

## Service Provider-Business Terms

### CN Coaching

Registered Office:

Suite 3, Level 27, Governor Macquarie Tower,

1 Farrer Place Sydney, NSW 2000

ABN: 98 524 480 136

Phone: (02) 9158 3851

Email: [contact@cncoaching.com.au](mailto:contact@cncoaching.com.au)

### RECITALS

- a. These terms and conditions, herein referred to as the 'Terms' set out the terms and conditions under which CN Coaching (ABN: 98 524 480 136), herein referred to as 'CN Coaching' or 'Service Provider' grants to the Business, a licence to access and use the Website ([www.cncoaching.com.au](http://www.cncoaching.com.au)) and online platform & backend lesson booking management software ([www.cnc.teachworks.com](http://www.cnc.teachworks.com)) and other tools and resources from time to time.
- b. These Terms govern the activities of the Business in relation to their use of the Website and the Services. By accessing or using the Website and the Services, the Business accepts these Terms in full. The Service Provider reserves the right to change the terms relating to these Terms (or any part) at any time, effective immediately upon posting on the Website. Please check this page of the Website periodically. Read it carefully and ensure that its effect is understood before proceeding to use the Website or Services. If there is any disagreement with any part of the Terms, do not use the Website or the Services. If there is any inconsistency between these Terms and any other communication, promises or agreements, these terms will prevail.
- c. When the Business uses the Website and the Services, they agree that in addition to these Terms, other terms and conditions apply and are incorporated by this reference, including the:
  1. **Privacy Policy**, **Business-Customer Terms** and **Child Protection Policy** (where applicable) posted on the Website;
  2. The TeachWorks Terms of Service and Privacy Policy including, without limitation, the Stripe Services Agreement;
  3. The Stripe Terms of Service and Privacy Policy;
  4. The Bitrix24 CRM Terms of Service and Privacy Policy;
  5. All terms and conditions and privacy policies of all API's and third party software that are integrated into or within the Website or in any way used to facilitate the Website or Services to and/or for the Customer and the Business.
- d. In using the Website, the Business will enter into two contractual relationships. The first contract is these Terms, being with the Service Provider, regarding the nature of the services to be provided by the Service Provider to the Business. The second contract is the Business-Customer Terms, being with the Customer, regarding the nature of the services to be provided by the Business to the Customer.
- e. The Service Provider does not offer Tutoring Services itself but is a third party facilitator of contracts between the Customer and the Business. Accordingly, the Service Provider offers a Website through which Customers can a Customer Booking to request and book a Business for the provision of Tutoring Services. The Service Provider utilises the search criteria and enquiry details provided by the Customer to search and filter the best matching Business from its database of Businesses (or by finding the most suitable Business and signing them up to the database) to the Customer Booking. The Service Provider can issue invoices to collect fees from the Customer and for the Business and pass on payments to the Business.

- f. The Business is in the business of providing tutoring services of the type set out in Tutoring Services.

## IT IS AGREED

### 1. Definitions and Interpretation

#### 1.1. Definitions:

“**Address**” means an address or location where Tutoring Services are to be carried out as identified in the Customer Booking;

“**Annexure**” means an annexure to these Terms;

“**Business Hourly Fee**” means the fee per hour for Tutoring Services;

“**Business Invitation**” means the communication in any form, whether orally, via the Website, SMS, phone call, notification and/or email sent by the Service Provider to the Business to convey a Customer Booking and to seek the Business’s acceptance of a Customer Booking;

“**Business Lesson Fee**” is the total fee payable to the Business which is calculated based on the number of **Lesson Hours** and the **Business Hourly Fee**;

“**Business**” means the independent tutoring business, being a sole trader or entity, who has sent an application on the Website and/or accepts a Customer Booking and provides tutoring services of the type set out in Tutoring Services;

“**Business-Customer Terms**” means the Terms between the Business and the Customer for the provision of Tutoring Services that is available on the Website;

“**Claim**” means any and all present and future claims, actions, demands and rights howsoever arising out of, or in connection with the Services, including any claim for damages, complaint, action, suit, cause of action or proceedings, arbitration, debt due, cost and expense (including legal cost and expense), demand, verdict or judgment arising out of any provisions under statute, award, order or determination whether or not known at the date of these Terms;

“**CN Coaching Account**” means the account of the Business that is confirmed by the Service Provider, which the Business can set a password for and login to manage their lessons, Customers and payment details;

“**Customer Booking**” means the communication in any form, whether orally, via the Website, SMS, phone call, notification and/or email sent by a Customer for Tutoring Services to be carried out at a Scheduled Time and Address for the Lesson Hours, by the Business;

“**Customer Hourly Fee**” means

“**Customer Lesson Fee**” means the amount payable by the Customer for the Lesson Hours to perform the Tutoring Services calculated at the Business Hourly Fee plus the Service Fee;

“**Customer**” means a Customer, being a person or entity, who has made or requested a Customer Booking;

“**Dollar**” or “**\$**” means Australian Dollars;

“**Extras**” means the services listed in item 4 of the Schedule;

“**Government Authority**” means any government or governmental, semi-governmental or judicial entity or authority;

**“Insurance Policy”** means the insurance policy which enables the Business to be insured against public liability and property damage arising from, or as a result of the Tutoring Services provided by the Business;

**“Intellectual Property”** means all, if any, corporate identity, copyrights, trade secrets, patents, design rights or other intellectual property rights;

**“Lesson Hours”** means the amount of time the Business will undertake the Tutoring Services in accordance with the Customer Booking;

**“Payout Method”** means the BSB, Account Number and Account Name details provided by the Business to the Service Provider, where the Payout will be paid into;

**“Payout”** means the release of funds to the Payout Method of the Business;

**“Schedule”** means a schedule to these Terms;

**“Scheduled Time”** means the time and date the Services are to be undertaken by the Business in accordance with the Customer Booking;

**“Service Fee”** means the fee contained within the Customer Lesson Fee that the Service Provider collects for facilitating and connecting the Customer with the Business and managing the administration of such Services;

**“Service”** means the service offered by the Service Provider to the Business and Customer through the Website and supporting methods;

**“Terms”** means these Terms together with any schedules or annexures hereto, which may be amended from time to time in writing by the Service Provider;

**“Tutoring Services”** means the services a Customer has requested in a Customer Booking, to be provided by the Business, which comprises or includes the following;

- a. private or group tutoring;
- b. lesson research and preparation;
- c. notes, plans and other resources required for the tutoring;
- d. lesson summary, follow-up and support;
- e. scheduling lessons with the Customer; and
- f. any other requirements relating to educational services as may be reasonably and lawfully requested of the Business by the Customer.

