

User Agreement

1. About

- 1.1. This User Agreement is between you and Learnmate and sets out the terms and conditions that govern your access or use of the Learnmate Services.
- 1.2. Your access and use of the Learnmate Services after the effective date of this document constitutes your agreement to be bound by this User Agreement. If you do not agree to all of the terms and conditions of this User Agreement, you may not use or access the Learnmate Services. This User Agreement expressly supersedes prior agreements or arrangements with you.
- 1.3. If you are under 18 years of age, you will need a parent or legal guardian to agree to this agreement on your behalf. In that case, both you and your parent or legal guardian will need to ensure compliance with the terms of this agreement.
- 1.4. Please read this User Agreement and all Learnmate Policies carefully before accessing or using the Learnmate Services. These Learnmate Policies are incorporated into this agreement by reference.
- 1.5. All defined terms in this User Agreement have the meaning given to them in Appendix A.

2. The Learnmate Services

- 2.1. Learnmate will provide the Learnmate Services to you in accordance with this User Agreement.
- 2.2. The Learnmate Services constitute the provision of the Learnmate Platform, a digital platform that:
 - (a) enables Students seeking Tutoring Services to review the profiles of potential Tutors and select, at their discretion, a Tutor from which they wish to receive Tutoring Services;
 - (b) enables Students to access, at their discretion, information related to Tutoring Services published or made available on the Learnmate Platform from time to time;
 - (c) enables Tutors seeking to provide Tutoring Services to connect with Students and, if engaged, provide Tutoring Services to those Students in accordance with this User Agreement and the Learnmate Policies; and
 - (d) facilitates payments from Students to Tutors for Tutoring Services that have been provided.

3. Tutors and Tutoring Services

- 3.1. Learnmate may from time to time include or list Tutors on the Learnmate Platform. Tutors act as third party independent contractors and the Tutoring Services offered and/or provided by these Tutors are not offered and/or provided by Learnmate.

- 3.2. If a Student engages with any Tutor for the provision of Tutoring Services, any such agreement will be directly between the Student and that Tutor and Tutors control the methods, materials and all aspects of any lessons that may comprise the Tutoring Services.
- 3.3. Learnmate makes no representation or warranty in relation to Tutoring Services. However, to help us continue to improve the Learnmate Platform, Users may inform Learnmate of their experiences with the Learnmate Platform and/or Tutoring Services <https://learnmate.com.au/feedback/>.

4. Learnmate's role and obligations

- 4.1. Learnmate provides the Learnmate Services only. Any agreement reached between a Student (including their parent or legal guardian) and a Tutor for the provision of Tutoring Services will be made directly between the Student and that Tutor. Learnmate is not responsible for the actions or inactions of a Student, parent or their legal guardian in relation to a Tutor or vice-versa in the context of such an arrangement.
- 4.2. At its absolute discretion, Learnmate may refuse to allow any person to register or create an account with Learnmate or cancel or suspend or modify any existing account including if Learnmate reasonably forms the view that a User's conduct (including a breach of this User Agreement) is detrimental to the integrity, operation or reputation of the Learnmate Platform.
- 4.3. As Tutors act as third party independent contractors, Learnmate accepts no liability for any aspect of the Tutor and Student interaction, including but not limited to the description, performance or delivery of the Tutoring Services.
- 4.4. Learnmate has no responsibility and makes no warranty as to the truth or accuracy of any aspect of any information provided by Tutors on the Learnmate Platform, including, but not limited to, the honesty or accuracy of any Tutor's public profiles, including but not limited to their self-reported credentials, education, experience or ability.
- 4.5. You understand and agree that Learnmate does not provide any guarantee or representation as to any minimum quality or duration of the Tutoring Services provided by a Tutor.
- 4.6. Learnmate has no obligation to any User to assist or involve itself in any dispute between Users, although it may do so to improve User experience.

5. User obligations

- 5.1. You agree that you will at all times:
 - (a) comply with this User Agreement (including all Learnmate Policies incorporated by reference) and all applicable laws and regulations;
 - (b) only post accurate information on the Learnmate Platform;
 - (c) ensure that you are aware of any laws that apply to you as a Student or Tutor or User, or in relation to accessing or using the Learnmate Platform.
- 5.2. You must be at least 18 years of age to become a User. If you are under the age of 18, a parent or guardian must conduct these activities on your behalf. You acknowledge and agree that Learnmate does not take steps to verify the age of Users and assumes that in

accessing Learnmate, you either are over the age of 18 or a parent or guardian is accessing and engaging in activities on the Learnmate Platform on your behalf.

