

1. PARTIES:

The Supplier: APTUTORING Pty. Ltd.. (ABN: 29 140 383 857)

The Customer: _____

2. DEFINITIONS

- 2.1. The Supplier is APTUTORING Pty. Ltd. (ABN 29 140 383 857) of PO Box 2394 Fountain Gate in the state of Victoria.
- 2.2. The Student is the person the Services are provided to.
- 2.3. The Customer is any entity who agrees to be liable for the debts of the Student and includes but is not limited to the Parent and/or other person acting as the legal or de facto parent of the Student or, if the Student is over the age of eighteen (18), the reference to the Student will include a reference to the customer.
- 2.4. Enrolment shall be defined as any request for the provision of Services by the Customer with the Supplier which has been accepted by the Supplier.
- 2.5. The Services are the provision of educational tutoring as one-on-one tutoring sessions for the duration of the School Term.
- 2.6. Sessions are the weekly appointments for the provision of the services as agreed to by the Supplier.
- 2.7. The Tutors are the Employees, Officers, Servants or Agents of the Supplier.
- 2.8. The Premises are the land and buildings where the Services are to be carried out.
- 2.9. The Price is the amount invoiced for the Services provided.
- 2.10. GST refers to Goods and Services Tax under the Goods and Services Act 1999 ("GST Act") and the terms used herein have meanings contained within the GST Act.
- 2.11. The School Term is taken to be those dates stipulated by the Victorian Government and can be accessed via the following website <http://www.education.vic.gov.au>.
- 2.12. Make-up Lesson is the rescheduling of a session, which was previously cancelled and approved by the Supplier.
- 2.13. School Holidays are taken to be those periods falling outside the School Term.

3. GENERAL

- 3.1. These Terms and Conditions together with the Supplier's Schedule of Fees, and the New Student Info section, form this Agreement and should be read in conjunction.
- 3.2. Any Enrolment by the Customer is deemed to be an Enrolment incorporating these Terms and Conditions and may not be varied unless expressly agreed to by the Parties in writing. In the event that an inconsistency exists and/or arises between these terms and the Enrolment it is acknowledged between the parties that these Terms and Conditions will prevail.
- 3.3. No subsequent correspondence or document or discussion shall modify or otherwise vary these Terms and Conditions unless such variation is in writing and signed by the Supplier.
- 3.4. The Terms and Conditions are binding on the Customer, his heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 3.5. In these Terms and Conditions, the singular shall include the plural, the masculine shall include feminine and neuter and words importing persons shall apply to corporations.
- 3.6. Where more than one Customer completes this Agreement each shall be liable jointly and severally.
- 3.7. If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired and the offending provision shall be deemed as severed from these Terms and Conditions.
- 3.8. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer.
- 3.9. The failure by the Parties to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect each Party's right to subsequently enforce that provision.
- 3.10. The Customer acknowledges that the Supplier may detail these Terms and Conditions on its website. In this event, the Terms and Conditions on the Supplier's website shall apply to any future dealings as between the parties and the Customer is deemed to have notice of any such Terms and Conditions and/or amendments.

4. ENROLLMENT

- 4.1. Enrolment will be considered valid when the Customer completes the Enrolment paperwork (signed Terms and Conditions, completed Contact and Availability Sheet),
- 4.2. Any written Schedule of Fees given by the Supplier shall expire fourteen (14) days after the date of the written Schedule of Fees.
- 4.3. All prices are based on taxes and statutory charges current at the time of the Schedule of Fees. Should these vary during the period from the date of the Schedule of Fees to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Supplier.

5. PRICE

- 5.1. The Supplier reserves the right to change the Price to the Supplier's Service in the event of a variation which was previously unknown or unforeseen by the Parties at the time of Enrolment, and notice will be provided in writing by the Supplier within a reasonable time.
- 5.2. At the Supplier's sole discretion the Price shall be either:
 - 5.2.1. As detailed on invoices provided by the Supplier to the Customer in respect of Services supplied; or
 - 5.2.2. The Supplier's Price as for the Schedule of Fees (subject to clause 5.1).

6. PROVISION OF SERVICES

- 6.1. The Supplier reserves their right to:
 - 6.1.1. Decline requests for any Services requested by the Customer.
 - 6.1.2. Cancel or postpone appointments at their discretion.
- 6.2. Unless specified by the Supplier to the contrary in the Enrolment, the Supplier does not warrant that it will be capable of providing the Services at specific times requested by the Customer during the term of this Agreement.
- 6.3. Subject to otherwise complying with its obligations under this Agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Services and of satisfying the Customer's expectations of those Services.
- 6.4. In the discharge of its duties, the Supplier shall comply with all reasonable directions of the Customer as to the nature and scope of the Services provided.
- 6.5. Nothing in the above clause shall affect the Supplier's right to exercise its own judgment and to utilise its skills as it considers most appropriate in Enrolment to achieve compliance with the said resolutions, regulations and directions or otherwise with its obligations under this Agreement.
- 6.6. The Customer grants full access to the Tutors to the Premises to enable it to carry out the Services.