**“Tutoring Tools and Equipment”** means the tutoring tools and equipment required to effectively provide the Tutoring Services;

**“Website”** means the website ([www.cncoaching.com.au](http://www.cncoaching.com.au)) and online platform and lesson booking and payment management software ([www.cnc.teachworks.com](http://www.cnc.teachworks.com)) and other front end and back end software, API's and tools used to facilitate the Service from time to time.

## 1.2. Interpretation

In these Terms, unless the context otherwise requires:

- i. headings are for convenience only and do not affect the interpretation of these Terms;
- ii. words importing the singular include the plural and vice versa;
- iii. words importing a gender include any gender;

- iv. an expression importing a natural person includes any entity, partnership, joint venture, association, corporation and any Governmental Agency;
- v. a reference to a 'Party', 'Plaintiff' and/or 'Defendant' collectively refers to the respective entity and, without limitation, its directors, officers, members, employees and agents;
- vi. a reference to anything (including, but not limited to, any right) includes a part of that thing;
- vii. a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of, and a party, annexure, exhibit and schedule to, these Terms and a reference to these Terms includes any annexure, exhibit or schedule;
- viii. a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.
- ix. a reference to a document includes all amendments or supplements to, or replacements or notations of, that document;
- x. no provision of these Terms will be construed adversely to a party solely on the ground that the party was responsible for the preparation of these Terms or that provision;
- xi. a covenant of these Terms on the part of two or more persons binds them jointly and severally.

## **2. Registering as a Business**

- 2.1.** To become a registered Business on the Website, the applying Business will first submit an application on the Website by completing an online application form. Once received, the Service Provider will process this application and may inform the applying Business of the result, but is not required to do so. The Service Provider has absolute discretion to decide if any applying Business qualifies (or continues to qualify) as a Business upon successful completion of the selection process.
- 2.2.** By completing the application form and/or commencing Tutoring Services for a Customer, the Business hereby warrants, represents and undertakes to the Service Provider that the Business is:
  - a) at least eighteen (18) years of age and has the necessary qualification or experience to provide the Tutoring Services in the subject(s) offered;
  - b) personally responsible for the information posted on the Website and submitted throughout the registration process which is accurate and up-to-date;
  - c) compliant with all applicable laws, regulations and codes of practice including, but not limited to, relevant legislation for the protection of businesses and consumers alike and which regulate the Services;
  - d) not prevented from working with children for any reason and without any limitations and has not had any past criminal charges or offences;
  - e) an independent business that is legally able to provide paid tutoring services in Australia and agrees to provide or obtain an ABN (Australian Business Number);
  - f) free to enter into these Terms, and that any terms within these Terms does not violate the terms of any agreement between the Business and any third party and does not violate any pertaining laws;
  - g) not permitted to provide Tutoring Services and it accepts any and all responsibility and liability for doing so, if any of the above are not correct, or if the Business does not agree to these Terms.

- 2.3.** The Business is required to provide the Service Provider with the following information for database records:
- a) Contact details, including full name, address, mobile phone number, email address, Australian Business Number and bank account details (for the deposit of funds);
  - b) Experience, teaching background, qualifications, resume and other relevant information;
  - c) Expected availability for the provision of the Tutoring Services;
  - d) Two (2) references, if requested by the Service Provider;
  - e) Drivers Licence and/or Passport, or other form of Identification as requested by the Service Provider;
  - f) Working with Children Check (or equivalent) number, expiry and a copy of the card, receipt or certificate;
- 2.4.** If any of the documents listed in the clause above have expired, changed or have been renewed, the Business must advise the Service Provider of the:
- a) expiration, two (2) days prior to the expiration; or
  - b) change, as soon as practicable, but no longer than 24 hours after the change; or
  - c) renewal, within two (2) days of the renewal
  - d) and provide evidence of the above as requested by the Service Provider.
- 2.5.** Once a Business has been confirmed and registered with a CN Coaching Account, it can benefit from full use of the Website and the Services.
- 2.6.** For maximum protection, during registration, the Business will keep the password relevant to the Website and the Services confidential and not reveal it to anyone else. The Business is responsible for all activities that are carried out under its username and password which shall represent its CN Coaching Account. The Service Provider does not have the means to check the identities of all people using the Website and will not be liable where the Business' username and/or password are used by someone else. The Business agrees to notify the Service Provider immediately by email of any unauthorised use of its account of which it becomes aware (with 'IMPORTANT – PASSWORD' in the subject line).
- 2.7.** The Service Provider reserves the right to suspend or terminate the Businesses ability to render Tutoring Services and access to the Website at any time and for any reason without liability to CN Coaching. Where terminated, the Business' CN Coaching Account shall be deactivated.

### **3. Customer Booking**

- 3.1.** The Website, with the aid of an administration team, enables Customers to locate a Business that best matches their search criteria. A Customer makes or requests a Customer Booking by submitting their search criteria or requirements via the Website, by e-mail, SMS or by telephone. Once the Customer Booking is received, the Service Provider will send Business Invitations to Businesses that match the criteria of the Customer. Customers can also request for all local Businesses to be provided to them, from which the Customer can make a decision about a booking.
- 3.2.** Once a Customer has made a Customer Booking and the Business receives a Business Invitation, the Business can confirm its acceptance of the Business Invitation by notifying the Service Provider of its acceptance through the Website, by e-mail, SMS or by telephone.
- 3.3.** The Service Provider in its absolute discretion may not submit a Business Invitation to the Business and these Terms do not oblige it to provide any minimum number of Business Invitations. Business Invitations may be sent to multiple Businesses at the same time. Typically, the first Business that best matches the search criteria of the Customer to respond will receive the Customer Booking.
- 3.4.** The Business is free to accept or decline a Business Invitation in its sole discretion.

- 3.5. Upon the Business' acceptance of the Business Invitation, the Business acknowledges and agrees that an agreement, **Business-Customer Terms**, between the Business and the Customer will come into effect immediately and the Business authorises the Service Provider to provide the Business' contact details to the Customer.
- 3.6. The Business will then contact the Customer at the phone number and/or email provided to the Business within 24 hours to for an introduction and to schedule the first lesson. The Business will then add this lesson into their CN Coaching Account directly or may inform the Service Provider of the confirmed lesson time. The Customer may also submit a request and confirm this Lesson with the Business via their CN Coaching Account.
- 3.7. By sending one or more matching Businesses for the Customer to select from, the Customer is responsible for determining and confirming the identity and suitability of the Business interacted with as a result of their use, or use by any third party, of the Website and Services. The Service Provider does not endorse or recommend any Business to the Customer.