- 5.3. Users must be natural persons, but can specify within their account description that they represent a business entity.
- 5.4. You grant Learnmate an unrestricted, worldwide, royalty-free licence to use, reproduce, modify and adapt any content and information posted on the Learnmate Platform for the purpose of publishing material on the Learnmate Platform and as otherwise may be required to provide the Learnmate Service, for the general promotion of the Learnmate Service, and as permitted by this agreement.
- 5.5. Registering and creating an account with Learnmate in order to contact tutors costs a one-time access fee of \$0.99. There is no charge to peruse or review content (including tutor profiles) on the Learnmate Platform.
- 5.6. Account registration requires you to submit to Learnmate certain Personal Information, such as your name, address, mobile phone number and age, as well as at least one valid payment method (either a credit card or accepted payment partner). You agree to maintain accurate, complete, and up-to-date information in your account. Your failure to maintain accurate, complete, and up-to-date account information, including having an invalid or expired payment method on file, may result in your inability to access or use the Learnmate Services. You are responsible for all activity that occurs under your account, and you agree to maintain the security and secrecy of your account username and password at all times and to ensure that you do not allow others to use your account, or by transferring or selling your account or any of its contents to another person. Unless otherwise permitted by Learnmate in writing, you may only possess one account.
- 5.7. You agree that any content (whether provided by Learnmate, a Tutor, a User or a third party) on the Learnmate Platform may not be used on third party sites or for other business purposes without Learnmate's prior written permission.
- 5.8. You understand and agree that Users are solely responsible for making their own evaluations, decisions and assessments about choosing a Tutor that is appropriate for their needs. In making a selection, Users should review and investigate each Tutor's self-reported credentials, education and experience, as well as reviews from other Users.
- 5.9. You must not use the Learnmate Platform for any illegal or immoral purpose.
- 5.10. You agree that any information posted on the Learnmate Platform must not, in any way whatsoever, be potentially or actually harmful to Learnmate or any other person. Harm includes, but is not limited to, economic loss that will or may be suffered by Learnmate.
- 5.11. Without limiting any provision of this agreement, any information you supply to Learnmate (including but not limited to the information you may be prompted to provide by a registration form) or upload, post, publish or otherwise transmit on the Learnmate Platform must be up to date and kept up to date and must not:
 - (a) be false, inaccurate or misleading or deceptive;
 - (b) be fraudulent or involve the sale of counterfeit or stolen items;
 - (c) infringe anyone's copyright, patent, trademark, trade secret or other proprietary rights or Intellectual Property rights, rights of publicity, confidentiality or privacy;
 - (d) violate any applicable law, statute, ordinance or regulation (including, but not limited to, those governing export and import control, consumer protection, unfair competition, criminal law, antidiscrimination and trade practices/fair trading laws);

- (e) be defamatory, libellous, threatening or harassing;
- (f) be obscene or contain any material that, in Learnmate's sole and absolute discretion, is in any way inappropriate or unlawful, including, but not limited to obscene, inappropriate or unlawful images; or
- (g) contain any malicious code, data or set of instructions that intentionally or unintentionally causes harm or subverts the intended function of any Learnmate Platform, including, but not limited to viruses, trojan horses, worms, time bombs, cancelbots, easter eggs or other computer programming routines that may damage, modify, delete, detrimentally interfere with, surreptitiously intercept, access without authority or expropriate any system, data or Personal Information.

5.12. You agree that you are entirely responsible for all content and information that you upload, post or otherwise transmit through your use of the Learnmate Platform.

5.13. A User should never disclose personal details such as the User's full name, street number, phone number or email address in a public profile or in any other public communication on the Learnmate Platform.

