

## **SOFTWARE LICENCE AGREEMENT FOR AVAIL APP AND ANY ASSOCIATED SOFTWARE SERVICES OR ORIGINAL DATA BASE ("avail software")**

### **1. General.**

A. The avail software, and any third party software and in relation to the avail software any documentation, interfaces, content, fonts, screenshots ( which includes and images or stills or captured images or part thereof of the avail software or any part or aspect of the avail software whether including any content owned by the licensee or not ) and any data accompanying the avail software whether in read only memory, on any other media or in any other form or any of the tasks created other than by the licensee and made available with the avail software or through the use of the avail software or the use of the services without limit as to who created the tasks, other than the tasks created by the licensee (collectively the "avail software") are Licensed, not sold, to you by avail support limited ("avail") for use only under the terms of this Licence. avail and/or avail's licensors retain ownership of the avail software itself and reserve all rights not expressly granted to you.

B. avail, at its discretion, may make available future upgrades or updates to the avail software for your device. The avail software upgrades and updates, if any, may not necessarily include all existing software features or new features that avail releases for newer or other devices. The terms of this Licence will govern any software upgrades or updates provided by avail to the original avail software product, unless such upgrade or update is accompanied by a separate Licence in which case you agree that the terms of that Licence will govern such upgrade or update.

C. For the avoidance of doubt where the term avail software is used this reference is not only to the avail software as defined in paragraph 1 C above but also to the intellectual property rights attaching to same, or any part of the avail software and the licensed property whether registered or not , even if capable of being registered ,and without geographical limit worldwide and in respect of any such rights including without limit patents, copyright, trademarks, industrial designs or any other right whether in statute or in any legal system of any kind affording protection to such rights or any variation of them and in all such jurisdictions worldwide. Therefore a breach of the terms of this licence will include an unlawful use of the licence and any or such rights as set out in this clause that relate to the use of the avail software. The licence of the avail software therefore extends to permit the licensee to use the avail software and the associated intellectual property rights subject at all times to the compliance by the licensee with the terms of this licence at all times

### **2. Permitted Licence Uses and Restrictions.**

#### **A. avail software Licence**

Unless you obtained the avail software as described in Section 2B or 2I, you are granted for the term agreed a limited, non-transferable, non-exclusive Licence to install and use the avail software on any compatible device that you own for use as you ( as a licensee for the purposes of these terms and conditions hereinafter referred to as a ' facilitator') to use the app to assist a single person in the carrying out of tasks for which the avail software is designed for ( hereinafter referred to as a 'learner'). You may not distribute or make the avail software available over a network where it could be used by multiple devices or by multiple facilitators or for the use by one facilitator for more than one learner either before or after its use by you as a facilitator or at the same time. You may not rent, lease, lend, sell, redistribute or sub Licence the avail software. For the avoidance of doubt the provision of login credentials of a licensed facilitator to third party will constitute a breach of the terms of this licence

#### **B. Multi – User, Fixed Term or Monthly Payment Licence**

If you obtained the avail software under a multi learner and or facilitator licence with avail, the terms of your multi learner and or facilitator Licence will determine the number of copies of the software you are permitted to download, install, use and run on devices you own or control. Except as agreed to in

writing by avail, all other terms and conditions of this Licence shall apply to your use of the avail software obtained under a multi user licence.

If you obtained the avail software as a monthly payment licence the licence granted shall determine within 30 days of receipt by avail of the last monthly payment and Clause 5 shall become operative immediately.

If you have obtained the avail software under a Fixed Term Licence, at the conclusion of the agreed term of the licence, the licence shall terminate and Clause 5 shall operate thereafter.

If a licence is granted by avail with payment – by any of the methods as described above – dependant on the amount of data stored used or otherwise utilised from time to time during the term of the licence or the provision of the services as recorded by avail any payment for a lesser amount of data so utilised from time than recorded by avail will constitute a non-payment of the licence fee for the purposes of this licence and the remaining provisions of this licence will be applied accordingly by avail.

### **C. System Requirements.**

avail software is supported only on devices or hardware that meets specified system requirements as indicated by avail.

### **D. Content.**

Title and intellectual property rights in and to any content displayed by or accessed through the avail software belongs to the respective content owner. Such content may be protected by copyright or other intellectual property laws and treaties, and may be subject to terms of use of the third party providing such content. Except as otherwise provided in this Licence, this Licence does not grant you any rights to use such content nor does it guarantee that such content will continue to be available to you.