#### 4. Business' Obligations

- 4.1. The Business must comply with any operational requirements as directed by the Service Provider and as amended from time to time and in accordance with these Terms. The Business agrees:
  - a) That all written and oral statements and information provided by the Business to the Service Provider in connection with these Terms were when provided, and remain true, complete and accurate;
  - b) To provide the Tutoring Services with all due care and skill, in conformity with these Terms and in compliance with all applicable statutory and regulatory requirements and standards of best practice;
  - c) To take all appropriate steps to safeguard and protect the interests of the Customer and all those involved in any way with the Tutoring Services;
  - d) To ensure that the Address is safe and to conduct its own work health and safety risk assessments of the Address prior to performing the Tutoring Services;
  - e) To assume all responsibility for its role as Tutoring Service provider and for the provision of Tutoring Services to the Customer;
  - f) To accept Business Invitations within a reasonable time frame;
  - g) Not to commence Tutoring Services until notified by the Service Provider that a Customer Booking has been confirmed and all administrative tasks have been completed with the Business and the Customer;
  - h) To confirm upcoming lessons with the Customer and ensure that the correct lesson is entered in Their CNC Account calendar;
  - i) To promptly for all tutoring lessons and conduct the lessons for the minimum assigned hours;
  - j) To not stay for an unreasonable amount of additional time without the pre-approval of the Customer and Service Provider. Unless requested otherwise by the Customer, or for any other reasonable cause, this shall be adhered to for all lessons;
  - k) To act at all times in accordance with the highest professional standards;
  - l) To notify the Service Provider immediately should it become incapacitated in any way and unable to provide the Tutoring Services. CN Coaching can notify any Customers concerned if the Business has not already done so;
  - m) To provide, in a timely manner, any information and instructions which the Service Provider or the Customer from time to time reasonably request to enable the Tutoring Service to be performed in accordance with these Terms or as reasonably appropriate;

- n) It is responsible for commercial risk and any other risk related to the Tutoring Services provided to the Customer by the Business. This includes the costs or loss of any poor workmanship, any injury suffered as a result of their work and other associated risks;
- o) If the Service Provider is advised by the Customer that the Business has not performed the Tutoring Services to a reasonable standard, it will forward this information to the Business. The Business agrees to negotiate with the Customer in good faith to achieve an agreement on reduced time or payment for the Tutoring Services, or a refund as necessary;
- p) To provide the Tutoring Products and Equipment agreed upon to effectively deliver the Tutoring Services, unless the Customer has chosen to provide their own tutoring products at the time of making the Customer Booking. If the Business fails to provide the Tutoring Products and Equipment agreed upon and the issue has been raised by the Customer, the Business agrees that the Service Provider is entitled to withhold a reasonable amount in the sole discretion of the Service Provider to compensate the Customer.
- q) That while on the premises of the Customer, the Service Provider, or the premises on which the Tutoring Services are offered, the Business shall comply with all reasonable rules and regulations established at such premises.

**4.2.** The Business agrees not to:

- a) Represent the Service Provider in any dealings, agreement, contract or transaction with any third party;
- b) Use its company contacts to advance its private business or personal interests at the expense of the Service Provider, Customers or affiliates;
- c) Give any bribes or other similar remuneration or consideration to any person to attract or influence business activity;
- d) Accept gifts, gratuities, fees, bonuses or excessive entertainment, in order to attract or influence business activity;
- e) Disobey any Equal Employment Opportunity laws and any other employment and general laws and act with respect in all of its dealings with third parties;
- f) Hide, conceal or destroy any unethical, dishonest, fraudulent and illegal behaviour, or the violation of our policies and procedures. These instead, should be reported directly to the Service Provider;
- g) Use, possess, buy, sell or be under the influence of or otherwise irresponsibly interact with alcohol, non-prescribed drugs or any mind-altering substances whilst on any Service Provider, Customer or other premises when conducting Tutoring Services or conducting any activity related to the Services or these Terms;

**4.3.** Nothing in these Terms shall prevent the Business from being engaged, concerned or from having any financial interest in any capacity in any other business, trade, profession or occupation during the duration of these Terms provided that such activity does not cause a breach of any of the Business' obligations under these Terms.

**5. Service Providers' Obligations**

**5.1.** The Service Provider agrees to:

- a) provide the Service with all due care, skill and ability and in a timely manner and in the best interests of the Customer and the Business;
- b) provide promptly and give to the Business all such information as it may reasonably require in connection with the provision of the Service;
- c) As an online service, the Website may periodically be unavailable as regular (and emergency) maintenance and upgrades are performed. The Service Provider makes no



warranty, guarantee or representation as to, and accepts no liability for, the availability or suitability of the Website and/or the Services.

## **6. Fees and Payment**

- 6.1.** The Business Lesson Fee is the total fee payable to the Business which is calculated based on the number of Lesson Hours and the Business Hourly Fee.
- 6.2.** The Business Hourly Fee is set out or referred to in the correspondence, application form or as otherwise agreed in writing between the Service Provider and the Business for the particular Customer that the Tutoring Services are provided to. Such fee may differ based on each Customers' requirements, travel distance, lesson duration and other factors as determined by the Business and agreed to by the Service Provider. The fee should be a comparable reflection of what the Business would otherwise charge their non-CN Coaching Customers for comparable work. The fee should be inclusive of any applicable GST, taxes, superannuation and any other expenses, fees or government taxes.
- 6.3.** The Business remains free to determine their Business Hourly Fee for any Customer, which will be specified and confirmed before the commencement of the Tutoring Services. Except for a reasonable change in situations, the Business cannot alter the Business Hourly Fee for any current Customer without the prior discussion with the Service Provider and approval of the Customer.
- 6.4.** Lesson Hours include only the Duration during which the Business is providing the principal Tutoring Service to the Customer, which is approved in writing by the Service Provider and the Customer prior to lessons or amended as required by all parties.
- 6.5.** The Service Fee is the fee that the Service Provider collects per hour for facilitating and connecting the Customer with the Business and managing the administration of such Services. The Service Fee is added to the Business Hourly Fee to total the Customer Hourly Fee which the Customer will pay on an hourly basis for the Tutoring Services and Service.
- 6.6.** Any Fee based on an hourly basis will be charged on a proportionate basis for any period of less or greater than an hour.
- 6.7.**
- 6.8.** If the Student, Parent or Business decides after the first hour that the in-home tutorial is not a satisfactory match, Service Provider does not charge for that first session; otherwise, a charge applies. Thus, Service Provider is not entitled to make payment for that hour to Tutor.
- 6.9.**
- 6.10.** We do not deduct any tax from the Business Lesson Fee. The Business has sole responsibility for:
  - a) paying all income tax and other required contributions in relation to all charges and sums payable to the Business by the Service Provider shall be responsible for completing and submitting all relevant assessments, returns and other information to the ATO and appropriate government and private bodies as necessary by law in relation to such charges and sums, based on the Business' own professional tax advice;
- 6.11.** Unless otherwise expressly agreed in writing by the Service Provider, the Business shall not receive or accept from the Customer or any other person any sums due to the Service Provider, or otherwise, for the provision of the Tutoring Services or as a gift or reward.
- 6.12.** The Business authorises the Service Provider as its payment collection agent solely for the limited purpose of accepting fees from Customers approved by the Service Provider in connection with the provision of the Tutoring Services on the Business' behalf.
- 6.13.** The Business agrees that any payment made by a Customer via the Website or other means, shall be considered the same as a payment made directly to the Business, and the



Business will provide the Tutoring Services to the Customer in the agreed-upon manner as if the Business has received the payment directly from the Customer.

