

Terms and Conditions

1. Overview

- (a) We, Vygo Pty Ltd (ACN 609 658 531) (**Vygo, us, our, we**) own and operate:
 - (i) the mobile application "Vygo";
 - (ii) the websites located at www.vygoapp.com and www.vygo.com.au; and
 - (iii) any other products and services we release from time to time,
(together, **Platform**) which allows users to connect and provide or receive tutoring or mentoring services.
- (b) By accessing and using the Platform you acknowledge you have read, understood and agree to comply with:
 - (i) these Terms and Conditions;
 - (ii) our Privacy Policy; and
 - (iii) any other terms, policies or notices published on the Platform,
(collectively, **Terms**).
- (c) Our Terms form a binding contractual agreement between the user of the Platform (**User, you**) and us.
- (d) Before accessing and using the Platform, you should read the Terms carefully. If you have any questions about the Terms, you can contact us at team@vygoapp.com.
- (e) If you do not agree to the Terms, as amended from time to time, in whole or in part, you must not access or use the Platform.
- (f) If you are younger than 18 years of age (a **Minor**), by accessing and using the Platform, you confirm that you have the consent of your parent or guardian and have received your parent or guardian's permission to use the Platform and agree to these Terms.
- (g) If you are the parent or guardian of a Minor, you agree that you are solely responsible for such Minor's use of the Platform and to bind the Minor to these Terms and to fully indemnify and hold us harmless if the Minor breaches any of these Terms.

2. How it works

2.1 Overview

- (a) The Platform allows universities or similar institutions (**University**) to invite their students to join the Platform.
- (b) Once the students have joined the Platform, the Platform connects users requiring tutoring or mentoring services (**Tutees**) to tutors and mentors willing to provide the required tutoring or mentoring services (**Tutors**).

- (c) A Tutee may, through the functionality provided on the Platform:
 - (i) search for:
 - (A) their subject or topic of interest;
 - (B) reviews of Tutors,
 - (ii) request a tutoring or mentoring session (**Session**) with their preferred Tutor (**Requested Job**);
 - (iii) amend, update or cancel a Requested Job;
- (d) A Tutor may, through the functionality provided on the Platform:
 - (i) review Requested Jobs from Tutees;
 - (ii) accept Requested Jobs (**Accepted Jobs**); and
 - (iii) make enquires about or reject Requested Jobs.

2.2 Communication and messaging

- (a) Tutors and Tutees may use a messaging feature available on the Platform to communicate directly about Requested and Accepted Jobs.
- (b) Each time you receive a message through the Platform, Vygo may send a notification to you via text message or email. If you do not wish to receive notifications, you can manage your notification settings through the functionality provided on the Platform.
- (c) We may monitor your communications through the Platform's messaging feature to ensure compliance with these Terms and your University's policies and codes of conduct. We may, at our discretion or when requested by your University, provide your communications to the University.

2.3 Reviews

- (a) Tutees may rate and provide feedback about a Tutor regarding the performance of services facilitated through the Platform (**Review**).
- (b) We strongly encourage Users to provide Reviews, and may from time to time, contact you to remind you provide a review for completed Sessions.
- (c) Reviews must be true, fair and accurate.
- (d) Reviews can be viewed by any User and will remain viewable until the relevant User's account is cancelled or removed from the Platform.
- (e) We may, but are not obliged to, review a Review made by a User.
- (f) If we, in our sole discretion, consider that a Review is untrue, unfair, inaccurate, offensive or otherwise inappropriate, we may delete the Review and/or prohibit the User from posting the Review.

3. About Us

- (a) We act as a facilitator between Tutors and Tutees and their University (as applicable), and our role is strictly limited to facilitating access to the Platform.
- (b) By accessing and using the Platform, you acknowledge and agree that:
 - (i) we are not responsible for, and have no control over the conduct, interactions or dealings between Users;
 - (ii) we are not an employment agency or labour hire business, nor are we a referral or booking agent and we do not provide related services;
 - (iii) we are not a party to any agreement entered into between Users;
 - (iv) no User is an employee, contractor, partner or agent of us;
 - (v) we do not determine your tax liability or collect or pay taxes you may be liable to pay as a result of or in connection with your use of the Platform;
 - (vi) we reserve the right, but are not obliged to monitor, review, verify, edit, modify or delete material, content, data or information created, generated or transmitted by Users through the Platform (collectively, **User Content**).