5.14. You agree to use the Learnmate Platform in a manner that is lawful, relevant and proper to the applicable forum. Any use of the Learnmate Platform that Learnmate, in its sole discretion, finds inappropriate and/or offensive may result in suspension and/or termination of a User with or without notice. Conduct that is inappropriate and/or offensive includes without limitation the following:

- (a) defaming, abusing, harassing, harming, stalking, threatening or otherwise violating the legal rights (including without limitation rights of privacy and publicity) of others;
- (b) publishing, posting, uploading, distributing or disseminating any profane, defamatory, infringing, hateful, distasteful, obscene or unlawful topic, name, information, materials or content;
- (c) use of the Learnmate Platform for any purpose that is in violation of local, state, national, or international law, including without limitation wage/hour and working condition laws and regulations;
- (d) taking any action that would undermine any aspect of the Learnmate Platform;
- (e) attempting to gain unauthorized access to the Learnmate Platform, other User accounts, or other device, computer system or networks connected to the Learnmate Platform;
- (f) advertising or offering to sell any goods or services for any commercial purpose on the Learnmate Platform that are not appropriate or relevant to the Learnmate Platform;
- (g) impersonating another person or allowing any other person or entity to use your user name, password or membership;
- (h) posting the same content repeatedly or spamming;
- (i) downloading any file posted by another User that you know, or reasonably should know, cannot be legally distributed through the Learnmate Platform;
- (j) accessing, downloading, or copying any information, content and/or materials from the Learnmate Platform through artificial means (including without limitation spiders, scrapers, hacking devices, computer programs, bots or other such means);
- (k) reproducing, duplicating, copying, selling, re-selling or exploiting any information, materials or content on the Learnmate Platform; or

- (l) restricting or inhibiting any other user from using and enjoying the Learnmate Platform.

5.15. If Learnmate determines in its sole discretion that you have breached any obligation under this clause 5 or that you have breached one or more of your obligations under one of the Learnmate Policies, it reserves the rights to remove any content you have submitted to the Learnmate Platform or cancel or suspend your account on the Learnmate Platform.

6. Bypassing and solicitation

- 6.1. You must not make, or directly or indirectly procure, solicit, canvass, approach, infer, induce a Tutor to receive, any payments outside of the Learnmate Platform or otherwise bypass (or attempt to bypass) the Learnmate Platform or by any other means or mechanism avoid or seek to avoid paying Learnmate any fees that it may otherwise be due under this User Agreement. For the avoidance of doubt, this includes seeking to receive, or receiving, services which are in any way competitive with the Tutoring Services from a Tutor outside of the Learnmate's online booking system and merchant facilities in return for cash, direct bank transfer or payment by any other means or mechanism to avoid paying Learnmate any fees that it may otherwise be due.
- 6.2. You acknowledge that Tutors are in a contractual arrangement with Learnmate and agree that you will not directly or indirectly procure, solicit, canvass, approach, infer, induce a Tutor to provide any services outside of the Learnmate Platform which are in any way competitive with the Tutoring Services. This includes using the Learnmate Platform for the sole purpose of procuring, soliciting, canvassing, approaching, inferring or inducing a Tutor to provide tuition for or through a business that is in any way competitive with Learnmate.
- 6.3. If Learnmate determines in its sole discretion that you have breached any obligation under this clause 6, Learnmate may immediately cancel or suspend your account on the Learnmate Platform and reserves its right to seek and obtain injunctive relief or any other remedy, in court, against you in relation to such a breach.

7. Academic honesty

- 7.1. You acknowledge and agree that the Learnmate Services and the Tutoring Services are provided for the purposes of facilitating learning, not cheating. You agree not to inquire about the engaging of, or to engage, Tutors for the purpose of or to complete assignments, write papers, take quizzes or otherwise do work on your behalf. You agree not to use the Learnmate Platform or the Tutoring Services for any purpose that violates the academic honesty policy or other conduct policies of your school, university, academic institution or workplace.

8. Payment

- 8.1. Students understand that use of the Learnmate Services may result in a charge to you of a Lesson Price in respect of any Tutoring Services that you receive from a Tutor.
- 8.2. The Lesson Price paid by a Student is final and non-refundable, unless otherwise determined by Learnmate or required by the Australian Consumer Law (under which you

may be entitled to a refund for a major failure of the Learnmate Services, or other remedies for a minor failure).

- 8.3. After a Student has received Tutoring Services, and a Tutor has logged the lesson as 'attended' in the Learnmate Platform, the Lesson Price in respect of the relevant Tutoring Services is due immediately and payment will be facilitated by Learnmate charging the preferred payment method designated in a Student's account, after which the Student will be sent a receipt by email.
- 8.4. If a Student's primary account payment method is determined to be expired, invalid or otherwise not able to be charged, you agree that Learnmate may, on behalf of the Tutor, use a secondary payment method in your account, if available.
- 8.5. If a Student's payment method is determined to be expired, invalid or otherwise not able to be charged, Learnmate may restrict a User's account (including suspending any future lessons) until all Fees have been paid.
- 8.6. You may elect to cancel a request for Tutoring Services from a Tutor at any time, in which case you may be charged a cancellation fee in accordance with Learnmate's Cancellation Policy.

