

Service Provider-Customer 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

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 Customer, a licence to access and use the Website (www.cncoaching.com.au) and online platform & backend lesson booking management software (www.cnc.teachworks.com) and other tools and resources from time to time.
- b. These Terms govern the activities of the Customer in relation to their use of the Website and the Services. By accessing or using the Website and the Services, the Customer 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 Customer 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** and **Business-Customer Terms** 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 Customer 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 Customer. The second contract is the Business-Customer Terms, being with the Business, 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 the Customer can make 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) and online platform and lesson booking and payment management software (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 Customer

- 2.1.** To become a registered Customer on the Website, the Customer will first submit an enquiry over the phone, SMS, email or via the Website with details including name, suburb, phone number, email and specific search criteria and requirements needed of a Business. Once received, the Service Provider will process this enquiry and create a CN Coaching Account for the Customer, although this may not be created until the Customer confirms the Business and the Tutoring Services.
- 2.2.** By submitting an enquiry and/or commencing Tutoring Services with a Business, the Customer hereby warrants, represents and undertakes to the Service Provider that the Customer is:
 - a) at least eighteen (18) years of age and is legally able to enter into this binding contract;
 - b) personally responsible for the information posted on the Website and submitted throughout the 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) 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;
 - e) not permitted to request or use the Website, Services or Tutoring Services and accepts any and all responsibility and liability for doing so, if any of the above are not correct, or if the Customer does not agree to these Terms.
- 2.3.** Once a Customer has registered with a CN Coaching Account, it can benefit from full use of the Website and the Services.
- 2.4.** For maximum protection, during registration, the Customer will keep the password relevant to the Website and the Services confidential and not reveal it to anyone else. The Customer 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 Customers' username and/or password are used by someone else. The Customer 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).

- 2.5. The Service Provider reserves the right to suspend or terminate the Customers' ability to be rendered Tutoring Services and access to the Website at any time and for any reason without liability to CN Coaching. Where terminated, the Customers' 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 Business in its network and within its database that match the criteria of the Customer. The Customer 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.
- 3.3. Upon the Business' acceptance of the Business Invitation, the Service Provider will forward the details of the Businesses, from which the Customer can select a preferred Business if more than one accepted the Business Invitation. The Service Provider will consider the search criteria and requirements of the Customer when facilitating the Service, however, a specific Business cannot be guaranteed and will depend on the Business's availability and other factors.
- 3.4. If the requested Customer Booking cannot be facilitated, the Service Provider may arrange an alternative time for the Tutoring Service with the Customer and a Business.
- 3.5. The Customer acknowledges and agrees that an agreement, **Business-Customer Terms**, between the Customer and the Business will come into effect immediately and the Customer authorises the Service Provider to provide the Customers' contact details to the Business.
- 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. Customers' Obligations

- 4.1. The Customer 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 Customer agrees:
 - a) That all written and oral statements and information provided by the Customer to the Service Provider in connection with these Terms were when provided, and remain true, complete and accurate;

- b) To receive the Tutoring Services in conformity with these Terms;
- c) To take all appropriate steps to safeguard and protect the interests of 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 receiving the Tutoring Services;
- e) 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;
- f) To confirm upcoming lessons with the Business and ensure that the correct lesson is entered in their CN Coaching Account;
- g) To not extend the Lesson Hours for additional time without the pre-approval of the Business;
- h) To notify the Service Provider immediately should it become incapacitated in any way and attend or receive the Tutoring Services. CN Coaching can notify the Business concerned if the Customer has not already done so;
- i) To provide, in a timely manner, any information and instructions which the Service Provider or the Business from time to time reasonably request to enable the Tutoring Service to be performed in accordance with these Terms or as reasonably appropriate;
- j) To negotiate with the Business and/or Service Provider in good faith to achieve an agreement on reduced time or payment for the Tutoring Services for less-than satisfactory performance, or a refund as necessary;
- k) To provide the Tutoring Products and Equipment agreed upon to effectively deliver the Tutoring Services, unless the Business has chosen to provide its own tutoring products;
- l) That while on the premises of the Customer, the Service Provider, or the premises on which the Tutoring Services are offered, the Customer shall comply with all reasonable rules and regulations established at such premises; and
- m) To be solely responsible in assessing the suitability of a Business to deliver the Tutoring Services and the accuracy of its stated credentials, expertise, references or any other details, whether provided by the Service Provider or through the Website, via any means.

