6 Termination for breach**

Without affecting any other right or remedy available to it, either party may terminate suspend this Agreement with immediate effect by giving written notice to the other if:

- (a) the User breaches, or is reasonably suspected to breach, the Code of Conduct, this Agreement, the Child Safety Policy or any other policies applicable to the User as provided by ATT from time to time;
- (b) any warranty provided by the User under suspend this Agreement is deemed to be misleading, untrue, incorrect or inaccurate;
- (c) either party commits a material breach of any term of this Agreement and either:
  - (i) the breach is irremediable; or
  - (ii) the breach is remediable and the breaching (or allegedly breaching) party fails to remedy that breach within a period of 20 Business Days' after the other party has, or is deemed to have, received written notice requesting it to do so,

13.7 ATT may terminate this Agreement immediately by written notice to the Tutor, if any warranty given by the Tutor in this Agreement is found to be untrue, incorrect or misleading.

### **13.8 Obligations on termination**



The User agrees that upon expiry or termination of this Agreement any amounts owing to ATT will be invoiced and all outstanding and invoiced amounts will be immediately due and payable.

#### **14. Confidentiality**

14.1 Both parties agree to keep the Confidential Information of the other party confidential and to use such information only for the purposes of performance of their respective obligations under this Agreement.

14.2 A party must:

- (a) not disclose any Confidential Information of the other party to anyone else except as permitted under this Agreement;
- (b) limit the disclosure of the Confidential Information within its own organisation only to those of its officers, contractors, sub-contractors and employees to whom such disclosure is strictly necessary for the purposes of this Agreement and who have been made aware of its confidential nature and have agreed to keep the information confidential in accordance with the terms of this clause; and
- (c) not use the name of the other party in publicity releases, advertising or promotion of the party unless the other party has given its prior written consent (which shall not be unreasonably withheld).

14.3 The obligations of confidentiality in clause 14.2 will not apply to information which:

- (a) is generally available in the public domain except where such availability is as a result of a breach of this Agreement;
- (b) is required to be disclosed to an accountant, legal advisor, investor or potential purchaser of the business or shares of ATT;
- (c) was known prior to the disclosure of the information by the other party; or
- (d) is required to be disclosed by an applicable law or court order.

14.4 If ATT breaches this clause 14, the User agrees that its sole remedy will be termination of this Agreement on 30 days' written notice.

14.5 The User agrees that ATT may, and grants ATT a irrevocable, worldwide, perpetual, royalty free licence with a right to sublicense, to publish case studies regarding the ATT Services provided to the User by ATT, including use of the User's name, logo and details about the work provided to the User as part of the ATT Services and that this would not be considered a breach of this clause 14.

#### **15. Limitation of Liability**

15.1 The User acknowledges and agrees that ATT is a technology platform provider and that liability for the provision of the Tutor Services to Users is the sole responsibility of the Tutor.

15.2 To the maximum extent permitted by law, ATT's total aggregate liability to the User under or in any way connected with this Agreement, or the performance or non-performance of this Agreement, whether under the law of contract, tort or otherwise, is limited to the Subscription Fees paid by the User under this Agreement in the 12 month period immediately preceding the date on which the relevant claim arose.

15.3 To the maximum extent permitted by law, the User will not be entitled to commence any action or claim whatsoever against ATT in respect of this Agreement, or the performance or non-performance of this Agreement, whether under the law of contract, tort or otherwise, after the expiration of one (1) year after date of expiry or termination of this Agreement.

15.4 To the maximum extent permitted by law, ATT expressly excludes any conditions, warranties, guarantees, representations, undertakings, rights, remedies, liabilities or other terms, under the general law or by statute in favour of the Users under this Agreement, except as expressly set out in this Agreement.

15.5 To the maximum extent permitted by law, the User releases and discharges ATT and its Personnel and contractors from, and the User acknowledges and agrees that ATT is not liable for, any claim, action, demand, cost, expense, liability, loss or damage arising out of or in any way connected with this Agreement including any consequential or indirect losses, loss of profit, revenue or goodwill, howsoever arising and whether caused by breach of statute, breach of contract, negligence or other tort, including but not limited to any such losses arising out of or in connection with:

- (a) any act, omission, breach of this Agreement, negligence or fraud by the User;
- (b) any representations or communications made by Personnel of ATT, including with respect to the User;
- (c) any ban, locking, suspension, delay, deactivation or deletion of the ATT Account;