9. Payment facility

- 9.1. Learnmate uses a Payment Provider to charge a Student via their preferred payment method. In so far as it is relevant to the charging of Student's preferred payment method, the terms at <https://stripe.com/ssa/> are incorporated into this User Agreement and will prevail over this User Agreement to the extent of any inconsistency in relation to the charging of the Student via their preferred payment method. If Learnmate changes its Payment Provider you may be asked to agree to any further additional terms with those providers. If you do not agree to them, you will be given alternative means of payment.

10. Feedback and reviews

- 10.1. After you have received Tutoring Services obtained through the Learnmate Platform, you will have the opportunity to rate your experience and leave additional feedback about your Tutor.
- 10.2. Any content that you submit, upload, publish or otherwise make available to Learnmate through the Learnmate Platform, including commentary and feedback related to the Learnmate Services, will remain your property. However, you acknowledge and agree that by providing such content, you grant Learnmate a worldwide, perpetual, irrevocable, transferable, licence for no fee, with the right to sublicense, to use, copy, modify, create derivative works of, distribute, publicly display, publicly perform, and otherwise exploit in any manner such content in all formats and distribution channels now known or hereafter devised (including in connection with the Learnmate Services and Learnmate's business and on third-party sites and services), without further notice to or consent from you, and without the requirement of payment to you or any other person or entity.
- 10.3. You agree to not provide feedback or reviews that are defamatory, libellous, hateful, violent, obscene, pornographic, unlawful, or otherwise offensive, as determined by Learnmate in its sole discretion, whether or not such material may be protected by law. Learnmate may, but is not obligated to, review, monitor, or remove content submitted by

Users, at Learnmate's sole discretion and at any time and for any reason, without notice to you.

- 10.4. Learnmate is entitled to suspend or terminate your account at any time if Learnmate, in its sole and absolute discretion, is concerned by any feedback about you, or considers your feedback rating to be problematic for other Users.

11. Intellectual Property

- 11.1. Learnmate does not grant you any right to any Intellectual Property belonging to Learnmate.

12. Confidential Information

- 12.1. All Confidential Information provided by Learnmate to you or resulting from your use or access of the Learnmate Platform must be kept confidential and must not be disclosed to any third party (unless required by law to be so disclosed or with prior written approval from Learnmate).
- 12.2. You acknowledge that damages may be an inadequate remedy to protect Learnmate's interests if you breach this clause 12 and that Learnmate is entitled to seek and obtain injunctive relief or any other remedy, in any court, against you for a breach of this clause 12.

13. Privacy

- 13.1. Our collection and use of Personal Information in connection with Learnmate is as provided in Learnmate's Privacy Policy. A current version of Learnmate's Privacy Policy can be accessed [here](#) and is incorporated into this User Agreement by reference.

14. Termination

- 14.1. Either you or Learnmate may terminate your account and this User Agreement at any time for any reason.
- 14.2. Termination of this User Agreement may, at Learnmate's absolute discretion, result in the termination of any legal relationship that has been formed between Students and Tutors.
- 14.3. Clause 6 (Bypassing and solicitation), clause 10 (Feedback and reviews), clause 11 (Intellectual Property), clause 12 (Confidential Information), clause 13 (Privacy), this clause 14 (Termination), clause 15 (Indemnity), clause 16 (Disclaimer and limitation of liability), clause 17 (Academic results disclaimer), clause 19 (Notices), clause 21 (General) and Appendix A (Defined terms and interpretation) and any other terms which by their nature should continue to apply, will survive any termination or expiration of this User Agreement.
- 14.4. If your account or this User Agreement are terminated for any reason then you may not without Learnmate's consent (in its absolute discretion) create any further accounts with Learnmate and we may terminate any other accounts you operate.