4.2. The Customer agrees not to:

- a) Represent the Service Provider in any dealings, agreement, contract or transaction with any third party;
- b) Give or accept any bribes, gifts, gratuities, fees, bonuses or excessive entertainment or other similar remuneration or consideration to any person to attract or influence any form of service, whether offered or received;
- c) Disobey any laws with respect in all of its dealings with third parties;
- d) 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;
- e) Publish any abusive comments about a Business or the Service Provider on the Website or any other place including defamatory or derogatory comments;
- f) Act as an agent to promote the services or opportunities of a company or any entity outside the scope of these Terms; and,
- 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 receiving the Tutoring Services or any activity related to the Services or 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 Customer 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 Customer acknowledges, authorises and agrees that the Service Provider, notwithstanding the fact that the Service Provider is not a party to the agreement between the Customer and the Business, the Service Provider acts as the Business payment collection agent solely for the limited purpose of accepting payments from the Customer on in connection with the provision of the Tutoring Services on the Business' behalf.
- 6.2.** All Customer Lesson Fees charged by the Service Provider on behalf of the Business will be charged directly after the Business has confirmed within its CN Coaching Account that the Tutoring Services have been completed for a particular Lesson.
- 6.3.** 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.
- 6.4.** 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.
- 6.5.** Any Fee based on an hourly basis will be charged on a proportionate basis for any period of less or greater than an hour.
- 6.6.** Unless otherwise specified, all fees processed under or in connection with these Terms will be on a GST-inclusive basis (if applicable).
- 6.7.** If the Customer decides after the first hour during the first lesson that the Tutoring Services are not a satisfactory match, the Service Provider may not charge for that first lesson hour; otherwise, a charge applies.
- 6.8.** Unless otherwise expressly agreed in writing by the Service Provider, the Customer shall not give or offer the Business 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.
- 6.9.** The Business and the Customer do not have the power to bind the Service Provider in any way in respect of the obligations of the one to the other.
- 6.10.** 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.
- 6.11.** Although the Website has features which are made to track the lessons and payment details, the Customer has complete liability and obligation for their own record-keeping of all lessons, Businesses, payments, invoices and other details in association with the Tutoring Services.
- 6.12.** The Customer shall promptly provide to the Service Provider, as requested from time to time:
 - a) written details of all 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
- 6.13.** The Customer agrees that at the time of adding a Payment Method within the CN Coaching of the Customer, the Customer will be asked to provide customary billing information such as name and billing address. The payment details entered will be transferred to the Service Providers secure payment gateway.
- 6.14.** The Service Provider may verify the Payment Method by authorising a nominal amount or by authenticating the account via a third-party payment service provider. The Service Provider will automatically save that Payment Method to their CN Coaching Account so it can be used for a future transaction, as required by these Terms.
- 6.15.** The Customer must provide accurate, current, and complete information when adding a Payment Method, and it is the Customers obligation to keep their Payment Method up-to-date at all times.
- 6.16.** The Customer must ensure that sufficient funds are available for debit at that time. Fees and charges relating to insufficient funds at time of debit will be passed onto the Customer.
- 6.17.** On receipt of the Customer Lesson Fee, the Service Provider will hold the Customer Lesson Fee on behalf of the Business until such time as they are remitted to the Business, refunded to the Customer (if they are entitled to a refund) or transferred to the Service Provider in payment of the Service Fee.
- 6.18.** The Service Provider will enable the Customer to access an online archive of all invoices that the Service Provider issues on behalf and in the name of the Business to the Customer. If the Customer disputes an invoice, it must notify the Service Provider within seven (7) days of the payment date of the invoice.
- 6.19.** 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 Payment Method used for the original payment by the Customer.
- 6.20.** If the Customer fails to make any payment due (and undisputed) under these Terms within ten (10) days post the due date for payment, the Service Provider 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.
- 6.21.** The Service Provider utilises a secure payment gateway to process all transactions and Payment Methods. The Service Provider does not give any warranty or make any representation regarding the strength or effectiveness of the secure payment gateway and is not responsible for events arising from unauthorised access to the Customers information.

7. Disputes

- 7.1.** Negative feedback reported to the Service Provider by the Customer may be investigated. The Customer will attempt, in good faith, to resolve any Dispute or claim promptly through negotiations between it and the Service Provider and Business.
- 7.2.** During the durations of these Terms, the Customer must inform the Service Provider immediately if it becomes aware of any Dispute or potential Dispute between it and the Business and/ or the Service Provider in connection with the provision of the Tutoring Services rendered by the Business.
- 7.3.** The Service Provider is not liable for potential settlements between the Customer and the Business, created in the result of using the Website or Services, nor is it liable for potential settlements with tax bodies appropriate for the Customer and Business, arising from cooperation between the parties.