### **E. No Reverse Engineering.**

You may not, and you agree not to or enable others to, copy (except as expressly permitted by this Licence if they are applicable to you), decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works of the avail software or any services provided by the avail software, or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by the licensing terms governing use of open-sourced components included with the avail software).

### **F. Compliance with Laws.**

You agree to use the avail software and the Services (as defined in Section 4 below) in compliance with all applicable laws, including local laws of the country or region in which you reside or in which you download or use the avail software and Services.

### **G. Automatic Updates.**

If you choose to allow automatic app updates, your device will periodically check with avail for updates and upgrades to the avail software and, if an update or upgrade is available, the update or upgrade will automatically download and install onto your device and, if applicable, your peripheral devices. You can turn off the automatic app updates altogether at any time by changing the automatic app updates settings found within Settings.

### **H. Device**

If as part of the Licence granted by avail (whether prepaid, Multi user, fixed term or monthly payment) avail provide any hardware or device to you, avail gives no warranty as to the merchantability of that device and if any issues arise in relation to the device and its functionality you accept unreservedly that it is an issue for the manufacturer or distributor and will contact them accordingly. In order to effect this part of the Licence if required to avail will agree to assign the benefit of any rights accruing to it on the purchase of the device(s) to the Licensee.

### **I. Trial Period**

If the avail software is obtained by way of purchase online and it is expressly agreed by avail that the payment for this trial will not be deducted from the bank account relating to the details provided where by provision of bank card details or third party payment providers or in any other manner which will result in an automatic payment by deduction or debit from the credit of the licensee whether in a bank account or otherwise held on the expiration of 14 ( or any other trial period agreed by avail from time to time ) days from the provision of the details of the requisite payment method details to avail the licence to use the avail software will be subject to the terms as set out herein but in addition subject to the following;

1. on the expiration of the trial period payment must be made for the period of use of the avail software on a monthly basis and
2. the licence may be determined at any time by the licensee but without refund or return
3. the provision of these terms that survive its determination will equally apply to all such licences whether the licence is continued after the trial period or not
4. on the determination of the licence the provision as set out in the other parts of this clause 2 shall apply as shall.

### **3. Consent to Use of Data.**

#### **A. Diagnostic and Usage Data**

You agree that avail and its subsidiaries and agents may collect, maintain, process and use diagnostic, technical, usage and related information, including but not limited to unique system or hardware identifiers, information about your device, computer, system and application software, and peripherals, that is gathered periodically to provide and improve avail's products and services, facilitate the provision of software updates, product support and other services to you (if any) related to the avail software, and to verify compliance with the terms of this Licence. avail may use this information as long as it is collected in a form that does not personally identify you, for the purposes described above.

#### **B Personal Data**

It is expressly agreed by the parties to this agreement that the data to be provided to avail in respect of the licensee and any learner is personal data but that its retention by avail does not require avail to register as a data controller for the purposes of Irish law as such the retention of that data is only for

the purpose of keeping records of purchases, sales or other transactions for the purpose of ensuring that the requisite payments and deliveries are made or services provided by or to the data controller in respect of those transactions . However as the data in question is personal data within the definition of the data protection legislation currently in force in Ireland avail will ensure compliance with that legislation at all material times though it is expressly agreed and confirmed by the licensee that avail is under no obligation to comply with the data protection legislation or equivalent requirements of any other jurisdiction.

#### C Passwords

You as licensor agree that on the first activation or use of the avail software or the Services you will create a password for each and every separate licensed product and that you agree to ensure that the password is not made available to any third parties not licensed by avail for the use of the avail software and or the Services. A breach of this condition will constitute a material breach of these terms and conditions and permit , at its sole discretion, avail to determine the license in question without any notice to the licensee and the conditions in this Licence that apply to termination of licences will apply in such circumstances. Further, for the avoidance of doubt, avail accept no responsibility for any use of the avail software and or the Services that arise out of the disclosure of any password irrespective of who the creator of the password is ,whether lawfully or otherwise, and the use of passwords is solely at the risk of the licensee and the conditions in this licence that regulate , limit and remove any liability for and on behalf of avail to the licensee and to any other parties shall apply in full to this condition.

