



The Autism & Neurodiversity Masterclass

Terms and Conditions

Autism Camp Australia Ltd (ACN 61 635 944 400) (**ACA**) operates an e-learning platform titled 'The Autism & Neurodiversity Masterclass', as described on the Autism & Neurodiversity Masterclass website (also referred to as the **Hosted Service**). This document sets out the terms and conditions under which ACA provides you (the **Customer**) with access to Hosted Service during the term of your subscription.

By clicking "I accept", you agree that you have read and understood these terms and agree to be bound by these terms.

1. Definitions and interpretation

1.1 Definitions

In this Agreement, unless the contrary intention appears:

- (1) **Acceptable Use Policy** means the acceptable use policy relating to the Hosted Service, as published by ACA from time to time;
- (2) **Agreement** means the agreement that governs the Customer's use of the Hosted Service, comprising these terms and conditions and the Subscription Details;
- (3) **ACA** means Autism Camp Australia Ltd;
- (4) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in New South Wales;
- (5) **Cloud Provider** means a service provider that provides the computing infrastructure (including on a managed services or "as a service" basis) on which the Hosted Service is provided, as determined by ACA from time to time;
- (6) **Commencement Date** means commencement date of the Customer's subscription to the Hosted Service, being the date on specified in the Subscription Details, or if no such date is specified, the date on which the Agreement is formed;
- (7) **Customer** means the persons the registered and subscribed to the Hosted Service, as set out in the Subscription Details;
- (8) **Customer Data** means all data (whether or not it includes personal information) stored by the Customer on the Hosted Service;
- (9) **Documentation** means the user guidelines, training material, frequently asked questions and similar materials relating to the Hosted Service, as provided by ACA to the Customer in electronic form from time to time;
- (10) **Fees** means the subscription fee payable by the Customer, as specified in the Subscription Details;
- (11) **Force Majeure Event** has the meaning given to that term in clause 22.3;
- (12) **Intellectual Property Rights** means copyright, trade mark, moral rights, confidential information, design, patent, trade, business or company names, or other proprietary rights, or any rights to the registration of those rights and any applications to register those rights (anywhere in the world);
- (13) **Malicious Code** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs;
- (14) **Personal Information** means "Personal Information" as that term is defined in the *Privacy Act 1988* (Cth);
- (15) **Term** means the subscription term as specified in the Subscription Details and as renewed in accordance with the terms of this Agreement; and
- (16) **Subscription Details** means the details of the Customer and its subscription to the Hosted Service as completed or accepted by the Customer as part of the online form on ACA's website to purchase a subscription to the Hosted Service.

1.2 Interpretation

In this Agreement:

- (1) reference to the singular includes the plural and the plural includes the singular, a person includes a body corporate and a party includes the party's executors, administrators, successors and permitted assigns;
- (2) reference to money is to Australian dollars, unless otherwise stated;
- (3) "including" and similar expressions are not words of limitation;
- (4) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (5) headings are for convenience only and do not form part of this Agreement or affect its interpretation;
- (6) a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement;
- (7) if an act must be done on a specified day that is not a Business Day, it must be done instead on the next Business Day;
- (8) if a party consists of more than one person, this Agreement binds each of them separately and any two or more of them jointly;

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- (9) an obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly; and
- (10) a party which is a trustee is bound both personally and in its capacity as a trustee.

2. Hosted Service

2.1 Provision of Hosted Service

- (1) With effect from the Commencement Date and subject to the payment of the Fee by the Customer, ACA will provide the Customer with single user access to the Hosted Service in accordance with this Agreement.
- (2) The Customer may report issues or incidents about the Hosted Service via email or other online channels specified by ACA from time to time. ACA will use reasonable endeavours to investigate and resolve substantiated issues or defects with the Hosted Service, and to do so in a timely manner.