- 7.4. The Service Provider reserves the right to suspend the Customer CN Coaching Account and hold all Tutoring Services offered by the Business, with immediate effect, while an investigation is conducted.
- 7.5. The consequence of any investigation instigated by a Customer or Business is entirely at the discretion of the Service Provider.
- 7.6. In response to a Dispute, if any refund or charge occurs, the Service Provider will be entitled, in its sole discretion to refund or charge the Customer on behalf of the Business in full or in part.

8. Ratings and Reviews

- 8.1. The Customer may provide ratings, reviews or feedback to the Service Provider in regards to the Website, Services or Tutoring Services about the Service Provider or Business (“Ratings”).
- 8.2. Ratings must be based on demonstrable facts. They must be written fairly and objectively.
- 8.3. By sending in a Rating, the Customer grants the Service Provider, free of charge, the usage rights to the text of the Rating without any territorial or time limitation.
- 8.4. The Service Provider will have the right to deal with the Rating in any manner it sees fit, including using it for further rating services, passing it on to third parties or publishing it.
- 8.5. Unjustified multiple Ratings, self-Ratings and other forms of Rating which attempt to have a distorting influence on the rating system are prohibited.

9. 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 Website 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 the Service Provider (or its affiliates and/or third party licensors as applicable).
- 11.2. The Customer agrees that, as between the Customer and the 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. The 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.

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 Customer 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 the Service Provider, 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 the 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 the Service Provider's services.
- 12.2.** All information provided by Service Provider to the Customer or resulting from any requirement of these Terms, is deemed to be confidential.
- 12.3.** The Customer 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 Customer 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 Customer shall not retain any copies of the aforementioned without the Service Provider's prior written permission. Upon the expiration or termination of these Terms, or whenever requested by Service Provider, the Customer shall immediately deliver to the Service Provider all such files, records, documents, specifications, information, and other items in their possession or under their control.
- 12.5.** The Customer 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.

- 12.6.** The Customer shall compensate the Service Provider for losses it incurs as a result of their negligent, reckless, or intentional disclosure of confidential information.
- 12.7.** The Customer 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 the Service Provider.
- 12.8.** The Customer must not use any images or information related to the Services in any form of advertising or marketing material including social media unless written permission is received from the Service Provider and the relevant third party in question.
- 12.9.** 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.
- 12.10.** 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 may be provided by:
- a) The Business that accepts the Business Invitation; and/or
 - b) The employees of the Business that accepts the Business Invitation

14. Termination

- 14.1.** Either Party may terminate these Terms at any time on the giving of twenty-one (21) business days' written notice ("Termination Notice").
- 14.2.** 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.
- 14.3.** The Service Provider reserves the right to deduct any outstanding fees and charges owing to the Service Provider and/or the Business on the Customers CN Coaching Account or Payment Method prior to disabling the account.
- 14.4.** 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) 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.

16. Damages and Indemnity

- 16.1.** The Customer agrees to defend and indemnify and hold the 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 Customer of these Terms;
- 16.4.** any wilful, unlawful or negligent act or omission by the Customer;
- 16.5.** any violation by the Customer 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 Customer or a breach of the Customer'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 Customer, in which event the Customer 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 Customer, but may be assigned by Service Provider without restriction.

17. Limitation of Liability and Consumer Guarantees

- 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.** The limitations of damages set forth above are fundamental elements of the basis of the bargain between Service Provider and the Customer. 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 Customer.
- 17.3.** 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.
- 17.4.** 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 Customer with rights, warranties, guarantees and remedies relating to the provision of Services by the Service Provider to the Customer which cannot be excluded, restricted or modified (Statutory Rights).
- 17.5.** If the Customer is a consumer as defined in the ACL, the following notice applies to the Customer from the Service Provider: "Service Provider guarantees that the Services

supplied to the Customer is rendered with due care and skill; fit for the purpose that Service Provider advertises, or that the Customer has told the Service Provider he, she or it is acquiring the Services for or for a result which the Customer has told the Service Provider he, she or it wishes the Services to achieve, unless the Service Provider considers and discloses that this purpose is not achievable; and will be supplied within a reasonable time. To the extent the Service Provider is unable to exclude liability; the Service Provider's total liability for loss or damage suffered or incurred by the Customer from the Services is limited to the Service Provider re-supplying the Services to the Customer, or, at Service Provider's option, the Service Provider refunding to the Customer the amount he, she or it has paid the Service Provider for the Services to which his, her or its claim relates."

