

# Tutor Terms and Conditions

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## 1. Introduction

- 1.1 These terms and conditions (Terms) are between Local Tutoring Pty Ltd (ACN 684 114 350; ABN 78 684 114 350) trading as 'Affordable Tutoring Tasmania' of Sandy Bay, TAS 7005 (ATT) and any person or entity that registers as a tutor on the Platform and accepts these Terms (**Tutor**).
- 1.2 ATT provides a tutoring Platform which connects actual or potential users of the Platform, including parents and their nominated student (**Users**) to Tutors, to allow Tutors to be listed and for Users to obtain tutoring services (**Tutor Services**) from Tutors for the student nominated by the User (**Student**) and other related activities.
- 1.3 ATT agrees to provide the Services to the Tutor, and the Tutor agrees to provide the Tutor Services to Users, in accordance with these Terms. The Tutor warrants and represents to ATT that it has the skills, background and experience required to provide the Tutor Services in accordance with these Terms.
- 1.4 These Terms commence on the date that the both parties agree to these Terms and continues on a perpetual basis and for any period where the Tutor is providing the Tutor Services to a party, unless either party gives the other at least 30 days' written notice prior to the end of the Term or if the Agreement terminated earlier in accordance with these Terms.

## 2. Acceptance of Terms

By clicking "I agree", creating a tutor account, accessing or using the Platform as a Tutor, or continuing to provide Tutor Services through the Platform, you confirm that you have read, understood and agree to be legally bound by these Tutor Terms and Conditions, together with any policies or documents incorporated by reference, including the Privacy Policy, Code of Conduct and Child Safety Policy (together, the Terms), as amended from time to time.

If you do not agree to the Terms, you must not create a tutor account, access the Platform, or provide Tutor Services through the Platform.

## 3. Services

- 3.1 ATT provides the Tutor with access to the Platform (**Services**) in consideration for the ATT Fees.
- 3.2 Subject to the Tutor's compliance with these Terms, ATT will use reasonable endeavours to ensure the Platform will enable the Tutor to:
  - (a) offer the provision of the Tutor Services to Users (and their nominated Students);
  - (b) accept and then provide the Tutor Services to Users in accordance with the type of Lesson or Group Class or Courses via User Booking Portal;
  - (c) communicate with Users regarding their specific Lesson, Group Class or Course, including any rescheduling or cancellations.
- 3.3 Subject to the Tutor's compliance with these Terms, ATT will:
  - (a) provide the Services to the Tutor on the terms of these Terms; and
  - (b) grant the Tutor a licence to use the Platform during the Term.
- 3.4 For the avoidance of doubt, ATT merely provides the Platform to enable the performance of the Tutor Services, the Tutor acknowledges and agrees that the Tutor is solely liable and responsible for the Tutor Services including any User disputes or complaints. ATT may choose to assist in the resolution of such disputes however is not any way obligated to.
- 3.5 ATT may also, as part of the Services, but is not obliged to:

- (a) advertise or promote the Tutor or the Tutor Services from time to time on the Platform, social media platforms, websites, online, in print media and electronic media; and
- (b) respond to complaints or disputes on the Tutor's behalf arising from or in connection with, the Tutor Services provided by the Tutor via the Platform.

#### **4. Tutor Services**

- 4.1 A User may request to book the Tutor via the Platform's User Booking Portal to engage the Tutor to provide the Tutor Services. By accepting the Booking via the Tutor Booking Portal, the Tutor accepts the appointment in consideration of the Tutor Fees payable in accordance with clause 8.
- 4.2 The User will determine the time and place for the performance of the Tutor Services when scheduling a Lesson via the User Booking Portal by using the available 'Location' filter, which may be either a physical location or online.
- 4.3 The Tutor acknowledges and agrees that a User may schedule a Lesson via the User Booking Portal in accordance with the following steps and system (subject to change via the Platform):
  - (a) **Step 1:** The User initially selects the Subject/Language and Timeslot applicable to the Lesson;
    - (i) When selecting the Timeslot as set out in clause 3.3(a) 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 Tutor Booking Portal;
  - (b) **Step 2:** The User will then be able to select the quantity of Lessons it wishes to schedule, which may include scheduling multiple Lessons at once.
    - (i) The Tutor is able to set the associated price for each Lesson via the Tutor Booking Portal including offering discounted rates for 'slabs' of Lessons i.e. the scheduling of multiple Lessons at once.
    - (ii) The User may also choose the 'Recurring Buy' option. If this option is enabled, the Lessons selected will be automatically scheduled every four (4) weeks. Payments will be automatically debited from their wallet balance on the User Booking Portal.
  - (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 Lesson Price at which point the Lesson will be scheduled.
  - (e) For the avoidance of doubt, the Lesson is deemed to have been accepted by the Tutor unless the Tutor cancels such Lesson.
- 4.4 The Tutor acknowledges and agrees that neither ATT nor any User is obliged to procure or obtain for the Tutor any minimum volume of Tutor Services.

#### **Group Classes**

- 4.5 The Tutor may also provide Group Classes via on the Platform.
- 4.6 If the Tutor wishes to provide Group Classes, it may select the "Add Class" prompt on the Group Classes tab via the Tutor Booking Portal. It will then be prompted to add details of the Group Class including but not limited to the "Title", "Language", "Description", "Duration" and "Fee" etc. Users will then be able to purchase their Group Class of choice via the User Booking Portal.