2.2 Use of the Hosted Service

- (1) The Customer must only access and use the Hosted Service in accordance with this Agreement.
- (2) Access under this Agreement is granted to the Customer as a single user only. Except as expressly permitted under this Agreement, the Customer must not, and must not allow any other person to:
 - (a) access (directly or indirectly) the Hosted Service or Documentation;
 - (b) sub-license, disclose, resell, publish, transmit or otherwise make available to any third party any part of the Hosted Service or Documentation;
 - (c) modify, copy or create derivative works based on the Hosted Service or the Documentation or reverse engineer the Hosted Service (except to the extent permitted by non-excludable laws);
 - (d) send or store unlawful material (including Malicious Code) by means of the Hosted Service;
 - (e) attempt to gain unauthorised access to, or disrupt or bypass the security, integrity or performance of, the Hosted Service or any data contained in it;
 - (f) use the Hosted Service otherwise than in accordance with the Documentation and Acceptable Use Policy; or
 - (g) use the Hosted Service in a manner reasonably likely to adversely affect other users of the Hosted Service.

2.3 Changes to the Hosted Service

- (1) ACA may make changes to the Hosted Service from time to time (including any Cloud Provider), provided that the change does not materially decrease the functionality of the Hosted Service and where the new Hosted Service meets, at a minimum, the requirements set out in this Agreement. These changes may include changes to features and functionalities, content and other changes that are transparent to the Customer. Once incorporated, these changes will form part of the Hosted Service.
- (2) The Customer agrees that it entered into this Agreement without relying on any warranty, representation or comments concerning any future functionality or features of the Hosted Service, and that the Customer has not relied on any warranty, representation or comments made by ACA, including any roadmaps, with respect to future functionalities or features of the Hosted Service.

2.4 Customer Responsibilities

The Customer must:

- (1) provide its own internal facilities (including computers, terminals, software, telecommunications facilities and internet connectivity) necessary for utilising the Hosted Service;
- (2) comply with ACA's reasonable directions and applicable laws in the use of the Hosted Service; and
- (3) maintain the confidentiality of all login credentials allocated to the Customer and not disclose them to any third party.

2.5 Credentials

- (1) The Customer acknowledges that any access to or use of the Hosted Service by means of a username assigned to the Customer (whether or not such use is in fact by the Customer) is deemed to be access or use by the Customer, except to the extent that such unauthorised use is by ACA's personnel.
- (2) The Customer must not share its user credentials with any person.

3. Subscription Fees

3.1 Amount of Fees

The Customer must pay the Fees (plus any GST). The Customer will pay the Fees using such payment mechanism as may be made available by ACA on its website from time to time.

3.2 Precondition to access

Despite anything to the contrary in the Agreement, the Customer's access to the Hosted Service is subject to the payment of the Fees, and ACA may withhold or suspend the Customer's access to the Hosted Service until payment of the Fees is received in full.



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4. Intellectual Property

4.1 Reservation of rights

The Hosted Service and Documentation are protected by intellectual property laws. ACA reserves all rights (including Intellectual Property Rights) in relation to the Hosted Service and Documentation. The Customer has no proprietary or other interest in the Hosted Service or Documentation and nothing in this Agreement transfers any right, title or interest in the Hosted Service or Documentation to the Customer. To the extent necessary to use the Hosted Service, ACA grants the Customer a non-exclusive, non-transferable and limited licence for the Customer to access and use the Hosted Service during the Term in accordance with this Agreement.

4.2 Ownership of modifications and improvements

- (1) ACA owns all improvements, adaptations and modifications made to the Hosted Service and Documentation and all related Intellectual Property Rights, including any suggestions, enhancement requests, recommendations or other feedback provided by the Customer. The Customer assigns any and all the rights that the Customer may have in those improvements and modifications to ACA, and agrees to execute all additional documents requested by ACA to give effect to such assignment.
- (2) To the extent that ACA (or its licensees or assignees) develops any updates, new versions, new releases or customisation of the Hosted Service, they will be owned exclusively by ACA.

5. Liability

5.1 Warranty as to authority

Each party warrants that it is empowered and authorised to enter into this Agreement.

5.2 Warranty by ACA

ACA warrants that the Hosted Service will materially operate in accordance with the Documentation.