7. PAYMENT

- 7.1. Invoices will be issued fortnightly in advance for the duration of the School Term.
- 7.2. The Customer must make full payment to the Supplier for each session by the nominated payment method at least a fortnight prior to the lesson.
- 7.3. Payments made by credit card are subject to a 1.3% surcharge per transaction.

Discounts

- 7.4. At the sole discretion of the Supplier, a discount of up to 10% for the full term will be provided to the Customer in the event that the Customer pays for all sessions in the School Term at least fourteen (14) days prior to the commencement of the School Term.
- 7.5. At the sole discretion of the Supplier, other discounts may be offered.

8. DISHONOUR OF DIRECT DEBIT

- 8.1. If any direct debit agreed to by the Customer or by any third party in payment of the Price, is dishonoured:
 - 8.1.1. The Supplier may refuse to supply any further Goods until satisfactory payment is received in full, including bank fees and charges;
 - 8.1.2. The Supplier is entitled to treat the dishonour of the Customer's direct debit as a repudiation of this Agreement and to elect between terminating this Agreement or affirming this Agreement, and in each case claiming and recovering compensation for loss or damage suffered from the Customer.
 - 8.1.3. The Customer will be liable for the dishonoured direct debit fee cost.

9. DEFAULT

- 9.1. Invoices issued by the Supplier shall be due and payable within (1) day after the date of the invoice ("Default Date"). Without prejudice to any other rights of the Supplier, the Customer may be charged account administration on any payment in arrears.
- 9.2. If the Supplier does not receive payment for the Services on or before the Default Date, the Supplier may, without prejudice to any other remedy it may have, forward the Customer's overdue account to a debt collection agency for further action. The Supplier acknowledges and agrees that:

- 9.2.1. After the Default Date, the Outstanding Balance shall include, but not be limited to, all applicable fees and charges under this Agreement;
- 9.2.2. The Supplier may, in its discretion, calculate interest at the rate of 2.5% per month compounding.
- 9.2.3. In the event of the Customer being in default of his obligation to pay and the overdue account is then referred to a debt collection agency, and/or law firm for collection the Customer shall be liable for the recovery costs incurred including the commission payable by the Supplier to the agency, fixed at the rate charged by the agency of up to 25% on the base amount outstanding.
- 9.2.4. In the event where the Supplier or the Supplier's agency refers the overdue account to a lawyer the Customer shall also pay as a liquidated debt the charges reasonably made or claimed by the lawyer on the indemnity basis.

10. RISK AND LIABILITY

- 10.1. The Customer will ensure when enrolling the Student that there is sufficient information to enable the Supplier to execute the Service.
- 10.2. The Customer is responsible for ensuring that the Supplier is made aware of any special requirements pertaining to the Enrolment and that the Supplier relies upon the integrity of the information supplied to it.
- 10.3. The Supplier takes no responsibility and will not be liable for any damages or costs resulting in the Services being deficient as a consequence of insufficient information provided by the Customer.
- 10.4. The Supplier makes no guarantees or representations as to outcomes achievable by the Student.
- 10.5. The Supplier takes no responsibility for representations made in relation to the Services or any delay in the provision of the Services made by a third party or third party provider.
- 10.6. The Customer acknowledges the nature of the Services provided by the Supplier which takes reasonable steps to provide the Services with attention to safety.
- 10.7. The Customer shall indemnify the Supplier on demand against any appropriate medical fees incurred in the event that the Student is injured and further agrees to indemnify and keep indemnified the Supplier against all reasonable costs, charges, expenses, liabilities, outgoings and/or payments, which the Supplier is liable to pay or incur in providing the Services.
- 10.8. The Customer indemnifies the Supplier against any applicable bank fees relating to the reversal of any credit card payment authorised by the Customer and charged by the Supplier.

11. WARRANTY

- 11.1. The Supplier warrants that the Customer's rights and remedies in this Agreement arising from a warranty against defects are in addition to other rights and remedies under any applicable law in relation to the services to which the warranty relates.
- 11.2. The Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the Competition and Consumer Act 2010 (Cth) or any related or complementary legislation or regulations as in force and amended from time to time.

Claims made under Warranty

- 11.3. Subject to clause 11.1 and 11.2 of this Agreement claims for warranty should be made in one of the following ways:
 - 11.3.1. The Customer must send the claim in writing together to the Supplier's business address stated in clause 2.1 of this Agreement;
 - 11.3.2. The Customer must email the to the Supplier on admin@aptutoring.com.au
 - 11.3.3. The Customer must contact the Supplier on the Supplier's business number (03) 9707 2761.