4.7 The ATT Fees for Group Classes will be in accordance with the Commission Structure.

### **Courses**

4.8 The Tutor may also develop and offer for sale courses on the Platform, including uploading its own pre-recorded video content by following the prompts on the Platform (**Courses**). The Tutor warrants and represents that all content created for or within the Courses, or otherwise uploaded or submitted on the Platform comply with clause 5.6 and warrants that it is the Tutor's original work and is not plagiarised in any form.

4.9 If the Tutor wishes to offer Courses for sale, it may select the "Add New Course" prompt on the All Courses tab via the Tutor Booking Portal. It will then be prompted to add details of the Course including but not limited to the "Basic Details", "Intended Learners", "Price" and "Curriculum" etc. Users will then be able to purchase their Course of choice via the User Booking Portal.

4.10 The ATT Fees for Courses will be in accordance with the Commission Structure.

### **User Content**

4.11 By providing or sending to us, uploading, publishing, transmitting or making available any data, content or other material to ATT (**User Content**), you agree to grant ATT, its 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.

4.12 By uploading, publishing, transmitting or making available any User Content to ATT, you warrant and represent to ATT 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 ATT;
- (b) ATT's 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 associate with the Services or send to other users is accurate, complete, not false and not misleading;
- (d) the disclosure and use of the User Content to ATT 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) the use by ATT of the User Content will not breach the security of ATT or its users by containing viruses, Trojan horses, worms or other harmful or disruptive scripts, code, programs or content;
- (f) the disclosure and use of the User Content by ATT does not violate these Terms 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) the disclosure and use of the User Content by ATT 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) the disclosure and use of the User Content by ATT will not bring ATT into disrepute; and
- (k) the User Content does not contain, promote or enable illegal or unlawful activities.

#### **Rights and liability of ATT in relation to User Content**

- 4.13 ATT retains the right, at any time without reason or notice, to pre-screen, review, control, monitor, reject, delete or edit User Content, however ATT is not obliged to do so.
- 4.14 You agree that ATT may require you to remove, amend or delete User Content and that you must comply with such requirement within 1 days' written notice to you.
- 4.15 You acknowledge and agree that ATT does 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 ATT is not liable for any mistakes, defamation, omissions, falsehoods, obscenity, pornography or profanity you may encounter. You agree to release ATT and its 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.

#### **5. Listing the Tutor**

- 5.1 The Tutor acknowledges and agrees that its details including but not limited to its name, footage, likeness, branding, images, logos, location, general description of the Tutor, reviews and ratings of the Tutor will be listed publicly on the Platform, pursuant to clause 11.
- 5.2 The Tutor warrants and represents to ATT that it is registered under GST Law, if applicable or as required by law.
- 5.3 The Tutor agrees to provide ATT with all information required by ATT from time to time to list the Tutor on the Platform, including but not limited to:
  - (a) the Tutor's name;
  - (b) the Tutor's location or address;
  - (c) the Tutor's contact phone number and email address for dealing with User communications, enquiries, issues and disputes;
  - (d) the Tutor's academic credentials and accolades;
  - (e) names and details of the Tutor's Personnel as required from time to time (if applicable);
  - (f) proof of COVID-19 vaccination status unless medically exempt, in which case a valid proof of exemption will be required;
  - (g) proof of Working with Vulnerable People (**WWVP**) registration or equivalent working with children check; and
  - (h) written evidence of the Tutor's business registration and its Australian Business Number (ABN) or such other verification details as required by ATT from time to time.
- 5.4 ATT reserves the right, in its sole discretion, to reject the Tutor for listing on the Platform or remove the Tutor from being listed on the Platform, for any reason and without notice to the

Tutor. If ATT exercises its rights under this clause not due to the fault of the Tutor, any amounts pre-paid with respect to the relevant period will be refunded to the Tutor.

## **6. Listing Tutor Services on the Platform**

- 6.1 The Tutor may make available its Tutor Services on the Platform by following the prompts on the Tutor Booking Portal and providing specific details of the Tutor Services in accordance with ATT's requirements, including the name of the subject(s) for the lesson, the prices, general description of the Tutor and its academic credentials and/or accolades and a photograph of the Tutor (**Listing**).
- 6.2 The Tutor acknowledges and agrees that by submitting a Listing, the Listing will be published on the Platform and accessible by the public and Users. The Tutor agrees that it is solely liable for the content, imagery and any other representations made in any Listing. ATT will not be liable in any way, for any content in the Listings and the Tutor releases ATT from all liability relating to such Listings.
- 6.3 The Tutor must ensure that Tutor Services are appropriate via the Platform and are in accordance with all of ATT's policies from time to time, including the Child Safety Policy and Code of Conduct.
- 6.4 The Tutor must ensure that the Availability Calendar via the Tutor Booking Portal is kept up to date, accurate and free from error.
- 6.5 The Tutor is solely liable for ensuring that all Listings are kept up to date, accurate and free from error, including where descriptions in a Listing have changed (such as available subject(s) for lessons and/or applicable year level), at which stage such Listings must be updated.
- 6.6 The Tutor warrants and represents to ATT, at all times, that the Listings, and any content or imagery relating to the Tutor Services on the Platform:
- (a) correctly and accurately describes and depicts the Tutor Services, including that the overall impression of the Listing is not misleading or deceptive;
  - (b) do not infringe upon any third party rights, including intellectual property rights and are used with the authority or licence of the owner or licensee of such intellectual property; and
  - (c) does not breach any laws, regulations, guidelines, industry best practice and advertising guidelines and standards including Australian Consumer Law.
- 6.7 ATT reserves the right, in its sole discretion, to reject any Tutor Services to be listed via the Platform or remove any Listings or Tutor Services listed for offer via the Platform, for any reason and without notice to the Tutor.