4. Agreement between Users

- (a) Each Accepted Job forms a separate legal agreement between the Tutee and Tutor and any arrangements between Users, including fees and payments for work carried out, are solely between those Users (**Tutoring Contract**).
- (b) The terms of any Tutoring Contract incorporate, to the extent practicable, the Terms.
- (c) Users must not enter into any agreement with another User that conflicts with these Terms. For the avoidance of doubt, these Terms take priority over any Tutoring Contract to the extent of any inconsistency.
- (d) The Tutor must provide the tutoring or mentoring services to the Tutee in accordance with the Tutoring Contract unless the services or the transaction is prohibited:
 - (i) under these Terms;
 - (ii) by law; or
 - (iii) under any applicable academic institution policies.
- (e) We are not responsible or liable for the monitoring or enforcement of any Tutoring Contract.

5. Access to Platform

- (a) To access the Platform, you must create an account.
- (b) You may only create one account on the Platform.
- (c) To register a User account, you must:

- (i) be an individual;
 - (ii) if you are a Minor, have obtained the necessary parental or guardian consent to access and use the Platform;
 - (iii) provide complete and accurate answers to all the items in the sign-up page, including your full name and email address; and
 - (iv) read and agree to the Terms.
- (d) When you register your account, you must nominate a password. You are responsible for maintaining the confidentiality and integrity of your account, password and for all use and activity carried out on your account.
- (e) If you believe that there has been unauthorised access to your account, please contact us.
- (f) Vygo may, at its sole discretion, implement, use and modify tools to verify the identity of any User and the qualifications or skills of Tutors. The tools may include, but are not limited to:
- (i) mobile phone verification technology;
 - (ii) verification of payment information;
 - (iii) integration with University's information management systems or single sign on; and/or
 - (iv) integration with social media sites such as Facebook, Twitter or LinkedIn.
- (g) The information you provide us through the Platform, including but not limited to during account registration or User verification, must be accurate, complete and up to date. You must update this information from time to time to ensure it remains up to date.
- (h) The information you provide us to create your account will be used to create your User profile (**Profile**) on the Platform.
- (i) You acknowledge and agree that, where we have partnered with your University to allow you access to and use of the Platform, you may be required to provide evidence or authentication of your relationship with the University, including by logging into our Platform through your University's single sign on.

6. Use of Platform

6.1 Your Obligations

You represent and warrant to:

- (a) use the Platform in accordance with these Terms; and
- (b) provide and keep accurate, current and complete all information provided in the Platform;
- (c) comply with your University's rules, standards and/or applicable codes of conduct; and

- (d) comply with all rules of common law, principles of equity, international law or any federal, state, local laws, statutes, rules, regulations, proclamations, ordinances or by-laws and other subordinate legislation of any country anywhere in the world.

6.2 Limitations

In accessing the Platform, you represent and warrant that you will not:

- (a) modify or copy the layout of the Platform or any computer software and code contained in the Platform;
- (b) interfere with or disrupt the Platform, including by transmitting any viruses, spyware, malware or any other code of a destructive or disruptive nature;
- (c) create accounts with us through unauthorised means, including but not limited to by impersonation or identity falsification or by using an automated device, script, bot or other similar means;
- (d) restrict, or attempt to restrict, another User from using or enjoying the Platform;
- (e) interfere with the privacy of another person;
- (f) infringe any intellectual property rights or any other contractual or proprietary rights of another person;
- (g) do any act, engage in any practice or omit to do any act or engage in any practice that:
 - (i) is or could reasonably be considered obscene, illegal, offensive, inappropriate, defamatory, indecent, threatening or objectionable in any way;
 - (ii) would cause us to breach or to be taken to breach a law;
 - (iii) would bring us into disrepute; or
 - (iv) interferes with the integrity or supply of the Platform to all users; or
- (h) encourage or facilitate violations of the Terms.

6.3 Cancellation by you

You may cancel your account at any time through the functionality provided on the Platform.

7. Requesting and Accepting Jobs

7.1 Requested Job

- (a) When submitting a Requested Job, the Tutee must include:
 - (i) the date, time, location and anticipated duration of the Session;
 - (ii) acceptance of the Tutor's hourly rate (**Tutor's Rate**); and
 - (iii) a description of the tutoring or mentoring services required.