- (d) any delay in performance of the ATT Services due to, or in connection with, any delay by, or failure of, the User or the Tutor;
  - (e) any error, inaccuracy, or incompleteness of information provided by the User or the Tutor;
  - (f) any third party claim or action against the User; and
  - (g) any loss or damage whatsoever and whenever caused to the User whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial loss or otherwise (including consequential loss, damage or injury).
- 15.6 Nothing in this Agreement purports to limit, restrict or exclude any rights available to the User under the Australian Consumer Law that cannot be limited, restricted or excluded.
- 15.7 This clause survives the termination of these Agreement.
- 16. Indemnity**
- 16.1 The User indemnifies ATT and its Personnel, and will keep all of them indemnified and holds ATT and its Personnel harmless, against all actions, claims, charges, costs (including legal costs on a full indemnity basis), expenses, losses, damages and other liability that they may sustain or incur, directly or indirectly, arising out of or in connection with:
- (a) an actual breach, or a suspected breach (in the opinion of ATT), of this Agreement by the User or its Personnel (including a breach of any warranty);
  - (b) any act, omission, communication, inaccuracy or error by the Tutor in relation to the provision of the Tutoring Services;
  - (c) any breach (or a suspected breach) of the Child Safety Policy or any other policy provided by ATT to the User;
  - (d) any act or omission of the User or its Personnel (if applicable), including any negligent, unlawful, wilful or fraudulent act or omission, in connection with this Agreement;
  - (e) any loss of or damage to any property or injury to or death of any person caused by any negligent or fraudulent act or omission or wilful misconduct of the User;
  - (f) the User Content or ATT's use of the User Content;
  - (g) any claim that ATT infringes the intellectual property rights or other rights of any person..
- 17. Warranties**
- 17.1 The User warrants and represents to ATT, and undertakes that:
- (a) prior to entering into this Agreement, the User was given a reasonable opportunity to obtain any advice (legal or otherwise) about this Agreement and the obligations and restraints contained in it;
  - (b) the User has had sufficient time to consider the terms of this Agreement, its implications and the advice given to them in respect of it;
  - (c) the User understands this Agreement and agrees that its terms are fair and reasonable in the circumstances;
  - (d) the User has entered into this Agreement voluntarily of their own freewill without duress, coercion, undue influence or pressure from either ATT or any other person;
  - (e) it is capable of, and will perform, its obligations as set out in this Agreement;
  - (f) it has full capacity and authority to enter into this Agreement; and
  - (g) it shall be responsible for all costs, fees, expenses and charges for training necessary or required for ATT's employees and agents to perform the ATT Services.
- 17.2 ATT will not be liable for, and makes no representations, warranties or guarantees, whether statutory, express or implied, as to:
- (a) the accuracy, correctness or completeness of any information provided to the User from or via the ATT Services or any of ATT's Personnel;
  - (b) whether the ATT Services will lead to any particular or actual results or any guarantees made as to performance; and/or
  - (c) whether any result or objective can or will be achieved.

- 17.3 The parties acknowledge and agree that no representations or warranties have been made other than those expressly recorded in this Agreement and that, in respect of this Agreement or any part of it including the transactions contemplated pursuant to this Agreement, no party has relied or will rely upon any representations or information, whether oral or written, previously provided to or discovered by it.
- 17.4 The User acknowledges that ATT is relying upon the warranties given in this clause 16 in executing this Agreement.
- 17.5 The User acknowledges that it has not relied on any representation or warranty from ATT in entering into this Agreement.
- 17.6 The User releases ATT from any loss, damage, cost or expense that it may suffer as a result of performing its obligations under this Agreement or, from ATT exercising any of its rights under this Agreement.