## **7. Provision of the Tutor Services**

- 7.1 The Tutor Services involves the Tutor running fixed time lessons (**Lessons**) to teach the Student in accordance with the class and details booked by Users via the User Booking Portal (**Booking**).
- 7.2 If the Tutor accepts a Booking, the Tutor must provide the Lesson at the time and place set out in the Booking. If there is an error in the details of a Booking the Tutor use best endeavours to remedy the issue via the Platform, or if it cannot resolve the issue, contact ATT as soon as reasonably possible and ATT may, but is not obliged to, work with the Tutor, to determine whether it is appropriate to cancel the erroneous booking of the Lesson or honour the Lesson, taking into consideration Australian Consumer Law.
- 7.3 The Tutor must communicate with the User that booked the Lesson and the Student and follow all reasonable directions of the User in relation to the Lessons or Booking.

- 7.4 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 credit to their account of the Lesson Price (pro-rated in accordance the number of lessons booked as applicable);
  - (b) if the User provides the Tutor at least 6 hours' prior notice, then the User will receive a full refund of the Lesson or Lesson Price; or
  - (c) if the User does not provide the Tutor at least 6 hours' prior notice, then the User will forfeit the Lesson Price and the Tutor will be paid the Tutor Fees.
- 7.5 Notwithstanding clause 6.3 above if the parties wish to re-schedule a Lesson, then this may occur at a mutually agreed time and place in accordance with these Terms.
- 7.6 The Tutor must work with and communicate with ATT, in good faith, for ATT to process refunds to Users, which may include wholly or partially deducting funds from payments owed to the Tutor. The Tutor agrees to pay any fees associated with such processing of refund as required by ATT.
- 7.7 **Late Arrivals:** Bookings must occur at the times stipulated in the User Booking Portal and no adjustment shall be made to Lessons for the time lost due to the late arrival by a Student. Any lost time due to the late arrival of a Tutor shall be compensated for by extending the applicable Lesson by mutual agreement of the parties and by such amount of time that was lost.
- 7.8 The Tutor acknowledges and agrees that its wallet on the Platform (**Wallet**) will be credited in accordance with clause 8.10 once it marks the Lesson as "complete" via the Tutor Booking Portal (**Completed Lesson**). "Completed Lesson" means a Lesson which has been completed for its applicable duration and otherwise in accordance with these Terms.
- 7.9 The Tutor further agrees that the requirements set out in clauses 6.2 to 6.8 above apply to Group Classes on the Platform.
- 7.10 In the provision of the Tutor Services, the Tutor acknowledges and agrees that:
- (a) it is solely liable for the provision of the Tutor Services and all acts or omissions relating to the Tutor Services;
  - (b) it will complete all preparation prior to Lessons and will structure Lessons in such a way so as to optimize time to the benefit of the Student;
  - (c) no child is to be left alone with the Tutor and that all Lessons are to take place in a common area where constant parental presence is maintained;
  - (d) if requested by a User, it expressly consents to the recording of the Lessons;
  - (e) it will keep all information regarding the Student strictly confidential and will only contact third parties involved in the education of the Student if granted written permission by the User to do so;
  - (f) ATT is not responsible or liable for the acts, omissions, negligence, fault, fraud or breach of these Terms, Child Safety Policy or Code of Conduct by the Tutor or the vehicle or manner of transportation used by Tutor; and
  - (g) ATT may provide details regarding the Tutor to Users or such other third party authorised by the User upon the reasonable request of a User.

## 8. Nature of the Relationship

- 8.1 The Tutor represents and warrants to ATT that:

- (a) it is an independent contractor in relation to the services provided to the User and is not an agent, a partner or an employee of ATT;
- (b) it will not act in any way other than as an independent contractor of the User;
- (c) is not entitled to any benefit from ATT to which an employee is usually entitled;
- (d) other than with the express permission and only in relation to the provision of Services under these Terms, has no authority to bind ATT or act on its behalf;
- (e) shall not incur any liability on behalf of ATT or in any way pledge or purport to pledge ATT's credit or accept any other or make any contract binding upon ATT without prior written approval being given by ATT; and
- (f) has no authority to engage the services of any person as an employee or agent of ATT.

8.2 As a consequence of the independent contractor relationship, the Tutor agrees that ATT will not be responsible for any payments in respect of

- (a) the remuneration of the Tutor including salary and wages, annual leave, sick leave, long service leave or superannuation;
- (b) workers' compensation, accident, sickness and life insurance for the Tutor's personnel;
- (c) all payments in relation to any taxes or any other payments imposed on an employer in respect of employees under the law of Australia and Tasmania;
- (d) providing superannuation, sickness benefits and WorkCover in respect of its, his or her employees;
- (e) ensuring compliance with all relevant laws of Australia and Tasmania with respect to its provision of the Services; and
- (f) all taxes including but not limited to corporate tax, payroll tax, PAYG tax, training guarantee levy, FBT, excise duty, GST, personal income taxes, ATT income taxes, Tutor's payroll taxes, superannuation guarantee levy, health insurance levy and any other additional taxes or levies imposed by government.