15. Indemnity

- 15.1. The User shall indemnify, defend (at Learnmate's option) and hold harmless Learnmate and its affiliates, officers, directors, employees, agents, successors and assigns from and against any and all liabilities, expenses (including legal fees), damages, penalties, fines, taxes and entitlements arising out of or related to (a) your breach of your representations, warranties or obligations under this User Agreement, or (b) any claim, suit or action made or brought by a third party (including, without limitation, Users, regulators and government authorities) directly or indirectly related to your provision of use or access of the Learnmate Services. Any liability shall be reduced proportionately if, and to the extent that, Learnmate directly caused or directly contributed to any such damage or losses.

16. Disclaimer and limitation of liability

- 16.1. Except for liability in relation to a breach of a Non-Excludable Condition, to the extent permitted by law, the User will have no claim against Learnmate for direct or indirect loss or damage incurred during the use or access of the Learnmate Services and, to the maximum extent permitted by law, the User bears all risks relating to the use and access of the Learnmate Services and/or the provision or receipt of Tutoring Services and the interaction between the Tutor and Student (including students and/or student's parents or guardians).
- 16.2. Except for liability in relation to a breach of a Non-Excludable Condition, to the extent permitted by law, Learnmate specifically disclaims all liability for any loss or damage (actual, special, direct, indirect and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed (including, without limitation, loss or damage relating to any inaccuracy of information provided, or the lack of fitness for purpose of any goods or service supplied), arising out of or in any way connected with any transaction between Students and Tutors.
- 16.3. Except for liability in relation to a breach of any Non-Excludable Condition, and to the extent permitted by law, Learnmate is not liable for any Consequential Loss arising out of or in any way connected with the Learnmate Services.
- 16.4. Learnmate's liability to you for a breach of any Non-Excludable Condition (other than a Non-Excludable Condition that by law cannot be limited) is limited, at our option to any one of resupplying, replacing or repairing, or paying the cost of resupplying, replacing or repairing goods in respect of which the breach occurred, or supplying again or paying the cost of supplying again, services in respect of which the breach occurred.
- 16.5. To the extent permitted by law, no action or proceeding against Learnmate may be commenced more than two (2) years after the claim has arisen.
- 16.6. The User acknowledges that Learnmate has not and does not audit or check Tutor backgrounds (other than (a) that they hold a valid working with children check or equivalent certification, and (b) that they meet Learnmate's minimum qualifications to be listed as a tutor on Learnmate) and the Student must exercise their own judgment and develop their own protocol in deciding whether to seek Tutoring Services from a Tutor.
- 16.7. To the full extent permitted by law, you agree that Learnmate will be absolved of all prosecution and liability in the event of abuse or sexual harassment by Tutors to Students. If such an incident occurs, Learnmate will provide authorities with all relevant documentation, information, cooperation and support necessary.

- 16.8. You may find links to other websites or resources on the Learnmate Platform. You acknowledge and agree that Learnmate is not responsible for the availability of such external websites or resources and does not endorse and is not responsible or liable for any content, advertising, products or liable, directly or indirectly, for any actual or alleged damage or loss caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.

17. Academic disclaimer

- 17.1. The VCAA does not endorse and is not affiliated with Learnmate. The VCAA provides the only official, up-to-date versions of VCAA publications and information about courses including VCE. VCE® is a registered trademark of the VCAA.
- 17.2. While Learnmate endeavours to provide professional and knowledgeable Tutors, the results of using Tutors may vary and depend upon a range of factors (including but not limited to a Student's study habits, work ethic, schooling experience, teaching methods and engagement at school and for many other reasons that are personal to Students). Accordingly, you acknowledge that we do not guarantee that the use of the Learnmate Platform or the Tutoring Services will lead to an improvement in academic performance or results. To the full extent permitted by law, you agree to hold Learnmate blameless for any act or omission, dispute, action, claim or proceedings or loss or damage arising from a Student's academic results or performance.
- 17.3. You acknowledge that the term 'qualified' in relation to a Tutor on the Learnmate Platform refers to someone who has satisfied Learnmate's [minimum qualifications](#) to be listed as a Tutor on Learnmate. 'Qualified' should not be confused with having earned an accredited teaching qualification unless otherwise stated by the Tutor in their profile.