5.3 Exclusion of implied warranties

All statutory or implied conditions, guarantees and warranties are excluded by ACA to the maximum extent permitted by applicable law. To the extent permitted by law, where liability under any condition, guarantee or warranty which cannot legally be excluded but can be validly limited, such liability is limited to:

- (1) in the case of goods (including the Documentation), the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; and
- (2) in the case of the services (including the Hosted Service and Support Services), supplying the services again; or paying the cost of having the services supplied again.

5.4 No other warranties

- (1) To the maximum extent permitted by law and subject to clause 16.3, ACA disclaims and excludes any warranty, representation or undertaking as to the purpose for which the Hosted Service and Documentation may be suitable, including any purpose for which the Customer intends to use the Hosted Service and Documentation.
- (2) The Customer warrants to ACA that it has not relied on any representation made by ACA which has not been stated expressly in this Agreement, or upon any descriptions or specifications contained in any document including brochures, marketing and promotional materials produced by ACA.
- (3) While ACA has taken due care in developing the Hosted Service, to the extent permitted by law, ACA does not warrant, and excludes all representations and warranties that:
 - (a) the Hosted Service is error-free or has no defects;
 - (b) access to the Hosted Service will be uninterrupted or error free;
 - (c) the Hosted Service is free from Malicious Code; or
 - (d) the Hosted Service meets the Customer's requirements or is compatible with all operating systems and browsers.

5.5 Limitation and exclusion of liability

- (1) Despite any other provision of this Agreement and to the maximum extent permitted by applicable law, neither party is liable to the other under contract, tort or otherwise in any circumstances for any indirect, economic, special or consequential loss or damage, or in any event for any loss of revenue, loss of production, loss of use, loss of profit, loss of anticipated savings or loss of data. The limitation in this clause does not apply to any obligation on the Customer to pay any fees set out in this Agreement.
- (2) Subject to clause 16.3 and any laws the application of which may not be lawfully excluded, ACA's aggregate liability to the Customer on any basis and in any circumstances (including liability for negligence) arising out of or in connection with this Agreement, Hosted Service, Documentation or their use, will not exceed, and is expressly limited to, the amount equal to the total amount paid by the Customer to ACA in the first 12 months of this Agreement.
- (3) All claims for liability in connection with this Agreement must be made within 24 months of the party becoming aware of the relevant breach or other facts.

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6. Confidentiality

6.1 Hosted Service and Documentation are confidential

The Customer acknowledges and agrees that the Hosted Service (and its content) and Documentation are confidential to ACA, and the Customer must not, without the prior written approval of ACA, disclose the Hosted Service (or its content) or Documentation or use them for any purpose other than the purposes of this Agreement.

6.2 Exceptions

The Customer is not in breach of clause 17.1 to the extent that:

- (1) the Hosted Service (or its content) or Documentation are or become publicly available without breach of this Agreement; or
- (2) the Customer is required by law or any court to disclose the Hosted Service or Documentation (but the Customer must give ACA reasonable opportunity to seek protective orders).

6.3 Steps to avoid disclosure

The Customer must take all reasonable steps to protect the Hosted Service or Documentation from unauthorised disclosure in breach of this clause 17.

7. Privacy

7.1 Compliance with Privacy Laws

- (1) For the purpose of this clause 18, “**Personal Customer Data**” means Customer Data that comprises of “Personal Information”, as that term is defined in the Privacy Laws, that is hosted or stored by or on behalf of ACA as part of the Hosted Service.
- (2) ACA will, in the performance of its obligations under this Agreement, comply with the applicable requirements of the *Privacy Act 1988* (Cth) with respect to such Personal Customer Data (**Privacy Laws**).

7.2 Privacy Obligations

Without limiting clause 18.1, ACA must:

- (1) only use the Personal Customer Data for the purposes of performing its obligations under this Agreement;
- (2) not disclose any Personal Customer Data to any other person (other than to ACA’s own personnel and subcontractors, for the purpose of performing its obligation under this Agreement) without the prior written consent of the Customer (which may be provided with conditions) or as required by law);
- (3) use all reasonable endeavours to ensure that its personnel and subcontractors who have access to any Personal Customer Data use, disclose, transfer or retain such Personal Customer Data only to the extent necessary to perform their duties of engagement;
- (4) protect the Personal Customer Data in accordance with clause 19.3; and
- (5) notify the Customer after ACA becomes aware of any unauthorised disclosure, use, interference or modification of any Personal Customer Data hosted by ACA.