#### **4. Services and Third Party Materials.**

##### General

A. The avail software will require access to avail website/portal (the “avail Portal”) for the exchange of information and data between the device connecting the App and the avail Portal. Use of these Services requires Internet access and use of certain Services, may require you to accept additional terms and may be subject to additional fees

B. Certain Services may display, include or make available content, data, information, applications or materials from third parties (“Third Party Materials”). By using the Services, you acknowledge and agree that avail is not responsible for examining or evaluating the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of such Third Party Materials.

C .avail, its officers, affiliates and subsidiaries do not warrant or endorse and do not assume and will not have any liability or responsibility to you or any other person for any third-party Services, Third Party Materials, or for any other materials, products, or services of third parties. Third Party Materials, if any, are provided solely as a convenience to you.

D. To the extent that you upload any content through the use of the Services, and for the avoidance of doubt this includes the information and content uploaded for the creation of the tasks and the assessments during the use of the avail software, you represent that you own all rights in, or have authorization or are otherwise legally permitted to upload, such content and that such content does not violate any terms of service applicable to the Services. You agree that the Services contain proprietary content, information and material that is owned by avail, the site owner and/or their licensors, and is protected by applicable intellectual property and other laws, including but not limited to copyright. You agree that you will not use such proprietary content, information or materials other than for permitted use of the Services or in any manner that is inconsistent with the terms of this Licence or that infringes any intellectual property rights of a third party or avail. No portion of the Services may be reproduced in any form or by any means. You agree not to modify, rent, lease, loan,

sell, distribute, or create derivative works based on the Services, in any manner, and you shall not exploit the Services in any unauthorized way whatsoever, including but not limited to, using the Services to transmit any computer viruses, worms, trojan horses or other malware, or by trespass or burdening network capacity. You further agree not to use the Services in any manner to harass, abuse, stalk, threaten, defame or otherwise infringe or violate the rights of any other party, and that avail is not in any way responsible for any such use by you, nor for any harassing, threatening, defamatory, offensive, infringing or illegal messages or transmissions that you may receive as a result of using any of the Services.

E. In addition, Services and Third Party Materials that may be accessed, linked to or displayed through the avail software are not available in all languages or in all countries or regions. avail makes no representation that such Services and Third Party Materials are appropriate or available for use in any particular location. To the extent you choose to use or access such Services and Third Party Materials, you do so at your own initiative and are responsible for compliance with any applicable laws, including but not limited to applicable local laws and privacy and data collection laws. avail and its licensors reserve the right to change, suspend, remove, or disable access to any Services at any time without notice. In no event will avail be liable for the removal of or disabling of access to any such Services. avail may also impose limits on the use of or access to certain Services, in any case and without notice or liability.

## **5. Termination.**

This Licence is effective until terminated. Your rights under this Licence will terminate automatically or otherwise cease to be effective without notice from avail if you fail to comply with any term(s) of this Licence. Upon the termination of this Licence, you shall cease all use of the avail software and destroy all copies, full or partial, of the avail software. Certification of the destruction of the avail software may be demanded by avail of the Licensee at the absolute discretion of avail. Further any sums owing to avail immediately become due on the termination of this Licence. Further any personal data other than the tasks as described in paragraph 3 B to this licence – in the event that they or any part of them constitute personal data and for the avoidance of doubt it is not accepted by avail that the use of such tasks constitutes the use of personal data – will be destroyed at the sole discretion of avail and will not necessarily be available for the use of the facilitator or any related or unrelated learner from a former licence in the event that that facilitator or another facilitator enters into a new licence agreement with avail from time to time after the termination of the licence during which use the tasks were entered into the avail software or during the use of the Services

Sections 3, 4, 5, 6, 7, 8 and 10 of this Licence shall survive any such termination.

## **6. Disclaimer of Warranties.**

a. If you are a customer who is a consumer (being someone who uses the avail software outside of your trade, business or profession), you may have legal rights which would prohibit the following limitations from applying to you, and where prohibited they will not apply to you. To find out more about consumer rights, you should contact a local consumer advice organization.

b. You expressly acknowledge and agree that, to the extent permitted by applicable law, use of the avail software, any device provided by avail as per clause 3(h), and any services performed by or accessed through the avail software is at your sole risk and that the entire risk as to satisfactory quality, performance, accuracy and effort is with you. For the avoidance of doubt it is expressly agreed by you the licensee bears all responsibility for the creation of the tasks and assessments during the use of the avail software and the licensee waives all rights and entitlements to attribute or any way claim that

avail is in any way responsible for the tasks and assessments created or any acts carried out by them or by third parties on their instructions or the licensee's warranty or representation that the tasks or assessments are complete and safe for anybody to adhere to and carry out.