8.3 Nothing in these Terms creates an employment, agency, joint venture or partnership relationship between ATT and the Tutor and it is the express intention of the parties that any such relationships are denied.

8.4 The obligations accepted by the Tutor under this clause 7 survive termination or expiry of these Terms.

## 9. Payments and Tutor Fees

9.1 The Tutor acknowledges and agrees that pricing of the Tutor Services which will be charged to the Users at the time of making a booking in accordance with clause 3.3 and the Tutor may set the price for via the Tutor Services in accordance with the following:

- (a) The prices for Lessons are to be set via the Platform (as at the date of this Agreement, via the "Manage Prices" tab under "Account Settings" of the Tutor Booking Portal) (**Lesson Price**); and
- (b) The Tutor may set different prices for different Timeslots, subjects and slabs of Lessons. ATT may provide a range or band as a guide for Tutors to set their prices, however for the avoidance of doubt, the Tutor is free to set its own price and ATT does not require Tutors to set any specific price.

9.2 The Tutor agrees that by using the Platform to provide the Tutoring Services, that it agrees with the pricing including the commission under these Terms.

- 9.3 The Tutor 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 clause 8.6 (**Limited Payment Agent**). The Tutor 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) payments received from Users will be held in a separate Stripe account entirely designated to accepting such payments until remittance is made to the Tutor in accordance with this Agreement;
  - (c) the User's payment obligation to the Tutor is satisfied upon receipt of the payment by Stripe; and
  - (d) all payment services in relation to the withdrawal of funds on the Platform are performed by Stripe.
- 9.4 The Tutor acknowledges and agrees that ATT's role as a Limited Payment Agent is limited to the functions and obligations as set out in clause 8.3 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.
- 9.5 The Tutor agrees that ATT is entitled to and will deduct a commission in accordance with the Commission Structure, plus the full amount of any Lessons, Group Classes and Courses purchased by a User but not booked with the Tutor, or not completed by the Tutor, or not used within the expiry period of such Lesson, Group Class or Course (**ATT Fees**) for the provision of the Services.
- 9.6 Subject to the Tutor providing the Tutor Services to the Users in accordance with clause 6, the Tutor acknowledges and agrees that it will be paid the Tutor Fees to its Wallet as follows:
- Tutor Fees = Tutor Service Price – ATT Fees – Costs**
- Costs mean** any costs or disbursements incurred by ATT Fees.
- Tutor Service Price** means any Lesson Price (or price payable by the User for any Group Class or Course, as applicable)
- 9.7 The Tutor acknowledges and agrees that it is solely responsible for considering any applicable fees, taxes (including GST) and/or ATT Fees. It is the sole responsibility and liability of the Tutor to ensure that it conducts its own evaluations and calculations regarding the Tutor Fees and to ensure that the Tutor Fees is correct, accurate and free from error. ATT will not be liable to any party for any issues, errors or miscalculations or representations with respect to the Tutor Fees.
- 9.8 ATT reserves the right, in its sole discretion, to seek reimbursement from the Tutor if it discovers any payment processing error. The Tutor expressly agrees that if there has been a payment processing error, ATT may deduct any amounts payable ATT from the Tutor Fees, debit or charge its credit card or bank account on record or seek reimbursement in any other lawful manner.
- 9.9 The Tutor must:
- (a) ensure that any payment, bank or card details provided to ATT are accurate and up to date at all times; and
  - (b) provide any such information as reasonably required by ATT in order to process payments, including providing any business and taxation information required by ATT.

- 9.10 **Withdrawal Requests:** The Tutor acknowledges and agrees that it may withdraw the balance of the Tutor Fees from its Wallet once it reaches a minimum amount of \$50.00, once every month to its nominated bank account as set out on the Platform (**Withdrawal**). All Withdrawal requests made prior to the first Friday of each month will be paid by the following Monday.
- 9.11 We will not be liable for any delay in processing Withdrawals or the Tutor receiving payments due to any reason outside of ATT's reasonable control, including where there are any user/parent payment issues, bank delays, payment gateway issues, processing delays or errors causing such delay.

## 10. Ratings and reviews

- 10.1 The Tutor acknowledges and agrees that Users may leave a review or rating of the Tutor Services and/or the Tutor (**Review**) and that Reviews will be displayed publicly on the Platform without prior approval of Tutor.
- 10.2 In accordance with Australian Consumer Law, the Tutor may not remove any Reviews, however the Tutor may report a Review to ATT and ATT may, in its sole discretion, remove the Review.

## 11. User disputes

- 11.1 The Tutor agrees that it is solely liable for managing and responding to User enquiries, issue and disputes (**Enquiries**) and that ATT may intervene, however it is not obliged to do so.
- 11.2 The Tutor must use best endeavours to respond to an Enquiry within two (2) Business Days' of receiving the Enquiry, in accordance with these Terms and all relevant agreements including the Code of Conduct and Child Safety Policy.
- 11.3 If the Tutor cannot come to an agreement with a User in relation to an Enquiry, or if the matter is escalated further including but not limited to, being referred to ATT or to legal representatives, the Tutor agrees that ATT may resolve the matter with the User in a manner that preserves ATT's reputation, on the Tutor's behalf and at the Tutor's cost.
- 11.4 **Disputes and refunds:** ATT is authorised, in its sole discretion to return any funds held to the User if an Enquiry cannot be resolved within a reasonable time-period.