## **18. Disclaimer**

- 18.1 We disclaim any warranty that any information, advice and material obtained in the course of providing the ATT Services or the Tutor Services will be accurate, complete, reliable, current, useful or error-free. To the extent permissible at law, the ATT Services is provided on an "as is" and "as available" basis, without warranties of any kind other than those prescribed under the Australian Consumer Law or other applicable law.
- 18.2 We do not exercise any control over all of the content of the Tutor Service. To the extent permissible at law, opinions, advice, representations and other information or content expressed or made available in the course of providing the Tutor Service, are provided by their respective authors/ makers and not ATT.
- 18.3 We do not make any representations or warranties that the Platform and/or Student access to the ATT Services will be uninterrupted or always available. We do not guarantee that any given Tutoring Services or other planned activity will always be available or performed as scheduled.
- 18.4 We do not provide, nor do we accept any responsibility or liability for any ancillary costs associated with their use of the ATT Service (such as internet access).
- 18.5 Users acknowledge and agree that information or advice found or made available through the ATT Service is general information, is not in the nature of advice and is not guaranteed to be error-free. Independent enquiries should be made before relying on anything said or done in the course of the provision of the ATT Service.
- 18.6 The ATT Service is not intended to replace regular class attendance or each Student's own taking or generating of notes. The Service is intended to be used in conjunction with and not as a substitute for a Student's own study notes and directions from their regular school teachers. The Student is responsible for maintaining classroom attendance and good study habits and following the necessary syllabus.
- 18.7 ATT does not represent or warrant that using the ATT Service will lead to any particular study outcome or academic result and disclaim any warranty that the ATT Service can be relied upon.
- 18.8 If you choose to use the Platform, ATT Services or similar content, you do so at your sole risk. You acknowledge and agree that ATT does not have an obligation to conduct background or character checks on any Tutor, but may conduct such background or character checks in its sole discretion. If we choose to conduct such checks, to the extent permitted by applicable law, we disclaim warranties of any kind, either express or implied, that such checks will identify prior misconduct by a user or guarantee that a Tutor will not engage in misconduct in the future.
- 18.9 The Platform, ATT Services and any associated content are provided "as is", without warranty of any kind, either express or implied. Without limiting the foregoing, ATT explicitly disclaims any warranties of merchantability, fitness for a particular purpose, quiet enjoyment or non-infringement, and any warranties arising out of course of dealing or usage of trade. ATT makes no warranty that the site, application, services, collective content, including, but not limited to, any Tutoring Services, will meet your requirements or be available on an uninterrupted, secure, or error-free basis. ATT makes no warranty regarding the quality of any Tutors. Tutoring Services, Users, Students, the ATT Services or associated content or the accuracy, timeliness, truthfulness, completeness or reliability of any collective content obtained through the Platform or ATT Services.
- 18.10 No advice or information, whether oral or written, obtained from ATT or through the Platform, ATT Services or similar content, will create any warranty not expressly made herein.
- 18.11 Users are solely responsible for all of communications and interactions with other users of the Platform, including, but not limited to, any Students and Tutors. Users understand that ATT does not make any attempt to verify the statements of Users or Tutors of the Platform, or ATT Services or to review any Tutoring Services. ATT makes no representations or warranties as to the conduct of other users of the Platform (including Tutors) or ATT Services or their compatibility with any current or future users of the Platform or ATT Services. ATT does not control, and are not responsible for, controlling how or when our Users or Tutors use the ATT Services or the messaging features, services, and interfaces the Platform provides. ATT are not responsible for and are not obligated to control the actions or information (including content) of our users or Tutors.

18.12 The Users agree to take reasonable precautions in all communications and interactions with other users of the Platform including, but not limited to, Students and Tutors, particularly if you decide to meet offline or in person regardless of whether such meetings are organized by ATT. ATT explicitly disclaims all liability for any act or omission of any Student or other third party.

## 19. Academic Disclaimer

19.1 The Tasmanian Assessment, Standards and Certification (**TASC**), Victorian Curriculum And Assessment Authority (**VCAA**) or similar do not endorse and is not affiliated with ATT. The TASC, VCAA or similar provides the only official, up-to-date versions of relevant publications and information about courses including VCE and TCE.

19.2 While ATT endeavours to facilitate connection between professional and knowledgeable Tutors and Students, the results of engaging Tutors and receiving Tutoring Services may vary and depend upon a range of factors (including but not limited to the Tutor selected and engaged, a Student's study habits, work ethic, schooling experience, teaching methods and engagement at school and for many other reasons that are personal to Students). Accordingly, you acknowledge that ATT provides no representation nor warranties or guarantees that the use of the ATT Platform or receiving Tutoring ATT Services directly from Tutors will lead to an improvement in academic performance or results.

19.3 To the full extent permitted by law, you agree to hold ATT blameless for any act or omission, dispute, action, claim or proceedings or loss or damage arising from a Student's academic results or performance.

19.4 You acknowledge that the terms 'expert' and 'qualified' in relation to a Tutor on the ATT Platform refers to someone who has satisfied ATT's minimum qualifications to be listed as a Tutor on ATT. 'Expert' and 'Qualified' should not be confused with having earned an accredited teaching qualification or having any particular expertise or qualification unless otherwise stated by the Tutor in their profile to which a Tutor is wholly and entirely responsible.

## 20. Dispute Resolution

20.1 If a dispute arises out of or relates to this Agreement, a party must not commence any court or other proceedings relating to the dispute unless it has first complied with the following procedure:

- (a) the party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute;
- (b) on receipt of that notice by that other party, the parties must endeavour in good faith to resolve the dispute using informal dispute resolution techniques such as mediation, expert evaluation, arbitration or similar methods agreed by them;
- (c) if the parties do not agree within 10 days of receipt of the notice (or such further period as the parties agree in writing) as to:
  - (i) the dispute resolution method and procedures to be adopted;
  - (ii) the timetable for all steps in those procedures; and
  - (iii) the selection and compensation of the independent person required for such method,the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of Tasmania.