- 6.14.** The Service Providers obligation to pay the Business is subject to and conditional upon successful receipt of the associated payments from the Customer. The Service Provider guarantees payments to the Business only for such amounts that have been successfully received by the Service Provider from the Customer in accordance with these Terms. In accepting appointment as the limited payment collection agent of the Business, the Service Provider assumes no liability for any acts or omissions of the Business.
- 6.15.** Although the Website has features which are made to track the lessons and payment details, the Business has complete liability and obligation for their own record-keeping of all lessons, customers, payments, invoices and other details as legally and operationally required for the provision of the Tutoring Services.
- 6.16.** The Business shall promptly provide to the Service Provider, as requested from time to time:
- a) written details of all time incurred by the Business in providing the Tutoring Services during that calendar month or since the commencement of lessons; and
  - b) all such other information relating to the performance of the Tutoring Services

## **7. Payment Settlement and Payout**

- 7.1.** The Service Provider holds all Customer Lesson Fees (which will be based on the number of undisputed and completed Tutoring Service hours for the time period in question) for the Business in a bank account for a limited time and is entitled to retain the full amount it charges to the Business in consideration for the Tutoring Services provided prior to releasing the Business Lesson Fees to the Business.
- 7.2.** The Service Provider shall release Payout to the Business an amount equal to the gross Business Lesson Fee collected by the Service Provider.
- 7.3.** In order to receive a Payout, the Business must have a valid Payout Method within its CN Coaching Account and accepts full liability for any payment errors due to errors with the Payout Method it has submitted.
- 7.4.** All Customer Lesson Fees collected by the Service Provider on behalf of the Business will be paid to the Business in the following payout cycles:
- a) on the 1<sup>st</sup> Friday of the month (“First Payout Date”); and
  - b) on the 3<sup>rd</sup> Friday of the month (“Second Payout Date”)
  - c) In the case of any public holidays or office closures, the above Payout dates will be moved to the next day which the Service Provider is open and able to process Payouts. (“Payment Cycle”)
- The Service Provider will pay all Customer Lesson Fees held by it on behalf of the Business and held to the account of the Business for services provided by the Business in the period since the previous Payout Date until and inclusive of the date of the current Payout date. The Business acknowledges that the Service Provider has the right to change the Payment Cycle at its sole discretion provided that it notifies the Business no less than seven (7) days prior to the change of the Payment Cycle.
- 7.5.** The Business irrevocably authorises the Service Provider to deduct from the Customer Lesson Fee collected by the Service Provider the Service Fee.
- 7.6.** Once released by the Service Provider, the time taken to receive the Payout may depend upon the processing schedule and time required for the financial institution to process the Payout. The Service Provider may delay or cancel any Payout for purposes of preventing unlawful activity or fraud, risk assessment, security, or investigation.
- 7.7.** The Business will confirm the accuracy and completeness of invoices for the Tutoring Services it has provided no later than 2 days after the Business has provided the Tutoring

Services. Failure to confirm invoices within 2 days will mean that no invoice is issued for a Booked Service and no Customer Lesson Fee collected by the Service Provider on behalf of the Business. The Service Provider will notify the Business of outstanding invoice confirmations.

- 7.8.** The Service Provider will enable the Business to access an online archive of all invoices that the Service Provider issues on behalf and in the name of the Business to the Customers. If the Business disputes an invoice, it must notify the Service Provider within seven (7) days of receipt of the copy of the invoice.
- 7.9.** If a Customer notifies the Service Provider that the Tutoring Services were not performed in accordance with the Business-Customer Terms, the Business acknowledges and agrees that the Service Provider will not issue an invoice to the Customer or attempt to claim from the Customer any Customer Lesson Fee referable to the disputed Tutoring Services until a new Customer Lesson Fee is agreed between the Customer and the Business.
- 7.10.** The Business acknowledges and agrees that:
  - a) the Service Provider will not be liable for any Customer Lesson Fee that any Customer fails to pay or that it, for any reason, does not receive from any Customer; and
  - b) the Business will not make any claim against the Service Provider for the non-payment or non-receipt of any Customer Lesson Fee.
- 7.11.** If a Customer fails to meet its obligations under the Business-Customer Terms, including payment of the Tutoring Services, the Service Provider shall not be obliged to collect any outstanding payments. The Business shall have all rights available at law to take legal action against the Customer. Before initiating any legal action, the Business shall notify the Service Provider at least seven (7) days prior to taking such action.
- 7.12.** The Service Provider may withhold, retain or set off from any payment due to the Business under these Terms amounts to protect it against any costs, charges, expenses and damages for which the Business is liable under or in connection with these Terms. This right to withhold, retain or set off does not limit the Service Provider's right to recover those amounts in any other way.
- 7.13.** The Service Provider will take steps to rectify any payment processing errors that it is made aware of. These steps may include crediting or debiting (as appropriate) the Payout Method or Payment Method used for the original Payout to or payment by the Business or Customer.

## **8. Changes, Cancellations and Refunds**

- 8.1.** The Customer may cancel or amend a Customer Booking on the Website or by communicating with the Business, free of charge, up to 2 hours before the Scheduled Time. The Service Provider is not involved with the relay of cancellations or amendments to a Customer Booking between the Business and the Customer.
- 8.2.** If the Customer cancels or amends a Customer Booking within 2 hours before the Tutoring Service is scheduled to begin, a cancellation fee equivalent to one hour of the Business Hourly Fee will be applied. This is only charged at the sole discretion of the Service Provider, with instruction from the Business. The Service Provider will notify the Business as soon as practicable and will pass the one-hour cancellation cost on to the Business, minus its Service Fee.
- 8.3.** If the Business is unable to fulfil a confirmed Customer Booking, it must notify the Customer and the Service Provider as soon as practical.
- 8.4.** If the Business must notify the Customer and Service Provider, but does so less than 2 hours before the confirmed Customer Booking, the Service Provider will deduct from the Payout otherwise due to the Business 1 hour of the applicable Business Hourly Fee.