## 12. Tutor obligations and warranties

- 12.1 The Tutor warrants and represents to ATT that it:
- (a) has legal capacity, power and authority to enter into and be bound by these Terms;
  - (b) will comply with any directions given to it by ATT from time to time;
  - (c) has and will utilise the necessary skills, experience and expertise to perform the Tutor Services in accordance with these Terms;
  - (d) will comply with any other agreements, terms and conditions and policies provided by ATT from time to time, such as the Privacy Policy, Code of Conduct and Child Safety Policy;
  - (e) has, or will enter into and comply with any agreements, terms and conditions and policies of any third party platforms, as necessary to enable performance by ATT under these Terms (for example, to allow for the functionality of the Platform such as the processing of payments and refunds);
  - (f) will not, and will ensure that its Personnel will not (if applicable), represent itself to be affiliated with, or an employee of ATT;

- (g) will act lawfully and in performing its obligations under these Terms, will comply with any applicable licenses, laws, regulations, industry standards or codes of conduct, health and safety requirements; and
  - (h) holds, will maintain and comply with all valid and up to date licences, permits, consents or other permissions as required by law for the provision of the Tutor Services including but not limited to a valid WWVP registration.
- 12.2 In providing the Tutor Services to the User, the Tutor will, and will ensure that its Personnel (if applicable) will:
- (a) fulfil the provision of the Tutor Services via the Platform and through the Platform only;
  - (b) not attempt to circumvent the Platform or circumvent the paying of any ATT Fees in any way, such as by soliciting, enticing away or otherwise encouraging Users to engage the services of the Tutor directly or by any other means outside of the Platform;
  - (c) not advertise or promote any third party competitors of the Platform or ATT;
  - (d) perform the Tutor Services with due care, skill and diligence in a professional and ethical manner and to ATT's satisfaction and comply with the reasonable directions of ATT; and
  - (e) not to disadvantage or treat unfavourably, Users that make bookings via the Platform.

### **13. Intellectual Property**

- 13.1 Pursuant to the User Terms, ATT and its licensors own or hold the Intellectual Property rights to, the Platform, any User lists and User details, and all related materials and data except for Tutor Content (**ATT IP**).
- 13.2 The Tutor must not copy, modify, publish, adapt, sub-licence, translate, sell, distribute, transmit, perform, display, reverse engineer, decipher decompile or otherwise disassemble any portion of ATT IP or the Services or cause or assist others to do so.
- 13.3 The Tutor grants to ATT an irrevocable, non-exclusive, transferable, sublicensable, royalty-free, perpetual, worldwide license and right to use, publish, modify, alter, reproduce and make derivative works from the Tutor Content for the purposes of ATT performing its obligations under these Terms and providing the Platform to the Tutor and Users, including but not limited to, listing the Tutor on the Platform, listing the Tutor Services on the Platform and providing the Services, including the Tutor's name, footage, likeness, branding, images, logos, location, general description of the Tutor, reviews and ratings.
- 13.4 The Tutor waives all of its Moral Rights in the Tutor Content and will procure that all of its Personnel also waive their Moral Rights (if applicable) in the Intellectual Property in the Tutor Content. In relation to the exploitation of the Tutor Content by ATT, the Tutor irrevocably consents to ATT using the Tutor Content without attribution to the Tutor and altering the Tutor Content for any purposes and in any manner for the purposes of these Terms and for the provision of the Platform and Services.

### **14. Promotions and advertising**

- 14.1 The Tutor agrees to comply with any Platform-wide promotion, such as a Platform-wide discount, exam-season promotion, etc. (**Platform-Wide Promotion**), at ATT's cost or as otherwise agreed between the parties.
- 14.2 ATT may also run other promotions such as those based on referrals as set out in the Platform from time to time.

## **15. Termination**

### **15.1 Termination for convenience**

Without affecting any other right or remedy available to it, ATT may terminate or suspend these Terms with immediate effect, for any reason in its sole discretion, with written notice to the Tutor.

### **15.2 Termination for breach**

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

- (a) the Tutor breaches, or is reasonably suspected to breach, the Code of Conduct, these Terms, the Child Safety Policy or any other policies applicable to the Tutor as provided by ATT from time to time;
- (b) any warranty provided by the Tutor under these Terms is deemed to be misleading, untrue, incorrect or inaccurate;
- (c) either party commits a material breach of any term of these Terms 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,
- (d) an Insolvency Event occurs in relation to either party (and the Corporations Act does not prevent the non-defaulting party from terminating these Terms because of that Insolvency Event); or

15.3 ATT may terminate these Terms immediately by written notice to the Tutor, if any warranty given by the Tutor in these Terms, including in clause 10 of these Terms, is found to be untrue, incorrect or misleading.

## **16. Effect of termination**

### **16.1 Upon termination of these Terms:**

- (a) the Tutor must complete any Bookings made prior to the date of termination (even if the Booking occurs after the date of termination) or cancel them via the Platform; and
- (b) if the Tutor fails to comply with sub-clause (a), ATT may cancel all Lessons booked; and
- (c) any Courses offered by the Tutor will be cancelled and any Users that purchased a Course will be refunded or credited at the sole cost of the Tutor, and the Tutor agrees that ATT may set off such costs or charge the Tutor for such amounts, payable immediately upon termination.