8. Customer Data

8.1 Ownership of Customer Data

- (1) The Customer will own the Customer Data.
- (2) ACA will not use or disclose the Customer Data except to the extent required to perform its obligations under this Agreement.

8.2 Responsibility for Customer Data

- (1) The Customer will be responsible for the content of all Customer Data and for complying with all applicable laws in respect of the Customer Data.
- (2) The Customer authorises ACA to receive, store and process the Customer Data as part of providing the Hosted Service.

8.3 Security of Customer Data

ACA will implement reasonable security measures to protect any Customer Data that is hosted on the Hosted Service from unauthorised access and disclosure. Provided that ACA has implemented those reasonable measures, ACA will not be liable for any misuse, interference and loss, and unauthorised access or disclosure of Customer Data.

8.4 Hosting of Customer Data

The Customer acknowledges that the nature of the Hosting Services means that ACA may vary the storage location from time to time.

8.5 Deletion of Customer Data

The Customer acknowledges that ACA may delete or destroy all Customer Data stored on the Hosted Service at any time after expiry or termination of the Agreement.

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9. Availability and suspension

9.1 Dependency on Cloud Provider

The Customer acknowledges and agrees that the availability of the Hosted Service depends upon permissions and services from the Cloud Provider, which may be varied or terminated from time to time by the Cloud Provider. Notwithstanding any other provisions of this Agreement, ACA may, with reasonable prior notice to the Customer, but without any liability on the part of ACA vary, suspend, terminate or limit the Hosted Service, if the Cloud Provider varies or terminates the services provided by the Cloud Provider so that ACA is no longer able to provide the Hosted Service in accordance with this Agreement.

9.2 Suspension

- (1) ACA may suspend the access to, and use of, the Hosted Service by Customer in the following circumstances:
 - (a) for the duration of any Force Majeure Event;
 - (b) for any material breach of this Agreement by the Customer (including, where applicable, non payment of fees by the Customer); or
 - (c) if ACA reasonably considers that suspension is necessary to protect the Hosted Service, the Customer Data, or any other computer systems and data (including in response to an external attack).
- (2) ACA will give the Customer as much practicable prior notice of the suspension as possible, and will promptly end the suspension after the relevant circumstances have abated.

10. Term and termination

10.1 Expiry of Term

- (1) Subject to this clause 21.1, this Agreement automatically terminates on the expiry of the Term.
- (2) ACA's website may offer the Customer the option to renew the Term by paying additional Fees. If this functionality is available, then the Term will be renewed by such period specified and paid for by the Customer. For clarity, renewal is subject to the full payment of the Fees for the renewal term by the Customer.

10.2 Termination for cause by ACA

Without limiting other provisions, ACA may terminate this Agreement immediately if:

- (1) the Customer commits any breach of clause 13.2(2);
- (2) the Customer fails to comply with any material provision of this Agreement and fails to remedy that failure within 20 Business Days after notice requiring it to be remedied;
- (3) Customer fails to pay the Fees, or payment made by the Customer is subsequently reversed or recharged; or
- (4) Customer assigns or otherwise disposes of any interest or right it has under this Agreement without the prior written consent of ACA.

10.3 Effect of termination

- (1) Upon termination of this Agreement for any reason:
 - (a) ACA is not required to provide the Customer any refund of any paid Fees (if any); and
 - (b) all rights and licences granted under this Agreement terminate immediately, and the Customer must immediately cease to use the Hosted Service and Documentation, and return to ACA or destroy all copies of the Documentation.
- (2) Clauses 0, 15, 16, 17, 19, 21.3 and 22 survive termination of this Agreement.