17.6. The Service Providers total liability to the Customer for all damages in connection with the Services will not exceed the price paid by or owed to the Customer 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.

17.7. Nothing in these Terms excludes a Customers Statutory Rights as a consumer under the ACL. The Customer agrees that the Service Providers liability for Services provided to Customers who are defined as consumers is governed solely by the ACL and these Terms.

17.8. 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 Customer 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.

18. Disclaimers

- a) The Customer acknowledge that Tutoring Services will mostly be available in English (unless otherwise specified by the Business and/or the Customer). The Service Provider is not responsible for any language misunderstandings during the Tutoring 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 Customers 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, Services or Tutoring Services 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 Customer or claims made against the Business, arising out of or in connection with the Website, Services, Tutoring 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 Customer agrees not to attempt to impose liability on, or seek any legal remedy from the Service Provider with respect to such actions or omissions.

19. Independent Relationship

- 19.1.** The Customer is and shall remain at all times independent of the Service Provider, fully responsible for its own acts or omissions (including those of its employees, agents, contractors or representatives).
- 19.2.** 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.
- 19.3.** Nothing in these Terms shall be construed or deemed as creating any agency, brokerage, employment relationship, joint venture or partnership between the parties.

20. Non Solicitation

- 20.1.** The Customer 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 Business, person, firm or company who was introduced to the Customer by the Service Provider during the term of these Terms and/or with whom the Customer was in contact, engaged, involved or dealt with.
- 20.2.** In the event that above clause is breached during the Non-Solicitation Period, the Customer 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.

21. Insurance

- 21.1.** The Customer has the full responsibility of checking that the Business has 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. General Provisions

22.1. Electronic Records

- a) It is agreed by the Customer that, notwithstanding the use of the words "writing," "execution," "signed," "signature," or other similar words, the use of an Electronic Signatures and the keeping of records in electronic form will 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.

22.2. Accuracy

- a) While the Service Provider will endeavour to keep the information up to date and correct, the 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 Customer hereby acknowledges that such information and materials may contain mistakes, inaccuracies or errors and the Service Provider expressly excludes any liability for such to the fullest extent permissible by law.
- b) The Service Provider does not control, nor is it responsible for, the truth, accuracy, completeness, safety, timeliness, quality, legality or applicability of anything said or written by or between the Customer and the Business. The Service Provider assumes no responsibility for verifying the identity, qualifications, credentials, biographic information, licensure, and/or any other information regarding any of the Businesses, although it may choose to take action to do so independently, in its sole discretion, and solely for its own benefit.

22.3. Data Protection

- a) The Service Provider will only use any personal information which the Customer provides for the purposes of providing access to the Website, performing the Services or in any way related to these Terms. Further uses and details can be found in the **Privacy Policy**.
- b) The Service Provider uses industry standard techniques to protect the Website from bugs, viruses and attacks but cannot guarantee that the 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 the Customers computer equipment, computer programs, data or other proprietary material due to the Customers use of the Website, the downloading of any content on it, or on any website linked to it.

22.4. 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 Customer 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 the Service Provider's reasonable control.
- b) So far as reasonably practicable, the Service Provider will seek, in consultation with the Customer, to find a solution by which the Service Providers 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 the obligations under these Terms after the Force Majeure Event ceases. However, if the Force Majeure Event prevents the Service Provider from performing all (or substantially all) of its obligations for more than 4 weeks, the Service Provider shall, without limiting its other rights or remedies, have the right to terminate its agreement with the Customer immediately by giving written notice to the Customer.

22.5. 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.

22.6. 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 the Service Provider of any of the Terms shall be effective unless the Service Provider expressly states that it is a waiver and the Service Provider communicates it to the Customer in writing.

22.7. Assignment

- a) The Customer may not transfer any of its rights or obligations under these Terms to any other person without the prior consent of the Service Provider.

22.8. 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.

22.9. Jurisdiction and Applicable Law

- a) These Terms, Communication, the Services and any dispute arising out of any Customers 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) The 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 Customer accesses the Website or Services 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 the Services.

22.10. Entire Agreement

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

Last update: May 2019