18. Modification of User Agreement

- 18.1. Learnmate reserves the right to modify the terms and conditions of this Agreement at any time, effective upon publishing an updated version of this User Agreement to the Learnmate Platform (publication of which shall be deemed to be notice to you) or by written notice notifying you that this User Agreement has been amended. Learnmate reserves the right to modify Learnmate Policies or information referenced in any hyperlinks forming part of this User Agreement at any time. You hereby acknowledge and agree that, provided that you remain a User, you are bound by any future amendments and additions to this User Agreement, any Learnmate Policy, any information referenced in hyperlinks or embedded herein, or documents incorporated herein. For the avoidance of doubt, continued use or access of the Learnmate Services after the publication of any amended User Agreement on the Learnmate Platform shall constitute acceptance of the amended User Agreement.
- 18.2. If you do not agree with any changes or amendments to this User Agreement (or any of the Learnmate Policies), you must either immediately terminate your account or you must notify Learnmate who will terminate your Learnmate account, and stop using or accessing the Learnmate Platform.

19. Notices

- 19.1. Except as stated otherwise, any notices must be given by registered ordinary post or by email, either to Learnmate's contact address as displayed on the Learnmate Platform, or a User's contact address as provided at registration. Any notice shall be deemed given:
- (a) if sent by email, 24 hours after email is sent, unless the User is notified that the email address is invalid or the email is undeliverable; and
 - (b) if sent by pre-paid post, three Business Days after the date of posting, or on the seventh Business Day after the date of posting if sent to or posted from outside the jurisdiction in which you have your Learnmate Platform account.

20. Mediation and dispute resolutions

- 20.1. If a dispute arises with another User, you must co-operate with the other User and make a genuine attempt to resolve the dispute within 14 days by informal negotiation (by phone, email or otherwise).
- 20.2. If the parties are unable to resolve the dispute in accordance with clause 20.1, either party may refer the dispute to Learnmate and act in accordance with this clause 20.
- 20.3. Learnmate encourages Users to try and resolve disputes (including claims for returns or refunds) with other Users directly. Accordingly, you acknowledge and agree that Learnmate may, in its absolute discretion, provide your information as it decides is suitable to other parties involved in the dispute.
- 20.4. Learnmate may elect to assist Users resolve disputes. Any User may refer a dispute to Learnmate. You must co-operate with any investigation undertaken by Learnmate. Learnmate reserves the right to make a final determination (acting reasonably) based on the information supplied by the Users and direct the Payment Provider to make payment accordingly. You may raise your dispute with the other User or Learnmate's determination in an applicable court or tribunal.
- 20.5. Learnmate has the right to hold any Fees that are the subject of a dispute until the dispute has been resolved.
- 20.6. Learnmate may provide access to a Third Party Dispute Service. If such a service is provided, either party may request the other party to submit to the Third Party Dispute Service if the parties have failed to resolve the dispute directly. Terms and conditions for the Third Party Dispute Service will be available on request. The Third Party Dispute Service is a third party service and Users are responsible for paying any costs associated with the Third Party Dispute Service in accordance with the Third Party Dispute Service terms and conditions.
- 20.7. If you have a complaint about the Learnmate Service please contact us by emailing hello@learnmate.com.au.
- 20.8. If Learnmate provides information about other Users to you for the purposes of resolving disputes under this clause, you acknowledge and agree that such information will be used only for the purpose of resolving the dispute (and no other purpose) and that you will be responsible and liable to Learnmate for any costs, losses or liabilities incurred by Learnmate in relation to any claims relating to any other use of information not permitted by this User Agreement.

21. General

- 21.1. This User Agreement, including any guides, policies, standards or documents incorporated herein, sets out the entire agreement and understanding between the parties and supersedes any prior agreement.
- 21.2. A User may not assign any of his or her rights under this User Agreement, or delegate the performance of any of his or her duties hereunder to another party or User, without the prior written consent of Learnmate.
- 21.3. Neither party shall be liable to the other for any loss, damage, delay or failure of performance, that is caused by an act or event beyond its reasonable control, including but not limited to, acts of God, civil disturbances, war, strikes, pandemics, emergency laws, regulations or governmental proclamations, or acts or failure to act of any governmental entity. Failure by either party to perform under this Agreement, because of the endurance of an event of force majeure for more than three months, will represent a ground for its termination on ten (10) days written notice.
- 21.4. This User Agreement is governed by and shall be construed in accordance with the laws of the State of Victoria, Australia and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of Victoria, Australia.
- 21.5. The provisions of this User Agreement are severable, and if any provision of this Agreement is held to be invalid or unenforceable, such provision may be removed and the remaining provisions will be enforceable.
- 21.6. A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or future exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- 21.7. This User Agreement may be assigned or novated by Learnmate to a third party without your consent. In the event of an assignment or novation the User will remain bound by this User Agreement.