- (b) A Tutee may also include any additional terms that he/she wishes to apply to the Requested Job.
- (c) If a Tutee updates a Requested Job after it has been published but before it has been accepted by a Tutor, Vygo may, in its absolute discretion, cancel or remove the Requested Job from the Platform.
- (d) By accepting a Requested Job, a Tutor confirms that he/she is legally entitled to and capable of supplying the services in accordance with specifications in the Requested Job.
- (e) Users must start and end a Session through the functionality provided on the Platform. The recorded tutoring session length on the Platform is deemed to be the actual length of the Session.

7.2 Accepted Jobs

- (a) A Tutor may, in his or her sole and absolute discretion accept or reject a Requested Job.
- (b) By accepting a Requested Job, the Tutor agrees to provide the tutoring or mentoring services on the terms and conditions specified in the Requested Job or as otherwise agreed between the parties.
- (c) If you consistently rejecting or withdrawing from Requested Jobs and are not actively engaging with Users on the Platform for Requested Jobs, Vygo may, at its sole discretion, terminate your account in accordance with clause 18.

7.3 Withdraw or Cancellation of Jobs

- (a) Either a Tutee or Tutor may withdraw a Requested Job at any time.
- (b) A Tutee may cancel an Accepted Job at any time.
- (c) If a Tutee cancels an Accepted Job 6 hours or less before the Session is scheduled to start, then the Tutee may be charged 50% of the Tutor's Fee.

8. Location of Sessions

- (a) All Sessions must occur in public places such as university campuses or cafes or digitally via the internet.
- (b) You acknowledge and agree that the Platform may include location and map-based functionality, including by displaying the location of a Requested Job to a relevant Tutee or Tutor.

9. Fees and payments

9.1 User Fee

- (a) Subject to this clause 9.1, use of the Platform to register an account is free.
- (b) We reserve the right to charge you a fee in consideration for us making the Platform available (**User Fee**).
- (c) We will advise you of any applicable User Fee (including any applicable GST) prior to charging any fee.

9.2 Tutor Fees

- (a) All mentoring sessions are provided to Tutee's free of charge.
- (b) Tutors may set their Tutor's Rate for tutoring sessions through the functionality provided on the Platform.
- (c) For each Accepted Job, the Tutee agrees to pay the Tutor at the Tutor's Rate for the length of the Session (**Tutor's Fee**).
- (d) Once the Tutor has ended the Session through the functionality provided on the Platform in accordance with clause 7.1(e), the Tutor's Fee will be automatically processed and released to the Tutor on the basis of the reported tutoring session length at the Tutor's Rate.

9.3 Vygo Service Fees

- (a) In consideration for providing the Platform, Vygo reserves the right to deduct a fee or a percentage of the Tutor's Fee before payment is made to the Tutor (**Service Fee**).
- (b) We will advise you of any applicable Service Fee (including any applicable GST) prior to charging any fee.

9.4 Payment processing

- (a) Payment processing services for Users on the Platform are provided by Stripe and are subject to the [Stripe Connected Account Agreement](#), which includes the [Stripe Terms of Service](#) (collectively, the Stripe Services Agreement). By agreeing to these Terms or continuing to operate as a User on the Platform, you agree to be bound by the Stripe Services Agreement, as the same may be modified by Stripe from time to time. As a condition of the Platform enabling payment processing services through Stripe, you agree to provide Vygo with accurate and complete information about you, and you authorize Vygo to share it and transaction information related to your use of the payment processing services provided by Stripe.
- (b) By agreeing to the terms and using the Platform, you agree to be bound by the Stripe Terms as amended by Stripe from time to time.
- (c) You are responsible for:
 - (i) ensuring that your billing information is kept up to date;
 - (ii) ensuring that your nominated bank account or credit card has sufficient funds or credit to meet the payments; and
 - (iii) paying all bank fees, including fees charged by your bank for an overdraw of your account as a result of a payment pursuant to these Terms.

9.5 Non-payment

- (a) If any payment fails, you will be responsible for any reasonable administration fees, including any fees for dishonoured payment.
- (b) If a Tutee fails to pay any amounts due under these Terms, then we reserve the right:

- (i) to suspend or terminate your access to the Platform, including access to your Account; and/or
- (ii) to refer the matter to a solicitor or debt collection agent.