16.2 The termination of these Terms will not release either party from any obligation or liability to the other party, including any payment and delivery obligation that:

- (a) has accrued under these Terms prior to termination;
- (b) comes into effect because of the termination of these Terms; or
- (c) otherwise survives the termination of these Terms.

16.3 Within five (5) Business Days' after termination of these Terms, the Tutor must:

- (a) immediately cease using the Platform and any ATT IP;
- (b) to the extent that return is possible, return to ATT, ATT's Confidential Information and all copies of it; or

- (c) to the extent that return is not possible, destroy all copies of ATT's Confidential Information; and
  - (d) deliver to ATT, all property belonging to ATT that is in its possession or control.
- 16.4 Any amounts owing or payable to ATT by the Tutor under these Terms, will be payable in full immediately upon termination.

## **17. Confidentiality**

- 17.1 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 these Terms.
- 17.2 A party must:
- (a) not disclose any Confidential Information of the other party to anyone else except as permitted under these Terms;
  - (b) limit the disclosure of the Confidential Information within its own organisation only to those of its Personnel to whom such disclosure is strictly necessary for the purposes of these Terms 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).
- 17.3 The obligations of confidentiality in clause 16.2 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 these Terms;
  - (b) ATT may wish to disclose to a prospective purchase or investor;
  - (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.

## **18. Limitation of liability**

- 18.1 From time to time, ATT may provide reports or recommendations to the Tutor suggesting consumer trends, behaviour and recommendations as to the provision of the Tutor Services. However, such information is provided as a guideline only and ATT makes no guarantee regarding the number of bookings expected, location of Users or similar information. ATT will not be liable for any losses or claims (including loss of opportunity or profits) in connection with such reports or recommendations, including any reliance by the Tutor on such reports or recommendations.
- 18.2 The Tutor 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.
- 18.3 To the maximum extent permitted by law, ATT's total aggregate liability to the Tutor under or in any way connected with these Terms, or the performance or non-performance of these Terms, whether under the law of contract, tort or otherwise, is limited to the ATT Fees paid by the Tutor under these Terms in the 12 month period immediately preceding the date on which the relevant claim arose.
- 18.4 To the maximum extent permitted by law, the Tutor will not be entitled to commence any action or claim whatsoever against ATT in respect of these Terms, or the performance or non-performance of these Terms, whether under the law of contract, tort or otherwise, after the expiration of one (1) year after date of expiry or termination of these Terms.

- 18.5 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 Tutor under these Terms, except as expressly set out in these Terms.
- 18.6 Subject to the other terms of this clause 17, ATT excludes any liability to the Tutor, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with these Terms, including any profits, sales or business, production, agreements or contracts, business opportunity, anticipated savings, or damage to goodwill, reputation or use or corruption of the Platform, software, data or information.
- 18.7 Nothing in these Terms purports to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application of any provisions of the Australian Consumer Law which cannot be excluded, restricted or modified.

## **19. Indemnity**

- 19.1 The Tutor 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 these Terms by the Tutor 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 Tutor Services;
  - (c) any breach (or a suspected breach) of clause 11.2, Code of Conduct or Child Safety Policy or any other policy provided by ATT to the Tutor;
  - (d) any act or omission of the Tutor or its Personnel (if applicable), including any negligent, unlawful, wilful or fraudulent act or omission, in connection with these Terms;
  - (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 Tutor or any of its Personnel; and
  - (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.

## **20. Insurance**

- 20.1 The Tutor acknowledges and agrees that it is solely responsible for determining, obtaining and maintaining any insurance required by law or otherwise necessary or appropriate for the provision of the Tutor Services and the performance of its obligations under these Terms.
- 20.2 Without limiting clause 19.1, the Tutor is responsible for assessing its own insurance needs having regard to its status as an independent contractor, the nature of the Tutor Services provided, and the manner in which those services are delivered (including whether services are provided in-person or online).
- 20.3 ATT does not provide, arrange, recommend, endorse or guarantee any insurance coverage for Tutors and makes no representations as to the adequacy, suitability or scope of any insurance held by a Tutor.

- 20.4 The Tutor acknowledges and agrees that any failure to obtain or maintain appropriate insurance is at the Tutor's sole risk, and ATT will not be liable for any loss, damage, claim or liability arising from or in connection with such failure.
- 20.5 ATT may, from time to time, request evidence of insurance from the Tutor for verification purposes. Any such request does not constitute advice, a representation, or a warranty by ATT as to the type or level of insurance required.
- 20.6 At the request of ATT, the Tutor shall supply a copy of the insurance policies and certificates of currency to ATT.

## **21. Dispute resolution**

### **21.1 Dispute resolution procedure**

- (a) If a dispute arises out of or relates to these Terms, a party must not commence any court or other proceedings relating to the dispute unless it has first complied with the following procedure:
- (i) the party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute;
  - (ii) 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;
  - (iii) if the parties do not agree within ten (10) days of receipt of the notice (or such further period as the parties agree in writing) as to:
    - A. the dispute resolution method and procedures to be adopted;
    - B. the timetable for all steps in those procedures; and
    - C. 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.

### **21.2 Other proceedings**

Nothing in these Terms will prejudice the right of a party to seek injunctive or declaratory relief in respect of a dispute or any matter arising under these Terms.