11. General

11.1 No assignment

The Customer must not transfer, sub-license or assign any benefit or obligation under this Agreement to any third party without the prior written consent of ACA.

11.2 Subcontract

ACA may subcontract the performance of any part of its obligations to any person.

11.3 Force majeure

ACA is not liable for any failure to perform or delay in performing any obligations under this Agreement to the extent caused by any cause or condition beyond its reasonable control, including fire, flood, act of God, war, insurrection, sabotage, acts of terrorism, industrial disturbance, failure of electrical or telecommunications networks, health pandemic, acts of vandalism and changes in legislation or regulations of any government (**Force Majeure Event**). The obligations of ACA is suspended to the extent to which it is affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

11.4 Severability

If any provision in this Agreement is unenforceable, illegal or void or makes this Agreement or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Agreement remains in force.

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11.5 Entire understanding

This Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes any prior agreement or understanding on anything connected with that subject matter.

11.6 Variation

An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

11.7 Waiver

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

11.8 Costs and outlays

Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Agreement.

11.9 Notices

A notice or other communication connected with this Agreement (**Notice**) has no legal effect unless it is in writing.

(1) In addition to any other method of service provided by law, the Notice may be:

- (a) sent by prepaid priority post to the address of the addressee;
- (b) sent by email to the addressee; or
- (c) delivered at the address of the addressee.

(2) The notice details of ACA is:

Attention: Partnerships Manager – Autism Masterclass

Company: Autism Camp Australia Ltd

Address: 1 Sands Street, Tweed Heads, NSW 2485

ABN: ABN 61 635 944 400

Email: partnerships@autismcampastralia.org

(3) The notice details of the Customer is set out in the Subscription Details.

(4) If the Notice is sent or delivered in a manner provided by clause 22.9(1), it must be treated as given to and received by the party to which it is addressed:

- (a) if sent by post, on the 4th Business Day (at the address to which it is posted) after posting;
- (b) if sent by email before 5.00pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
- (c) if otherwise delivered before 5.00pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

(5) Despite clause 22.9(4)(b):

- (a) an email message is not treated as given or received if within 2 hours after the time sent the sender receives an automated message that the email has not been delivered; and
- (b) an email message is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 2 hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.

(6) A Notice sent or delivered in a manner provided by clause 22.9(1) must be treated as validly given to and received by the party to which it is addressed even if:

- (a) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or
- (b) the Notice is returned unclaimed.

11.10 Governing law and jurisdiction

The law of New South Wales governs this Agreement. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

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12. Definitions and interpretation

12.1 Definitions

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13.2 Use of the Hosted Service

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- (2) Access under this Agreement is granted to the Customer as a single user only. Except as expressly permitted under this Agreement, the Customer must not, and must not allow any other person to:
 - (a) access (directly or indirectly) the Hosted Service or Documentation;
 - (b) sub-license, disclose, resell, publish, transmit or otherwise make available to any third party any part of the Hosted Service or Documentation;
 - (c) modify, copy or create derivative works based on the Hosted Service or the Documentation or reverse engineer the Hosted Service (except to the extent permitted by non-excludable laws);
 - (d) send or store unlawful material (including Malicious Code) by means of the Hosted Service;
 - (e) attempt to gain unauthorised access to, or disrupt or bypass the security, integrity or performance of, the Hosted Service or any data contained in it;
 - (f) use the Hosted Service otherwise than in accordance with the Documentation and Acceptable Use Policy; or
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- (2) The Customer agrees that it entered into this Agreement without relying on any warranty, representation or comments concerning any future functionality or features of the Hosted Service, and that the Customer has not relied on any warranty, representation or comments made by ACA, including any roadmaps, with respect to future functionalities or features of the Hosted Service.

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The Customer must:

- (1) provide its own internal facilities (including computers, terminals, software, telecommunications facilities and internet connectivity) necessary for utilising the Hosted Service;
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14. Subscription Fees

14.1 Amount of Fees

The Customer must pay the Fees (plus any GST). The Customer will pay the Fees using such payment mechanism as may be made available by ACA on its website from time to time.