12. TERMINATION AND CANCELLATION

Cancellation by Supplier

- 12.1. The Supplier may cancel any Enrolment to which these Terms and Conditions at any time before payment is made by the Customer by giving written notice to the Customer.
- 12.2. Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel or suspend all or any part of any Enrolment of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
 - 12.2.1. Any money payable to the Supplier becomes overdue; or
 - 12.2.2. The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - 12.2.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

Cancellation by Customer

- 12.3. Sessions cannot be cancelled by the Customer or Student unless a cancellation notice is provided to Supplier via email and approved by the Supplier.
- 12.4. A cancellation notice may be rejected by the Supplier in the event that it is not provided to the Supplier twenty-four (24) hours in advance of the scheduled session.

- 12.5. If a cancellation notice is approved by the Supplier, the Customer covenants that:
- 12.5.1. The Customer will be charged for the cancelled Session.
 - 12.5.2. The Customer is entitled to a Make-up Lesson no later than the conclusion of the following School Term.
 - 12.5.3. Unless a Make-up Lesson is scheduled prior to the conclusion of the following school term, the Customer forfeits any entitlement to the Make-up Lesson.
 - 12.5.4. Make-up Lessons may be rescheduled during School Holidays if agreed to by the Supplier in writing.
 - 12.5.5. The Make-up Lesson is fixed and final and cannot be altered.
 - 12.5.6. If a Student is unable to attend a Make-up Lesson, the Customer and Student forfeit any entitlement to reschedule the session.
 - 12.5.7. Make-up Lessons are non-refundable.
- 12.6. If a cancellation notice is rejected by the Supplier, the price of the session is non-refundable.
- 12.7. If a Customer does not provide the Supplier with a cancellation notice the customer will be charged a Failure to Notify Fee of \$45.00.

Termination of Service

- 12.8. Termination of services by the Customer must be provided to the Supplier in writing at least twenty-eight (28) days prior to the end of the trading period (term).
- 12.9. If services are terminated by the Customer:
- 12.9.1. The Customer covenants that he will be charged for Sessions scheduled within twenty-eight (28) days of the written notice of termination of services being provided to the Supplier.
 - 12.9.2. At the sole discretion of the Supplier, the Customer may be offered a refund for Sessions that are scheduled twenty-nine (29) days after written notice of termination of services is provided to the Supplier.

13. SET-OFF

- 13.1. The Customer shall have no right of set-off in any suit, claim or proceeding brought by the Supplier against the Customer for default in payment.
- 13.2. The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.

14. INSURANCE

- 14.1. The Supplier is not responsible to provide insurance cover for the Student. The Customer is responsible to effect whatever insurance cover he requires at his own expense.

15. ACCESS

- 15.1. The Customer shall, where ensure the Supplier has full and safe access to the Premises and, where relevant, provide the Tutor with any necessary essential services, resources, equipment, materials and information.
- 15.2. The Customer shall ensure that where one-on-one tutoring is supplied, an adult over the age of 18 is present for the duration of the provision of the service.
- 15.3. The Customer will be charged an additional fee if the Supplier's work is interfered with or no proper or safe access is provided to the Supplier.
- 15.4. The Supplier will not be held responsible for any delay due to inclement weather, failure of the Customer to provide required Items or changes requested to be made by the Customer and/or in any circumstances beyond the Supplier's reasonable control.
- 15.5. The Customer shall supply water and/or electricity to the Supplier to carry out the Enrolment at no costs to the Supplier.

16. JURISDICTION

- 16.1. This Agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the appropriate courts of Victoria.

17. PRIVACY ACT 1988

- 17.1. The Customer and/or the Guarantor/s agrees;
- 17.1.1. That the Supplier may exchange information about the Customer and the Guarantor/s with other credit providers or named in a consumer credit report issued by a credit reporting agency.
 - 17.1.2. The Customer consent to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988*).

18. ENTIRE AGREEMENT

- 18.1. These Terms and Conditions as defined in Clause 3.1 constitute the whole Agreement made between the Customer and the Supplier.
- 18.2. This Agreement can only be amended in writing signed by each of the parties.

- 18.3. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by him or on his behalf that are in conflict with any clauses in this document in any way.
- 18.4. Nothing in these Terms and Conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia.

SIGNATORY

I/We understand and agree to be bound by the Terms and Conditions set out herein.

NAME:
POSITION HELD:.....
SIGNATURE:
DATE:/...../20.....

NAME:
POSITION HELD:.....
SIGNATURE:
DATE:/...../20.....

WITNESS NAME:.....
ADDRESS:
.....
SIGNATURE:
DATE:/...../20.....