## 21. Privacy

21.1 We will treat Student information in accordance with our [Privacy Policy](#).

21.2 If information is disclosed to ATT or discovered in the provision of the ATT Services that we believe could be harmful to Users or to others, we may disclose this information to the relevant authorities, including the Users parents, school, a health care professional or anyone else we deem necessary that will assist us with dealing with the situation.

## 22. General

22.1 **Assignment:** The User cannot assign, whether in whole or part, or otherwise transfer the benefit of this Agreement, or any rights or obligations hereunder, without the prior written consent of ATT. ATT may assign, transfer, novate, and otherwise deal in any manner with, all or any part of the benefit of this Agreement and any of its rights, remedies, powers, duties and obligations under this Agreement to any person, without the consent of the User.

22.2 **Set off:** ATT may at any time set off any amount owing to the User against any liability or amount owing to ATT by the User whether such liability or amount arises under this Agreement or otherwise.

22.3 **Survival:** The following clauses are continuing obligations and will continue after termination or expiry of these Terms: 1.1(Definitions and interpretation), 5 (User Obligations), 6(Fees), 10 (Licence); 12 (IP); 13 (Termination); 14 (Confidentiality); 16 (Indemnity); 15 (limitation of liability); 17 (warranties); 18 (disclaimer); 22 (general).

- 22.4 **Non-solicitation:** The User agrees that it will not canvass, solicit or entice, employ, induce or attempt to employ, induce, solicit or entice away from ATT any employee, contractor or User of ATT either during the Term or for a period of 12 months after the date of expiry or termination of this Agreement.
- 22.5 **Force majeure:** Neither party shall be in breach of the Contract or under any liability to the other for any delay, loss or damage that is attributable to Force Majeure, provided that the party affected (a) informs the other party in writing of the occurrence of Force Majeure, and (b) makes all reasonable efforts to mitigate the effect of Force Majeure. An act of **Force Majeure** means: anything beyond the control of the party affected and includes, but is not limited to, power failure, network overload, interruption to an internet service, malfunction in a telecommunication system or computer service, breakdown of equipment, default or failure of a third party, labour shortage, strike or labour dispute (except of the workforce of the party claiming Force Majeure), infection/pandemic, natural disaster, war, terrorism or action of any government or regulatory authority. In that situation the time for performing any ATT Services will be extended by the period of delay.
- 22.6 **Liability:** The User and the Representative will be jointly and severally liable for any obligations or liabilities under this Agreement.
- 22.7 **Variation:** A provision of this Agreement or a right created under it may not be varied except in writing with the consent of each of the parties to this Agreement.
- 22.8 **Waiver:** In no event shall any delay, neglect or forbearance on the part of any Party in enforcing any provision of this Agreement be, or deemed to be, a waiver thereof or a waiver of any other provision or shall in any way prejudice any right of that party under this Agreement.
- 22.9 **Severability:** If any provision of this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, prohibited by law or judged by a court to be unlawful, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.
- 22.10 **Entire agreement:** This Agreement contains the whole agreement between the parties in respect of the subject matter of this Agreement and supersedes and replaces any prior written or oral agreements, representations or understandings between the Parties relating to such subject matter. In the event of any inconsistency between those documents, the terms of this Agreement shall prevail.
- 22.11 **Delay:** No failure or delay by ATT in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- 22.12 **Rights and remedies:** The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.
- 22.13 **Relationship:** This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.
- 22.14 **Further assurance:** Each party to this Agreement shall at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of this Agreement or to make it easier to enforce.
- 22.15 **Governing law:** This Agreement is governed by and construed and interpreted in accordance with the laws applicable in the Tasmania, Australia. The parties irrevocably submit to the exclusive jurisdiction of the courts of Tasmania, Australia.
- 22.16 **Costs:** Each party must pay its own legal costs of and incidental to the preparation and completion of this Agreement.
- 22.17 **Counterparts:** This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart. This Agreement may be executed and delivered by email and the parties agree that such scanned execution and email delivery shall have the same force and effect as delivery of an original document with original signatures, and that each party may use such scanned signatures as evidence of the execution and delivery of this Agreement by all parties to the same extent that an original signature could be used.
- 22.18 **Time of essence:** Time is of the essence with regards to the User's obligations under this Agreement.