## **22. GST**

- 22.1 Words used in this clause 21 that have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context indicates otherwise.
- 22.2 Unless expressly stated otherwise, the consideration for any supply under or in connection with these Terms is exclusive of GST.
- 22.3 To the extent that any supply made under or in connection with these Terms 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 these Terms 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.
- 22.4 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.

- 22.5 Whenever an adjustment event occurs in relation to any taxable supply to which clause 21.3 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.
- 22.6 If either party is entitled under these Terms to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with these Terms, 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.

### 23. Notices

- 23.1 In these Terms, **Notices** includes any approvals, consents, instructions, orders, directions, statements, requests and certificates or other communications that may be given, or are required to be given, under these Terms.
- 23.2 Unless expressly stated otherwise in these Terms, all Notices:
- (a) must be:
    - (i) in writing;
    - (ii) signed -- if the party is a company, then the Notice must be signed by the company's directors or solicitors; and
    - (iii) left at the address, sent by prepaid ordinary post, sent by fax, or given in any other way permitted by law.
  - (b) take effect from the time they are received unless a later time is specified.

### 24. General

- 24.1 **Amendments:** The Platform is subject to updates and changes and as such, parts of these Terms may need to be amended or varied. ATT may amend or vary these Terms, in its sole discretion, by notice in writing to the Tutor. The Tutor may, within 14 days' of receiving such notice, elect to terminate the Agreement if it does not agree with such amendments by notice in writing to ATT. If ATT does not receive such notice of termination within the specified timeframe, the Tutor is deemed to have accepted and agreed to be bound to such amendments and variations as at the date of receiving the notice of such amendment or variation.
- 24.2 **Assignment:** The Tutor must not assign, transfer, novate or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of ATT. Any purported dealing in breach of this clause is of no effect. A change in control (as defined in the Corporations Act) of the Tutor constitutes a deemed assignment.
- 24.3 **Costs:** Each party must pay its costs of entering into and negotiation of these Terms.
- 24.4 **Counterparts:** These Terms may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of these Terms, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart. The parties agree that an executed electronic copy of a digital scan (including in portable document format), of these Terms (where such email address has been notified by a party to another party for these purposes) will serve as a legal and binding agreement with the same force and effect as the original.

- 24.5 **Entire agreement:** These Terms is the entire agreement between the parties and supersedes all and any communications, negotiations, arrangements and agreements, whether oral or written, between the parties in respect of the matters that are the subject of these Terms.
- 24.6 **Force majeure:** If by reason of any fact, circumstance, matter or thing beyond the reasonable control of ATT either is unable to perform in whole or in part any obligation under these Terms then:
- (a) ATT is relieved of that obligation under these Terms to the extent and for the period that it is unable to perform such obligation; and
  - (b) ATT will not be liable to the Tutor for failure to perform such obligation to the extent and for the period of non-performance contemplated by this clause.
- 24.7 **Further assurance:** Each party must from time to time and in a timely manner do all things reasonably required of it by the other party to give effect to these Terms.
- 24.8 **No representations or warranties:** The parties hereby acknowledge that no representations or warranties have been made other than those expressly recorded in these Terms and that, in respect of these Terms or any part of it including the transactions contemplated pursuant to these Terms, no party has relied or will rely upon any representations or information, whether oral or written, previously provided to or discovered by it.
- 24.9 **Relationship:** Except as expressly stated in these Terms, nothing in these Terms is intended to create a relationship of partnership, joint venture, agency or employer-employee between the parties. Neither party has authority to create, assume or otherwise enter into any agreement that imposes rights or obligations on the part of the other party.
- 24.10 **Powers, rights and remedies:** Unless otherwise stated in these Terms, the powers, rights and/or remedies of a party under these Terms are cumulative and are in addition to any other powers, rights and remedies of that party. Nothing in these Terms merges, extinguishes, postpones, lessens or otherwise prejudicially affects any power, right, or remedy that a party may have at any time against the other party to these Terms or any other person.
- 24.11 **Set off:** ATT is authorised to deduct any amount due and payable by the Tutor from amounts otherwise due and payable to the Tutor under or in connection with these Terms. Any exercise by a party of its rights under this clause does not limit or affect any other rights or remedies available to it under these Terms or otherwise.
- 24.12 **Severance:** If any provision of these Terms is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from these Terms and rendered ineffective as far as possible without modifying the remaining provisions of these Terms, and shall not in any way affect any other circumstances of or the validity or enforcement of these Terms.
- 24.13 **Survival:** The following clauses are continuing obligations and will continue after termination or expiry of these Terms: 24 (Definitions and interpretation), 6 (Payments and Tutor Fees), 11 (Tutor Obligations and Warranties), 15 (Effect of termination), 16 (Confidentiality), 17 (Limitation of Liability), 18 (Indemnity), 20 (Dispute Resolution) and 23 (General).
- 24.14 **Third parties:** These Terms does not, and is not intended to, confer any rights or remedies upon any person other than the parties.
- 24.15 **Time of the essence:** The parties agree that time is of the essence with respect to the Tutor's obligations under these Terms.
- 24.16 **Waiver:** A failure by either party to take action to enforce its rights does not constitute a waiver of any right or remedy under these Terms unless it is in writing signed by the party granting the waiver.
- 24.17 **Jurisdiction:** The parties irrevocably submit to the exclusive jurisdiction of the courts of the state of Tasmania, Australia.