- 8.5. In the event of a complaint by a Customer with respect to any damage to Customer property or premises, the Service Provider may deduct from the payments otherwise due to the Business the sum of \$500 pending full investigation and resolution of the damage complaint.
- 8.6. If any refund occurs subsequent to the Business receiving the Payout from the Service Provider, the Service Provider shall be entitled to withhold sufficient monies and offset any amounts payable to the Business by the Service Provider under these Terms from any gross Business Lesson Fees collected by the Service Provider thereafter to enable it to refund the relevant Customer on the Business' behalf. The Service Provider shall be entitled to repay such monies to the Customer at its discretion.
- 8.7. If either party fails to make any payment due (and undisputed) under these Terms within ten (10) days post the due date for payment, the other shall be entitled to charge interest on the overdue sum for the period from and including the due date of payment up to the actual date of payment (after as well as before judgment) at the rate of 2% (two per cent) above the base rate per annum.

## **9. Disputes**

- 9.1. Negative feedback reported to the Service Provider by the Customer may be investigated. The Business will attempt, in good faith, to resolve any Dispute or claim promptly through negotiations between it and the Service Provider and Customer.
- 9.2. During the durations of these Terms, the Business must inform the Service Provider immediately if it becomes aware of any Dispute or potential Dispute between it and the Customer and/ or the Service Provider in connection with the provision of the Tutoring Services rendered by the Business.
- 9.3. The Business agrees to cooperate fully with the Service Provider in resolving any Dispute with a Customer.
- 9.4. The Service Provider reserves the right to suspend the Business CN Coaching Account and hold all Tutoring Services offered by the Business, with immediate effect, while an investigation is conducted.
- 9.5. In the event of a Dispute prior to receipt of Tutor Fees, MTW reserve the right to withhold Tutor Fees until the Dispute has been resolved.
- 9.6. The consequence of any investigation instigated by a Customer is entirely at the discretion of the Service Provider.
- 9.7. In response to a Dispute, if any refund occurs, the Service Provider will be entitled, in its sole discretion to refund the Customer on behalf of the Business in full or in part. In such circumstances, the Business may receive either no Business Lesson Fees or only part of the Business Lesson Fee respectively.

## **10. Promotions**

- 1.1. The Service Provider may from time to time run promotional campaigns to market its Website by discounting the Fees payable by the Customer.

## **11. Intellectual Property**

- 11.1. All logos, slogans, content, designs, diagrams, drawings, graphics, images, appearance, videos, ideas, methods, databases, codes, algorithms, software, fees, pricing, notes, documents, domain names, confidential information, copyright (or similar rights), registered or unregistered trademarks, trade names, patent, know-how, trade secrets and any other intellectual or industrial property whether such rights are capable of being registered or

not (collectively Intellectual Property), including but not limited to copyright which subsists in all creative and literary works displayed on the Site, the App and Services, appearance and look of the Website, together with any applications for registration and any rights to registration or renewal of such rights anywhere in the world, whether created before or after the date of these Terms and whether used or contained in the Website is owned, controlled or licensed to Service Provider (or its affiliates and/or third party licensors as applicable).

- 11.2.** The Business agrees that, as between the Business and Service Provider, the Service Provider owns or holds the relevant licence to all Intellectual Property rights in the Website and Services, and that nothing in these Terms constitutes a transfer of any Intellectual Property. The Intellectual Property, Website and Services are protected by copyright, trademark, patent, trade secret, international treaties, laws and other proprietary or industrial rights whether such rights are capable of being registered or not, and also may have security components that protect digital information only as authorised by Service Provider or the owner of the content.
- 11.3.** Some Intellectual Property used in connection with the Website and Services are the trademarks of their respective owners (collectively Third Party Marks).
- 11.4.** Service Provider's Intellectual Property and Third Party Marks may not be copied, imitated or used, in whole or in part, without the prior written permission of Service Provider or the applicable trademark holder or Intellectual Property owner.
- 11.5.** Users of the Website do not obtain any interest or licence in the Intellectual Property or Third Party Marks without the prior written permission of Service Provider or the applicable Intellectual Property owner. Users may not do anything which interferes with or breaches the Intellectual Property rights.

## **12. Confidential Information**

- 12.1.** Confidential information includes, but is not limited to, any information, idea or concept, in any form (tangible or intangible), whether disclosed to The Business or learned by the Business. For the purpose of these Terms, confidential information specifically includes, but is in no way limited to, all information:
- a) concerning Students, patrons, learners, employees, and other independent contractors, including but not limited to information concerning their age, sex, sexual orientation, religious affiliation, ethnicity, national origin, ancestry, disability, or other personally identifiable information;
  - b) of a competitively sensitive nature, including trade secrets or confidential or proprietary information of any sort, including, without limitation, information relating to products, processes, know-how, designs, formulas, developmental or experimental work, computer programs, databases, or other original works of authorship, customer lists, business plans, financial information or other subject matter pertaining to any business of the Company or any persons or entities with which it does business; and
  - c) concerning Service Provider's policies, strategies, finances, pricing, pay rates, use of independent contractors, and the nature of relationships between corporate management and its service providers, customers, and end users – including the specific questions such asked while using Service Provider's services.
- 12.2.** All information provided by Service Provider, Customers, and prospective Customers (including Students, Parents, learners, institutions, companies, and other entities) to the Business or resulting from any requirement of these Terms, is deemed to be confidential.
- 12.3.** The Business shall hold such Information in confidence, use only for the purpose of using the Website and providing the Services, and shall not disclose such Information to any third party, unless otherwise required for the normal operating of Services. All Information shall remain the property of Service Provider or its respective owner.

- 12.4.** The Business agrees that it will not disclose any of this information, directly or indirectly, or use any of them in any manner, either during the term of these Terms or at any time thereafter, except as required in the course of this engagement with Service Provider. The Business shall not retain any copies of the aforementioned without Service Provider's prior written permission. Upon the expiration or termination of these Terms, or whenever requested by Service Provider, the Business shall immediately deliver to Service Provider all such files, records, documents, specifications, information, and other items in their possession or under their control.
- 12.5.** The Business shall not disclose any such information to any third party (including other independent contractors) and agree not to use such information for any purpose except for the scope of these Terms.
- 12.6.** The Business warrants that it will:
- a) not, without the prior written approval of the other Party, disclose the Confidential Information unless compelled to do so by law;
  - b) take all reasonable steps to ensure that its agents, customers, colleagues, employees, officers, staff, contractors, subordinates and superiors, do not make public or disclose any Confidential Information;
  - c) take all reasonable measures to ensure that the Confidential Information is protected against loss, unauthorised access, use, modification, disclosure or other misuse;
  - d) ensure that only authorised personnel have access to the Confidential Information in line with industry best practice;
  - e) immediately notify the other Party where it becomes aware that a disclosure of any Confidential Information which may be required by law;
  - f) secure the execution of a non-disclosure agreement on terms as required by either Party by any agents, colleagues, employees, officers, staff, contractors, subordinates and superiors requiring access to any Confidential Information; and
  - g) immediately notify the other Party where it becomes aware of a breach of this clause.
- 12.7.** The Business shall compensate Service Provider for losses it incurs as a result of their negligent, reckless, or intentional disclosure of confidential information.
- 12.8.** The Business must not provide any information to the media or the public, in any form whatsoever, as it relates to any of the above Confidential Information, unless required by law or as otherwise directed by Service Provider.
- 12.9.** The Business must not use any images or information about any lesson, Customer, Student, Parent or any information related to the Services in any form of advertising or marketing material including social media unless written permission is received from Service Provider and the relevant third party in question.
- 12.10.** Nothing contained in this clause shall be construed so as to place an obligation of confidentiality on the Parties in respect of information that:
- a) is or becomes publicly available without breach of these Terms;
  - b) was previously in the possession of the receiving party and was not acquired directly or indirectly from the disclosing party as evidenced by records;
  - c) was lawfully received by one Party without any obligation of confidentiality from a third party;
  - d) is independently developed by the receiving party; and
  - e) is required to be disclosed by law, an order of court/arbitral tribunal, a directive/order of any governmental/regulatory body or the requirements of any relevant stock exchange.
- 12.11.** The obligations created by this clause shall survive and continue to bind the parties after any termination of these Terms.