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Despite anything to the contrary in the Agreement, the Customer's access to the Hosted Service is subject to the payment of the Fees, and ACA may withhold or suspend the Customer's access to the Hosted Service until payment of the Fees is received in full.

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15.1 Reservation of rights

The Hosted Service and Documentation are protected by intellectual property laws. ACA reserves all rights (including Intellectual Property Rights) in relation to the Hosted Service and Documentation. The Customer has no proprietary or other interest in the Hosted Service or Documentation and nothing in this Agreement transfers any right, title or interest in the Hosted Service or Documentation to the Customer. To the extent necessary to use the Hosted Service, ACA grants the Customer a non-exclusive, non-transferable and limited licence for the Customer to access and use the Hosted Service during the Term in accordance with this Agreement.

15.2 Ownership of modifications and improvements

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- (1) ACA owns all improvements, adaptations and modifications made to the Hosted Service and Documentation and all related Intellectual Property Rights, including any suggestions, enhancement requests, recommendations or other feedback provided by the Customer. The Customer assigns any and all the rights that the Customer may have in those improvements and modifications to ACA, and agrees to execute all additional documents requested by ACA to give effect to such assignment.
- (2) To the extent that ACA (or its licensees or assignees) develops any updates, new versions, new releases or customisation of the Hosted Service, they will be owned exclusively by ACA.

16. Liability

16.1 Warranty as to authority

Each party warrants that it is empowered and authorised to enter into this Agreement.

16.2 Warranty by ACA

ACA warrants that the Hosted Service will materially operate in accordance with the Documentation.

16.3 Exclusion of implied warranties

All statutory or implied conditions, guarantees and warranties are excluded by ACA to the maximum extent permitted by applicable law. To the extent permitted by law, where liability under any condition, guarantee or warranty which cannot legally be excluded but can be validly limited, such liability is limited to:

- (1) in the case of goods (including the Documentation), the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; and
- (2) in the case of the services (including the Hosted Service and Support Services), supplying the services again; or paying the cost of having the services supplied again.

16.4 No other warranties

- (1) To the maximum extent permitted by law and subject to clause 16.3, ACA disclaims and excludes any warranty, representation or undertaking as to the purpose for which the Hosted Service and Documentation may be suitable, including any purpose for which the Customer intends to use the Hosted Service and Documentation.
- (2) The Customer warrants to ACA that it has not relied on any representation made by ACA which has not been stated expressly in this Agreement, or upon any descriptions or specifications contained in any document including brochures, marketing and promotional materials produced by ACA.
- (3) While ACA has taken due care in developing the Hosted Service, to the extent permitted by law, ACA does not warrant, and excludes all representations and warranties that:
 - (a) the Hosted Service is error-free or has no defects;
 - (b) access to the Hosted Service will be uninterrupted or error free;
 - (c) the Hosted Service is free from Malicious Code; or
 - (d) the Hosted Service meets the Customer's requirements or is compatible with all operating systems and browsers.

16.5 Limitation and exclusion of liability

- (1) Despite any other provision of this Agreement and to the maximum extent permitted by applicable law, neither party is liable to the other under contract, tort or otherwise in any circumstances for any indirect, economic, special or consequential loss or damage, or in any event for any loss of revenue, loss of production, loss of use, loss of profit, loss of anticipated savings or loss of data. The limitation in this clause does not apply to any obligation on the Customer to pay any fees set out in this Agreement.
- (2) Subject to clause 16.3 and any laws the application of which may not be lawfully excluded, ACA's aggregate liability to the Customer on any basis and in any circumstances (including liability for negligence) arising out of or in connection with this Agreement, Hosted Service, Documentation or their use, will not exceed, and is expressly limited to, the amount equal to the total amount paid by the Customer to ACA in the first 12 months of this Agreement.
- (3) All claims for liability in connection with this Agreement must be made within 24 months of the party becoming aware of the relevant breach or other facts.

17. Confidentiality

17.1 Hosted Service and Documentation are confidential

The Customer acknowledges and agrees that the Hosted Service (and its content) and Documentation are confidential to ACA, and the Customer must not, without the prior written approval of ACA, disclose the Hosted Service (or its content) or Documentation or use them for any purpose other than the purposes of this Agreement.