10. Intellectual property rights

- (a) We own or are the licensee of all rights, title and interest (including copyright, designs, patents, trademarks and other intellectual property rights) in the Platform and in or to the Material made available to you in providing the Platform (together, the **Platform Content**).
- (b) Your use of and access to the Platform does not grant or transfer any rights, title or interest to you in relation to the Platform Content.
- (c) You must not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, commercially exploit, create derivative works from, transfer or sell any Platform Content or any other material in whatever form contained within the Platform.

11. User Content

11.1 General

- (a) We do not claim ownership of any User Content. Instead, you grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable licence to use the User Content, whether on the Platform or in any hardcopy form.
- (b) You consent to any act or omission which would otherwise constitute an infringement of your moral rights. If a third party has moral rights in your User Content, you must ensure the third-party consents in the same manner.
- (c) User Content must be accurate, truthful and genuine, provided for information purposes. We do not have the ability or responsibility to verify the accuracy or otherwise of the User Content.

11.2 Sharing User Content

- (a) We may share your User Content, including the contents of any chats or messaging through the Platform directly with your University at any time if requested by the University. Any such disclosure will be in accordance with the terms of our Privacy Policy.
- (b) We may also share aggregated and anonymised User Content and other information with the University and other third parties for research and analytics processes.
- (c) For further information about when and how we collect and share your User Content and other information, please refer to our Privacy Policy.

11.3 Security of content

- (a) We will take all reasonable steps to implement, maintain and enforce security procedures and safeguards to protect the security, confidentiality and integrity of

the User Content from unauthorised access or use by a third party or misuse, damage or destruction by any person.

- (b) However, given the nature of the internet, we do not guarantee and cannot ensure the security of User Content and we expressly exclude liability for any such loss, however caused.
- (c) We recommend you take proactive means to protect your computer and phone system from potential hazards by installing firewalls, anti-virus software and other security Platform.

11.4 Prohibited content

You must not create or generate any User Content:

- (a) unless you hold all necessary rights, licences and consents to do so;
- (b) that would cause you or us to breach any law, regulation, rule, code or other legal obligation;
- (c) that is in breach of or inconsistent with any of your University's policies or codes of conduct;
- (d) that we consider inappropriate, defamatory, offensive, abusive, indecent, illegal or disparaging;
- (e) that would bring us into disrepute; or
- (f) that infringes the rights, including intellectual property rights, of any third party.

11.5 Enforcement

- (a) We reserve the right to, but do not assume the obligation to:
 - (i) remove, screen or edit User Content that violates our Terms or is otherwise objectionable, as determined by us in our sole discretion;
 - (ii) disable your access to all or certain functions of the Platform where you or your Student has violated this clause 11, as determined by us in our sole discretion; and
 - (iii) notify your University or its agent or representatives of the violation of this clause 11 and assist with their investigations or enquiries into the User Content.
- (b) You acknowledge and agree that your University may take action or impose penalties against you as a result of your conduct on the Platform and User Content and we will not be liable for or party to such action and/or penalties.

12. Third Party Links

- (a) The Platform may contain links to other websites owned and operated by third parties, which are not under our control (**Third Party Links**).
- (b) Third Party Links are provided as a convenience to you and the existence of such links on the Platform is not an endorsement of those Third Party Links.

- (c) We are not responsible for the content or material contained on any Third Party Link.

13. Privacy

- (a) We will collect, use and disclose any personal information you provide us when using the Platform in accordance with our Privacy Policy.
- (b) You acknowledge and agree that we may share your personal information with your University or receive additional personal information about you from your University in accordance with our Privacy Policy.
- (c) Users should never disclose personal details such as their full names, home address, phone number or email address with another User in any communication on the Platform, except as required to provide or receive the tutoring or mentoring services on the Platform.
- (d) For more information on our information collection and handling practices, please view our Privacy Policy [here](#).

14. Disclaimer

- (a) The Platform and Third Party Links are provided to you on an 'as is' and 'as available' basis. We give no warranty, guarantee or representation about the accuracy, reliability or timeliness or otherwise of the Platform or Third Party Links.
- (b) We reserve the right to change, suspend or discontinue any aspect of the Platform, including removing any User Content or Third Party Links, at any time and without notice to you.
- (c) You are responsible for considering the appropriateness of the Platform for your intended application and use and we give no warranty, guarantee or representation that the Platform is suitable for or meets your requirements.
- (d) We are not responsible or liable for the conduct of any User or your University. We reserve the right to monitor or become involved in any dispute between you and another user.
- (e) We are not responsible for and make no representations or warranties as to the truthfulness or accuracy of any User Content.
- (f) We are not responsible or liable to you or any third party for any action taken against you or another User by your University as a result of your use or misuse of the Platform.