### **13. Subcontracting**

- 13.1.** The Tutoring Services can only be provided by the Business that accepts the Business Invitation or may be provided by the employees of the Business that accepts the Business Invitation who the Business has registered with the Service Provider as being part of the Business' undertaking to provide the Tutoring Services (“Registered Personnel”). The Business agrees that no Customer Lesson Fee will be paid to the Business for the Tutoring Services if the Tutoring Services are provided by people other than the Registered Personnel.
- 13.2.** The Business must not sub-contract or otherwise arrange for another person to perform any of their obligations under these Terms without the prior written consent of the Service Provider and approval of the Customer which may be withheld at the absolute discretion of the Service Provider.
- 13.3.** If the Service Provider consents to The Business subcontracting any part of their obligations under these Terms, the Business:
- a) Remains fully responsible for the performance of all work in accordance with these Terms as if:
    - i. All acts of, including all work by, its subcontractors, employees, agents and any third party; and
    - ii. All omissions including any failure to perform work, of its subcontractors, were acts and omissions of the Business themselves;
  - b) Must ensure that the terms of any sub-licence granted:
    - i. Are consistent with the terms of these Terms and contain obligations on the subcontractor as least as onerous as those imposed on the Business under these Terms; and
    - ii. Terminates immediately upon termination of these Terms; and
  - c) Provide to the Service Provider a complete copy of any executed sub-licence agreement within 7 days of its execution;
  - d) On request by the Service Provider, the Business must enforce the terms of any sub-licence agreement.

## **14. Termination**

- 14.1.** The Business agrees to accept Customer Bookings from Customers and provide Tutoring Services to Customers that are booked via the Website for a minimum of three (3) months. If the Business plans to cease providing tutoring services within this initial three-month period, a minimum of 21 days’ notice is required to the Service Provider in order to organise a replacement Business. Failure to provide 4 weeks’ notice may subject the Business to termination fees which the parties agree is a genuine and reasonable estimate of the loss that the Service Provider will suffer as a consequence of such termination (not exceeding the Service Fee equivalent for 4 weeks).
- 14.2.** Either Party may terminate these Terms at any time on the giving of twenty-one (21) Business Days’ written notice (“Termination Notice”). If the Business fails to provide the Termination Notice, the Service Provider has to cancel the confirmed Customer Bookings as a result of the termination without the Termination Notice. The Business agrees that it will pay the Service Fee that the Service Provider would be entitled otherwise.
- 14.3.** These Terms may be terminated immediately by either Party by written notice, if the other Party commits a material breach of these Terms, and which, in the case of a breach capable of being remedied is not remedied within fourteen (14) days of a written request to remedy the same.
- 14.4.** These Terms may be terminated immediately by the Service Provider by providing written notice to the Business if:
- a) in the sole opinion of the Service Provider, the Business has been incompetent or grossly negligent in the provision of the Services;

- b) the Business becomes or may become insolvent, bankrupt or wound up;
- c) the Business makes a general assignment or compromise for the benefit of its creditors;
- d) the Business suffers or permits the appointment of a receiver, trustee, judicial manager or such similar officer over any of its business or assets;
- e) the Business becomes the subject of any proceedings relating to insolvency or the protection of creditors' rights and fails to have those proceedings struck out or dismissed within thirty (30) days of commencement of such proceedings;
- f) if the Business or any person employed by the Business or acting on behalf of the Business, shall have committed or be suspected of committing any offence under the any laws of Australia, or shall have abetted, attempted or may be suspected of abetting or attempting to commit such an offence;
- g) if from any cause whatsoever the Business is prevented from performing its duties pursuant to these Terms;
- h) in the sole opinion of the Service Provider, the Business is guilty of any conduct which is prejudicial to the Service Provider or its business interests; and/or
- i) if the Business offers, gives or agrees to give to any person, any gift or consideration of any kind as an inducement or reward for doing, promising to do or for having done or having forborne to do any action in relation to the obtaining or execution of these Terms regardless of whether or not such acts have been done by the Business or any person employed by the Business or acting on his behalf (whether with or without the knowledge of the Business).

**14.5.** Upon written notice by the Service Provider, the Business's obligations shall cease immediately. The Service Provider has the right to recover damages in respect of any antecedent breach of these Terms. The Business shall not be entitled by reason of such determination to any right of action or remedy against the Service Provider. 10.6. The expiry or termination of these Terms shall not affect any accrued rights, obligations and/or liabilities of the Parties nor the coming into or continuance in force of any provision, which is expressly or by implication intended to come into or continue in force on or after such expiry or termination.

## **15. Warranties and Representations**

**15.1.** Each Party represents and warrants to the other Party that:

- a) it has the legal capacity to enter into and perform these Terms and all the transactions contemplated by these Terms;
- b) it has or will obtain and maintain at its own costs all insurances, permits, approvals and/or licences which may be necessary or desirable for the purposes of carrying out these Terms; and
- c) these Terms is duly executed by it and is valid and binding upon it.

**15.2.** The Business warrants that it has sought independent and specified advice from its legal and accounting advisors concerning the likely legal consequences of entering into these Terms and accordingly have not received from or relied upon any representation by the Service Provider, its officers, servants or agents whom in any event the Parties acknowledge are not qualified to provide such legal advice.

**15.3.** The Service Provider does not warrant or make any representation to the Business that the Service Provider will provide the Business with a minimum number of Customer Bookings.