Appendix A – Defined terms and interpretation

1. Definitions

1.1. In this agreement:

Business Day means a day that is not a Saturday, Sunday, a public holiday or bank holiday in Melbourne, Victoria.

Confidential Information means the following information, regardless of its form and whether the User becomes aware of it before or after the date of this agreement:

- (a) information that is by its nature confidential to Learnmate or any third party who has made that information available to Learnmate;
- (b) information that is designated or treated by Learnmate as confidential;
- (c) information that the User knows, or ought to know, is confidential to Learnmate or any third person who has made that information available to Learnmate,

and includes, for the avoidance of doubt, Learnmate's financial information, commercial models, rates, fees and commission structure, marketing information and other valuable information (other than to the extent it is already publicly available) learned by the User in the course of using or accessing the Learnmate Services, but excludes information that:

- (d) the User creates (whether alone or jointly with any third person) independently of Learnmate; or
- (e) is public knowledge (otherwise than as a result of a breach of confidentiality by the other party or any of its permitted disclosees).

Consequential Loss means any loss, damage or expense recoverable at law:

- (a) other than a loss, damage or expense that would be suffered or incurred by any person in a similar situation to the person suffering or incurring the loss, damage or expense; or
- (b) which is a loss of:
 - (i) opportunity or goodwill;
 - (ii) profits, anticipated savings or business;
 - (iii) data; or
 - (iv) value of any equipment,

and any costs or expenses incurred in connection with the foregoing.

Fee means all fees payable to Learnmate by Users.

Intellectual Property means any intellectual property rights, including the following rights:

- (a) patents, copyright, rights in circuit layouts, designs, trade and service marks (including goodwill in those marks), domain name and trade names and any right to have confidential information kept confidential;
- (a) any application or right to apply for registration of the rights referred to in paragraph (a); and
- (b) all rights or forms of protection of a similar nature or having equivalent or similar effects of any of the rights in paragraphs (a) or (b), which may subsist anywhere in the world (including Australia),

whether or not such rights are capable of registration.

Learnmate means Learnmate Tutoring Pty Ltd ACN 608 761 682.

Learnmate Platform means the Learnmate website at www.learnmate.com.au, including its subdomains and any other website that we operate from time to time.

Learnmate Policies means the policies posted by Learnmate on the Learnmate Platform (as amended or in existence from time to time), including but not limited to the Code of Conduct, Child Safety Policy, Cancellation Policy and Privacy Policy accessible here <https://learnmate.com.au/terms-and-conditions-centre>.

Learnmate Services means the service of providing the Learnmate Platform.

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

Non-Excludable Conditions means any implied condition, warranty or guarantee in a contract, the exclusion of which would contravene the law (including but not limited to the Australian Consumer Law) or cause any part of the contract to be void.

Payment Provider means an entity appointed by Learnmate that manages and accepts payments from and payments to Users.

Personal Information means information that is personal information as defined in the *Privacy Act 1988* (Cth) or that is information to which any other Privacy Laws apply.

Privacy Laws means all laws relating to privacy, confidentiality or use of any information about individuals, including:

- (a) the *Privacy Act 1988* (Cth) and the National Privacy Principles contained in schedule 3 to that Act or any approved privacy code that applies to any of the parties to this agreement;
- (b) the *Privacy and Data Protection Act 2014* (Vic) and the Information Privacy Principles contained in schedule 1 to that Act; and
- (c) the *Health Records Act 2001* (Vic) and the Health Privacy Principles contained in schedule 1 to that Act.

Student means:

- (a) a person who uses the Learnmate Platform to seek or receive Tutoring Services; or

- (b) in circumstances where such a person is under 18 years of age, both the person who seeks or receives Tutoring Services and, where applicable, that person's parent or legal guardian (being the parent or legal guardian who has acknowledged and agreed to be bound by this User Agreement in accordance with clause 1.3).

Third Party Dispute Service means a third party dispute resolution service provider used to resolve any disputes between Users.

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

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

User Agreement means this agreement.

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

2. Interpretation

2.1. In this User Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause or appendix is to a clause of, or an appendix to, this agreement, and a reference to this agreement includes any schedule;
- (d) a reference to **A\$, dollar** or **\$** is to Australian currency;
- (e) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions; and
- (i) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it.

2.2. Headings are for ease of use only and do not affect interpretation.