17.2 Exceptions

The Customer is not in breach of clause 17.1 to the extent that:

- (1) the Hosted Service (or its content) or Documentation are or become publicly available without breach of this Agreement; or
- (2) the Customer is required by law or any court to disclose the Hosted Service or Documentation (but the Customer must give ACA reasonable opportunity to seek protective orders).

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17.3 Steps to avoid disclosure

The Customer must take all reasonable steps to protect the Hosted Service or Documentation from unauthorised disclosure in breach of this clause 17.

18. Privacy

18.1 Compliance with Privacy Laws

- (1) For the purpose of this clause 18, “**Personal Customer Data**” means Customer Data that comprises of “Personal Information”, as that term is defined in the Privacy Laws, that is hosted or stored by or on behalf of ACA as part of the Hosted Service.
- (2) ACA will, in the performance of its obligations under this Agreement, comply with the applicable requirements of the *Privacy Act 1988* (Cth) with respect to such Personal Customer Data (**Privacy Laws**).

18.2 Privacy Obligations

Without limiting clause 18.1, ACA must:

- (1) only use the Personal Customer Data for the purposes of performing its obligations under this Agreement;
- (2) not disclose any Personal Customer Data to any other person (other than to ACA’s own personnel and subcontractors, for the purpose of performing its obligation under this Agreement) without the prior written consent of the Customer (which may be provided with conditions) or as required by law);
- (3) use all reasonable endeavours to ensure that its personnel and subcontractors who have access to any Personal Customer Data use, disclose, transfer or retain such Personal Customer Data only to the extent necessary to perform their duties of engagement;
- (4) protect the Personal Customer Data in accordance with clause 19.3; and
- (5) notify the Customer after ACA becomes aware of any unauthorised disclosure, use, interference or modification of any Personal Customer Data hosted by ACA.

19. Customer Data

19.1 Ownership of Customer Data

- (1) The Customer will own the Customer Data.
- (2) ACA will not use or disclose the Customer Data except to the extent required to perform its obligations under this Agreement.

19.2 Responsibility for Customer Data

- (1) The Customer will be responsible for the content of all Customer Data and for complying with all applicable laws in respect of the Customer Data.
- (2) The Customer authorises ACA to receive, store and process the Customer Data as part of providing the Hosted Service.

19.3 Security of Customer Data

ACA will implement reasonable security measures to protect any Customer Data that is hosted on the Hosted Service from unauthorised access and disclosure. Provided that ACA has implemented those reasonable measures, ACA will not be liable for any misuse, interference and loss, and unauthorised access or disclosure of Customer Data.

19.4 Hosting of Customer Data

The Customer acknowledges that the nature of the Hosting Services means that ACA may vary the storage location from time to time.

19.5 Deletion of Customer Data

The Customer acknowledges that ACA may delete or destroy all Customer Data stored on the Hosted Service at any time after expiry or termination of the Agreement.

20. Availability and suspension

20.1 Dependency on Cloud Provider

The Customer acknowledges and agrees that the availability of the Hosted Service depends upon permissions and services from the Cloud Provider, which may be varied or terminated from time to time by the Cloud Provider. Notwithstanding any other provisions of this Agreement, ACA may, with reasonable prior notice to the Customer, but without any liability on the part of ACA vary, suspend, terminate or limit the Hosted Service, if the Cloud Provider varies or terminates the services provided by the Cloud Provider so that ACA is no longer able to provide the Hosted Service in accordance with this Agreement.

20.2 Suspension

- (1) ACA may suspend the access to, and use of, the Hosted Service by Customer in the following circumstances:
 - (a) for the duration of any Force Majeure Event;
 - (b) for any material breach of this Agreement by the Customer (including, where applicable, non payment of fees by the Customer); or

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- (c) if ACA reasonably considers that suspension is necessary to protect the Hosted Service, the Customer Data, or any other computer systems and data (including in response to an external attack).
- (2) ACA will give the Customer as much practicable prior notice of the suspension as possible, and will promptly end the suspension after the relevant circumstances have abated.