## **16. Damages and Indemnity**



- 16.1.** The Business agrees to defend and indemnify and hold Service Provider (and CN Coaching's Parent, related bodies corporate, officers, directors, contractors, employees and agents) harmless from and against any claims, actions, suits, demands, damages, liabilities, costs or expenses (including legal costs and expenses on a full indemnity basis), including in tort, contract or negligence, arising under any statute or common law in respect of:
- 16.2.** Its use of or access to the Website or Service;
- 16.3.** any breach by the Business of these Terms;
- 16.4.** any wilful, unlawful or negligent act or omission by the Business;
- 16.5.** any violation by the Business of any applicable laws or the rights of any third party;
- 16.6.** Loss or damage to property; and
- 16.7.** Bodily injury to or death of any person
- a) Where the loss, damage, injury or death arises out of or as a consequence of a negligent act or omission of the Business or its employees, agents or contractors, or a breach of the Business's obligations under the Business-Customer Terms or these Terms. This indemnity will not be defeated or reduced by any reason of negligence, omission or default by the Service Provider, its servants or agents.
- 16.8.** The Service Provider reserves the right to assume the exclusive defence and control of any matter otherwise subject to indemnification by the Business, in which event the Business will cooperate in asserting any available defences.
- 16.9.** This defence and indemnification obligation will survive these Terms and their use of the Website or Service. These Terms, and any rights and licences granted hereunder, may not be transferred or assigned by the Business, but may be assigned by Service Provider without restriction.

## **17. Limitation of Liability**

- 17.1.** The Service Provider is not responsible for any syllabus or content taught by a Business to a Customer, the Business is solely responsible, and should check if all subject content is taught correctly. Professional Indemnity rests solely with the Business.
- 17.2.** To the extent permitted by law, Service Provider's total liability arising out of or in connection with the Website, Communication, the Services or the Terms, however arising, including under contract, tort, negligence, in equity, under statute or otherwise, is limited to Service Provider re-supplying the Service and/or Website to the Business, or, at Service Provider's option, Service Provider refunding to the Business the amount it is owed for the Services to which its claim relates. Service Provider's total liability to the Business for all damages in connection with the Services will not exceed the price paid by or owed to the Business under these Terms for the 12 months' period prior to the act which gave rise to the liability, or one hundred dollars (AUD\$100) if no such payments have been made.
- 17.3.** The limitations of damages set forth above are fundamental elements of the basis of the bargain between Service Provider and the Business. Some jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, so the above limitation may not apply to the Business.
- 17.4.** This limitation of liability reflects the allocation of risk between the parties. The limitations specified in this section will survive and apply even if any limited remedy specified in these terms is found to have failed of its essential purpose. The limitations of liability provided in these terms inure to the benefit of Service Provider.

## **18. Consumer Guarantees**

- 18.1.** Certain legislation including the Australian Consumer Law (ACL) in the Competition and Consumer Act 2010 (Cth), and similar consumer protection laws and regulations may confer the Business with rights, warranties, guarantees and remedies relating to the provision of Services by the Service Provider to the Business which cannot be excluded, restricted or modified (Statutory Rights).
- 18.2.** If the Business is a consumer as defined in the ACL, the following notice applies to the Business from the Service Provider: “Service Provider guarantees that the Services supplied to the Business is rendered with due care and skill; fit for the purpose that Service Provider advertises, or that the Business has told Service Provider he, she or it is acquiring the Services for or for a result which the Business has told Service Provider he, she or it wishes the Services to achieve, unless Service Provider considers and discloses that this purpose is not achievable; and will be supplied within a reasonable time. To the extent Service Provider is unable to exclude liability; Service Provider’s total liability for loss or damage suffered or incurred by the Business from the Services is limited to Service Provider re-supplying the Services to the Tutor, or, at Service Provider’s option, Service Provider refunding to the Business the amount he, she or it has paid Service Provider for the Services to which his, her or its claim relates.”
- 18.3.** Nothing in these Terms excludes a Business’s Statutory Rights as a consumer under the ACL. Each Business agrees that the Service Provider’s liability for Services provided to Businesses who are defined as consumers is governed solely by the ACL and these Terms.
- 18.4.** The Service Provider excludes all conditions and warranties implied by custom, law or statute except for their Statutory Rights. Except for their Statutory Rights, all material and work is provided to the Business without warranties of any kind, either express or implied, and the Service Provider expressly disclaims all warranties of any kind including but not limited to implied warranties of merchantability and fitness for a particular purpose.

## **19. Disclaimers**

- a) The Business acknowledge that tutoring services will mostly be available in English (unless otherwise specified by the Business and/or Customer). Service Provider is not responsible for any language misunderstandings during the Services.
- b) To the fullest extent allowable under applicable law, the Service Provider disclaims all warranties, representations and conditions, whether express or implied, including any warranties, representations and conditions that the Website or Services are merchantable, of satisfactory quality, reliable, accurate, complete, suitable or fit for a particular purpose or need, non-infringing or free of defects or errors.
- c) For the avoidance of doubt, the Service Provider is not responsible for any duties, fees, taxation, visa or immigration matters associated under these Terms. The Service Provider advises that all Tutors should seek advice in relation to these matters.
- d) The Service Provider excludes all express and implied conditions and warranties, except for their Statutory Rights, to the fullest extent permitted by law, including but not limited to:
  - i) Service Provider expressly disclaims any implied or express guarantees, warranties, representations or conditions of any kind, which are not stated in these Terms;
  - ii) Service Provider does not warrant that the Website, the Services, Communication, content on the Website or Communication (including pictures, videos, sound clips, resumes, links etc.), or their access to the Website or the Services will be error free, that any defects will be corrected or that the Website or the server which stores and transmits material to the Business is free of viruses or any other harmful components
  - iii) Service Provider takes no responsibility for, and will not be liable for, the Website, Software, or related services being unavailable, of a particular standard of workmanship, failing to meet their needs, or being of less than merchantable quality; and

- iv) Service Provider will not be liable for any loss, damage, costs or expense whether direct, indirect, incidental, special, consequential and/or incidental, including lost profits, loss of data or loss of goodwill, service interruption, computer damage or system failure or the cost of substitute products or services, or for any damages for personal, bodily injury, death or emotional distress, loss of revenue, production, opportunity, access to markets, goodwill, reputation, use or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption, loss of programs or other data on their information systems or costs of replacement goods, or otherwise, suffered by the Business or claims made against the Tutor, arising out of or in connection with the Website, Services, content on the Website or Communication, inability to access or use the Website, the Services or the Terms, even if Service Provider was expressly advised of the likelihood of such loss or damage.
- e) The Business agrees not to attempt to impose liability on, or seek any legal remedy from Service Provider with respect to such actions or omissions.

## **20. Independent Business**

- 20.1.** Each Party is and shall remain at all times an independent of the other Party, fully responsible for its own acts or omissions (including those of its employees, agents, contractors or representatives).
- 20.2.** Neither Party, nor their employees, agents or representatives shall at any time attempt to act or act on behalf of the other Party to bind the other Party in any manner whatsoever to any obligations.
- 20.3.** Nothing in these Terms shall be construed or deemed as creating any agency, brokerage, employment relationship, joint venture or partnership between the Parties.