24.18 **Governing law:** These Terms will be governed by and construed and interpreted in accordance with the laws of Tasmania, Australia.

## 25. Definitions and interpretation

### 25.1 Definitions

In these Terms, unless the context requires otherwise:

**Agreement** or **Tutor Terms** means these Terms and its schedules and annexures and any subsequent variation.

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

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

**Commencement Date** means the date specified in Schedule 1.

**Commission Structure** means the information provided to the Tutor by ATT regarding the various commission rates applicable to the Tutor Services available at <https://portal.affordabletutoringtasmania.com/>.

**Confidential Information** means:

- (a) the terms of these Terms and its subject matter, including information submitted or disclosed by a party during negotiations, discussions and meetings relating to these Terms;
- (b) any information relating to the business of ATT;
- (c) any information relating to commissions, margins or pricing details of ATT;
- (d) any information provided by ATT to the Tutor regarding consumer demand for the Tutor Services, consumer preferences, case studies and any reasonably similar information;
- (e) any User lists or User details;
- (f) any information of ATT which is designated by ATT as confidential;
- (g) any information of ATT which is of a confidential or sensitive nature, which is marked or denoted as confidential or which a reasonable person to whom that information is disclosed or to whose knowledge the information comes would consider confidential; or
- (h) any information which is disclosed by ATT to the Tutor, directly or indirectly, or otherwise comes to the knowledge of that party in relation to or in connection with these Terms, whether that information is in oral, visual or written form or is recorded or embodied in any other medium.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Group Class** 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 Law** means the definition given to that term in the *A New Tax System (Services & Services Tax) Act 1999* (Cth).

**Insolvency Event** means the occurrence of any one or more of the following events in relation to a party:

- (a) it is insolvent as defined by section 95A of the Corporations Act as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable law (including under section 459C(2) or section 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;

- (b) any step is taken to appoint a receiver, a receiver and manager, a liquidator or a provisional liquidator or other like person to it or any of its assets, operations or business;
- (c) an administrator is appointed to it under sections 436A, 436B or 436C of the Corporations Act;
- (d) a controller (as defined in section 9 of the Corporations Act) is appointed to it or any of its assets;
- (e) an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator, receiver or receiver and manager be appointed, and that application is not withdrawn, struck out or dismissed within 15 Business Days of it being made;
- (f) any step is taken to enter into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors;
- (g) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (h) it is taken to have failed to comply with a statutory demand under section 459F(1) of the Corporations Act;
- (i) a notice is issued under section 601AA or section 601AB of the Corporations Act [and not withdrawn or dismissed within 15 Business Days;
- (j) a writ of execution for its property which is not dismissed within 15 Business Days;
- (k) it ceases to carry on business or threatens to do so, other than in accordance with the terms of these Terms; or
- (l) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the events set out in the above paragraphs of this definition.

**Intellectual Property** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs and unregistered designs, rights to use, and protect the confidentiality of, confidential information (including know-how, trade secrets, and datasets), technology and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist now or in the future, anywhere in the world.

**Moral Rights** means the rights conferred by Part IX of the *Copyright Act 1968* (Cth) and any similar rights existing or that may come to exist anywhere in the world, including:

- (a) a right of attribution of authorship;
- (b) a right not to have authorship falsely attributed; and
- (c) a right of integrity.

**Personnel** means an employee, director, officer, agent, representative, contractor or sub-contractor of a party.

**Platform** means the ATT website and application (including mobile application) which allows tutors to offer their services and users to purchase tutoring services, including the Tutor Booking Portal and User Booking Portal for the purpose of receiving Services and providing Tutor Services to Users.

**Platform Terms** mean the Platform Terms and Conditions, which apply to all users of the Platform, which incorporate by reference, ATT's Privacy Policy, Child Safety Policy and Code of Conduct.

**Privacy Policy** means ATT's privacy policy as provided by ATT, including as linked on the Platform, from time to time.

**Services** means the facilitative services provided by ATT to the Tutors with respect to the Platform.

**Tutor Booking Portal** means the Tutor booking system where Tutors may manage their Listings, Lessons and payments in accordance with these Terms and where ATT may provide training, onboarding, updates, payments, academic materials located at ATT.

**Tutor Content** means Intellectual Property owned by or licenced to the Tutor, including information and data provided to ATT by the Tutor, including information related to the Tutor, information.

**User Booking Portal** means the User booking system where Users may schedule Lessons and manage payments in accordance with these Terms located at ATT.

## 1.2 Interpretation

In these Terms, unless the context requires otherwise:

- (a) words in the singular include the plural and vice versa;
- (b) headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of these Terms;
- (c) any reference to gender includes the other gender;
- (d) 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 these Terms;
- (e) if any act which must be done under these Terms is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;
- (f) a reference to any legislation includes subordinate legislation and all amendments, consolidations or replacements from time to time;
- (g) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity;
- (h) the words "includes" and "including" or words of similar effect are not words of limitation;
- (i) no clause of these Terms shall be interpreted to the disadvantage of a party merely because that party drafted the clause or would otherwise benefit from it;
- (j) a reference to a party includes the party's successors, assigns and persons substituted by novation;
- (k) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (l) a reference to time and date is to local time and dates in Tasmania, Australia; and
- (m) unless specified otherwise, a reference to "\$" or "dollars" refers to Australian dollars.