21. Term and termination

21.1 Expiry of Term

- (1) Subject to this clause 21.1, this Agreement automatically terminates on the expiry of the Term.
- (2) ACA's website may offer the Customer the option to renew the Term by paying additional Fees. If this functionality is available, then the Term will be renewed by such period specified and paid for by the Customer. For clarity, renewal is subject to the full payment of the Fees for the renewal term by the Customer.

21.2 Termination for cause by ACA

Without limiting other provisions, ACA may terminate this Agreement immediately if:

- (1) the Customer commits any breach of clause 13.2(2);
- (2) the Customer fails to comply with any material provision of this Agreement and fails to remedy that failure within 20 Business Days after notice requiring it to be remedied;
- (3) Customer fails to pay the Fees, or payment made by the Customer is subsequently reversed or recharged; or
- (4) Customer assigns or otherwise disposes of any interest or right it has under this Agreement without the prior written consent of ACA.

21.3 Effect of termination

- (1) Upon termination of this Agreement for any reason:
 - (a) ACA is not required to provide the Customer any refund of any paid Fees (if any); and
 - (b) all rights and licences granted under this Agreement terminate immediately, and the Customer must immediately cease to use the Hosted Service and Documentation, and return to ACA or destroy all copies of the Documentation.
- (2) Clauses 0, 15, 16, 17, 19, 21.3 and 22 survive termination of this Agreement.

22. General

22.1 No assignment

The Customer must not transfer, sub-license or assign any benefit or obligation under this Agreement to any third party without the prior written consent of ACA.

22.2 Subcontract

ACA may subcontract the performance of any part of its obligations to any person.

22.3 Force majeure

ACA is not liable for any failure to perform or delay in performing any obligations under this Agreement to the extent caused by any cause or condition beyond its reasonable control, including fire, flood, act of God, war, insurrection, sabotage, acts of terrorism, industrial disturbance, failure of electrical or telecommunications networks, health pandemic, acts of vandalism and changes in legislation or regulations of any government (**Force Majeure Event**). The obligations of ACA is suspended to the extent to which it is affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

22.4 Severability

If any provision in this Agreement is unenforceable, illegal or void or makes this Agreement or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Agreement remains in force.

22.5 Entire understanding

This Agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement and supersedes any prior agreement or understanding on anything connected with that subject matter.

22.6 Variation

An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

22.7 Waiver

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

22.8 Costs and outlays

Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Agreement.

22.9 Notices

A notice or other communication connected with this Agreement (**Notice**) has no legal effect unless it is in writing.

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- (1) In addition to any other method of service provided by law, the Notice may be:
 - (a) sent by prepaid priority post to the address of the addressee;
 - (b) sent by email to the addressee; or
 - (c) delivered at the address of the addressee.
- (2) The notice details of ACA is:

Attention: Partnerships Manager – Autism Masterclass

Company: Autism Camp Australia Ltd

Address: 1 Sands Street, Tweed Heads, NSW 2485

ABN: ABN 61 635 944 400

Email: partnerships@autismcampastralia.org
- (3) The notice details of the Customer is set out in the Subscription Details.
- (4) If the Notice is sent or delivered in a manner provided by clause 22.9(1), it must be treated as given to and received by the party to which it is addressed:
 - (a) if sent by post, on the 4th Business Day (at the address to which it is posted) after posting;
 - (b) if sent by email before 5.00pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
 - (c) if otherwise delivered before 5.00pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- (5) Despite clause 22.9(4)(b):
 - (a) an email message is not treated as given or received if within 2 hours after the time sent the sender receives an automated message that the email has not been delivered; and
 - (b) an email message is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 2 hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.
- (6) A Notice sent or delivered in a manner provided by clause 22.9(1) must be treated as validly given to and received by the party to which it is addressed even if:
 - (a) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or
 - (b) the Notice is returned unclaimed.

22.10 Governing law and jurisdiction

The law of New South Wales governs this Agreement. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.