15. Exclusions and limitation of liability

- (a) To the fullest extent permitted by law, we are not liable to you for any loss or damage you may suffer or incur in connection with your access to and use of the Platform.
- (b) To the fullest extent permitted by law, we exclude liability for special, indirect or consequential damages, including damages for loss of data, loss of or claim for, revenue, profits, actual or potential business opportunities or anticipated savings or profit.

- (c) Any limitations or exclusions do not apply to our liability for loss suffered or incurred by you for:
 - (i) our fraudulent or other unlawful acts;
 - (ii) our gross negligence; or
 - (iii) liability that cannot be limited or excluded by law, including under the Australian Consumer Law.
- (d) To the fullest extent permitted by law, our liability to you is limited to the total amount of the fees paid by you to Vygo or paid by your University to Vygo and attributable to your use of the Platform, in the 12 months immediately preceding the incident giving rise to our liability.

16. Indemnity

You must indemnify and keep indemnified us, our directors, employees, contractors and agents, Related Bodies Corporate and Related Entities as defined in the *Corporations Act 2001* (Cth) (together, **Indemnified Persons**) from and against any loss (including reasonable legal costs and expenses) or liability incurred by any of the Indemnified Persons from any claim, demand, suit, action or proceeding by any person against any of the Indemnified Persons where such loss or liability arose directly or indirectly out of or in connection with:

- (a) any breach of these Terms by you; or
 - (b) breach of any right of another user,
- except to the extent that the loss or liability is caused or contributed to by the act or omission of any of the Indemnified Persons.

17. Dispute resolution

- (a) The parties must use their reasonable endeavours to resolve through negotiation all disputes, conflicts (including, without limitation, conflicts of interest) differences or questions between them arising out of or in connection with these Terms.
- (b) If within 10 business days (that is, days that are not bank holidays in Brisbane, Australia), the dispute cannot be resolved following negotiation between the parties, either party may refer the dispute for arbitration.
- (c) The parties agree to negotiate in good faith to agree on the appointment of a single arbitrator, or failing agreement as appointed by the President of The Queensland Law Society (if all the parties are situated in Australia) or (where one or more of the disputing parties is not situated in Australia) to an arbitrator appointed by the Australian Centre for International Commercial Arbitration Court (**ACICA**).
- (d) The arbitration will be conducted in Australia in accordance with the ACICA Rules operating at the time the dispute is referred to ACICA (the **Rules**).
- (e) The terms of the Rules are deemed incorporated into these Terms.

- (f) If a party fails to adhere to the terms of this clause 17 and proceedings are subsequently issued by the defaulting party, these Terms can be used as a bar to any proceedings so issued.

18. Termination

- (a) We reserve the right to cease operating the Platform, without notice and for any reason.
- (b) We may terminate our relationship with you without notice and with immediate effect if:
- (i) you, in any way, breach these Terms; or
 - (ii) we are requested to do so by your University, in your University's sole discretion.
- (c) On termination of these Terms:
- (i) access to your account will expire or cease; and
 - (ii) you will not have any access to User Content through the Platform; and
 - (iii) we will remove your account and its related information from the Platform.
- (d) We are not liable for any costs, losses or damages of any kind arising as a consequence of terminating your access to the Platform.

19. Contact us

If you wish to contact us or make a complaint, please contact us at team@vygoapp.com.

20. Variation to the Terms

- (a) We may vary, amend or otherwise modify the Terms at any time (**New Terms**).
- (b) We will publish the New Terms on the Platform, at which time they will be effective.
- (c) Your continued use of the Platform following posting of the New Terms constitutes your acceptance of the New Terms.

21. Severability

If any provision of our Terms is unenforceable or invalid, it will be ineffective to the extent it is unenforceable or invalid and will not affect the enforceability or validity of the remaining provisions.

22. Jurisdiction

- (a) The Terms are governed by the laws in force in Queensland, Australia.
- (b) You and we submit to the exclusive jurisdiction of the courts of Queensland.

Last update of these Terms of Use: 26/07/2019