## **21. Non Solicitation**

- 21.1.** The Business agrees that it will not, during the term of these Terms and for a period of twelve months after its termination, 'Non-Solicitation Period', directly or indirectly, in any manner whatsoever, contact, entice away, solicit, accept the business of or deal in any manner with any Customer , person, firm or company who was introduced to the Business by the Service Provider during the term of these Terms and/or with whom the Business was in contact, engaged, involved or dealt with or about which or whom the Business received Confidential Information by virtue of its association with the Service Provider.
- 21.2.** In the event that above clause is breached during the Non-Solicitation Period, the Business shall pay \$1000 to the Service Provider within 14 calendar days of the occurrence of the breach as liquidated damages, and not as a penalty.

## **22. Insurance**

- 22.1.** The Business will have a current insurance policy or policies deemed appropriate in the conduct of providing the Tutoring Services, including, but not limited to public liability insurance and professional indemnity insurance.
- 22.2.** The Business will on request provide the Service Provider with proof of appropriate insurance

## **23. Taxes, Expenses and Benefits**

**23.1.** Each Party is at all times responsible for their own costs, taxes, imposts, levies, payments and other outgoings and expenses, including, but not limited to:

- a) Income tax;
- b) Payroll tax;
- c) GST;
- d) Superannuation guarantee charge; or
- e) Workcover charges

in connection with the services under these Terms. For the avoidance of doubt, this includes any lodgement or payment obligation of a Party, in relation to any of the matters set out in the sections above, to any Government Authority arising from a fee made under or in connection with these Terms.

**23.2.** Unless otherwise specified, all fees processed under or in connection with these Terms will be on a GST-inclusive basis (if applicable).

**23.3.** Neither Party (nor any of their employees) has any claim against the other Party for any:

- a) Annual leave;
- b) Personal leave; or
- c) Long service leave

## **24. General Provisions**

### **24.1. Electronic Records**

- a) It is agreed by the Parties that, notwithstanding the use of the words “writing,” “execution,” “signed,” “signature,” or other similar words, the Parties intend that the use of an Electronic Signatures and the keeping of records in electronic form be granted the same legal effect, validity or enforceability as a signature affixed by hand or the use of a paper-based record keeping system (as the case might be) to the extent and as provided for in any applicable law including the Electronic Transactions Act 2000 (NSW), or any other similar laws.

### **24.2. Accuracy**

- a) While Service Provider will endeavour to keep the information up to date and correct, Service Provider makes no representations, warranties or guarantee, express or implied, about the completeness, accuracy, reliability, suitability or availability of any information, images, products, services, or related graphics contained on the Website or Communication for any particular purpose. The Business hereby acknowledges that such information and materials may contain mistakes, inaccuracies or errors and Service Provider expressly excludes any liability for such to the fullest extent permissible by law.

### **24.3. Data Protection**

- a) We will only use any personal information which the Business provide to us for the purposes of performing the Services or to inform the Business about similar services which we provide (unless the Business tell us that it does not want to receive this information). Further uses and details can be found in our **Privacy Policy**.
- b) We use industry standard techniques to protect our Website from bugs, viruses and attacks but cannot guarantee that our Website will be free from bugs, viruses or other malicious software. We will not be liable for any loss or damage caused by a virus, distributed denial-of-service attack, or other technologically harmful material that may infect Their computer equipment, computer programs, data or other proprietary material due to Their use of our Website or to Their downloading of any content on it, or on any Website linked to it.

#### **24.4. Force Majeure**

- a) The Service Provider will not be liable for any delay or failure to perform its obligations under these Terms if such delay is due to any circumstance outside its reasonable control, including:
  - i. strikes or other industrial action;
  - ii. civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war or the threat for war;
  - iii. fire, explosion, storm, flood, earthquake, subsidence, accident, epidemic or other natural disaster;
  - iv. substantial disruption to the use or availability of railways, motor transport, aircraft or other means of public or private transport;
  - v. substantial disruption to the use or availability of any public or private telecommunications, internet or other communications networks or facilities, or of any utilities
  - vi. any non-compliance by the Business with these Terms or any non-compliance by the Customer with any of its contractual obligations to us in relation to the Services; or
  - vii. any other act, event, non-occurrence, omission, or accident which is beyond Service Provider's reasonable control.
- b) So far as reasonably practicable, Service Provider will seek, in consultation with the Tutor, to find a solution by which our obligations under these Terms can continue to be performed (in whole or in part), notwithstanding the Force Majeure Event, and/or to extend the time for its performance of our obligations under these Terms after the Force Majeure Event ceases. However, if the Force Majeure Event prevents Service Provider from performing all (or substantially all) of its obligations for more than 4 weeks, Service Provider shall, without limiting its other rights or remedies, have the right to terminate its agreement with the Business immediately by giving written notice to the Tutor.

#### **24.5. Notice**

- a) Any notice in connection with the Terms will be deemed to have been duly given when made in writing and delivered or sent by email or post to the party to whom such notice is intended to be given or to such other address or email address as may from time to time be notified in writing to the other party.

#### **24.6. Waiver**

- a) Any failure by a party to insist upon strict performance by the other of any provision in the Terms will not be taken to be a waiver of any existing or future rights in relation to the provision. No waiver by Service Provider of any of the Terms shall be effective unless Service Provider expressly states that it is a waiver and Service Provider communicates it to the Business in writing.

#### **24.7. Assignment**

- a) The Business may not transfer any of its rights or obligations under these Terms to any other person without the prior consent of the Customer and the Service Provider. The Customer and Service Provider may transfer or assign all or any of our rights and obligations under these Terms relating to the provision of the Tutoring Services to any other person without the consent of the Business.

#### **24.8. Severability**

- a) If any of the Terms are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

**24.9. Jurisdiction and Applicable Law**

- a) These Terms, Communication, the Services and any dispute arising out of any Tutor's use of the Website or Services is subject to the laws of New South Wales, Australia, and subject to the exclusive jurisdiction of the New South Wales courts.
- b) Service Provider makes no representation that the content of the Website complies with the laws (including intellectual property laws) of any country outside Australia. If a Business accesses the Website from outside Australia, it does so at its own risk and are responsible for complying with the laws in the place where he/she accesses the Website or App.

**24.10. Entire Agreement**

- a) These Terms and any document expressly referred to in them represent the entire agreement between the Service Provider and the Business, and supersede any prior agreement, understanding or arrangement between the Service Provider and the Business, whether oral or in writing.

**For questions and notices, please contact:**

**CN Coaching**

Registered Office:

Suite 3, Level 27, Governor Macquarie Tower,

1 Farrer Place Sydney, NSW 2000

ABN: 98 524 480 136

Email: [contact@cncoaching.com.au](mailto:contact@cncoaching.com.au)

Last update: Maya 2019