c. To the maximum extent permitted by applicable law, the avail software and services are provided "as is" and "as available", with all faults and without warranty of any kind, and avail and avail's licensors (collectively referred to as "avail" for the purposes of sections 6 and 7) hereby disclaim all warranties and conditions with respect to the avail software and services, either express, implied or statutory, including, but not limited to, the implied warranties and/or conditions of merchantability, satisfactory quality, fitness for a particular purpose, accuracy, quiet enjoyment, and non-infringement of third party rights. For the avoidance of doubt and noting such tasks fall within the definition of the avail software in this licence this disclaimer extends to any tasks available on the avail software or through the use of the Services without limit as to who created the tasks in the first instance .

d. avail does not warrant against interference with your enjoyment of the avail software and services, that the functions contained in, or services performed or provided by, the avail software will meet your requirements, that the operation of the avail software or services will be uninterrupted or error-free, that any services will continue to be made available, that the avail software or services will be corrected, or that the avail software will be compatible or work with any third party software, applications or third party services. Installation of this software may affect the usability of third party software, applications or third party services.

e. You further acknowledge that the avail software and services are not intended or suitable for use in situations or environments where the failure or time delays of, or errors or inaccuracies in the content, data or information provided by, the avail software or services could lead to death, personal injury, or severe physical or environmental damage, including without limitation the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, life support or weapons systems.

f. No oral or written information or advice given by avail or an avail authorized representative shall create a warranty. Should the avail software or services prove defective, you assume the entire cost of all necessary servicing, repair or correction. Some jurisdictions do not allow the exclusion of implied warranties or limitations on applicable statutory rights of a consumer, so the above exclusion and limitations may not apply to you.

#### **7. Limitation of liability.**

To the extent not prohibited by applicable law, in no event shall avail be liable for personal injury, or any incidental, special, indirect or consequential damages whatsoever, including, without limitation, damages for loss of profits, corruption or loss of data, failure to transmit or receive any data, business interruption or any other commercial damages or losses, arising out of or related to your use or inability to use the avail software and services, the use, non-use or misuse of passwords or any third party software or applications in conjunction with the avail software, the creation of tasks or assessments during the use of the services or the avail software, however caused, regardless of the theory of liability (contract, tort or otherwise) and even if avail has been advised of the possibility of such damages. Some jurisdictions do not allow the exclusion or limitation of liability for personal injury, or of incidental or consequential damages, so this limitation may not apply to you.

The total liability of avail, whether in contract, tort or otherwise and where the condition of this licence or any connection with the contract shall in no circumstances exceed a sum equal to the licence fee except where liability cannot be limited by the licensor. Notwithstanding anything to the contrary of this agreement avail should not be liable to the Licensee by reason of any representation or any condition or other term or any other duty of common law, or under the express terms of this agreement for any consequential, special, incidental or punitive loss or damage (whether for loss of current or future profits, loss of enterprise value or otherwise) or whether occasioned by its negligence of the

respective parties, or that of its employees or agents or otherwise, even if it applies to the possibility of such damages.

#### **8. Controlling law and severability.**

This Licence will be governed by and construed in accordance with the laws of Ireland, and is subject to the exclusive jurisdiction of the Irish Courts. This Licence shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. If for any reason a court of competent jurisdiction finds any provision, or portion thereof, to be unenforceable, the remainder of this Licence shall continue in full force and effect.

#### **9. Complete Agreement; Governing Language; Waiver**

This Licence constitutes the entire agreement between you and avail relating to the use of the avail software and supersedes all prior or contemporaneous understandings regarding such subject matter unless expressly agreed in writing and signed by avail. No amendment to or modification of this Licence will be binding unless in writing and signed by avail. Any translation of this Licence is done for local requirements and in the event of a dispute between the English and any non-English versions, the English version of this Licence shall govern, to the extent not prohibited by local law in your jurisdiction.

Any delay in exercising a right or remedy provided by this agreement or by law does not constitute a waiver of the right of remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this agreement or by law prevents further exercise of the right or remedy of the exercise of the right or remedy.

#### **10. Third Party Acknowledgements.**

Portions of the avail software may utilize or include third party software and other copyrighted material. If applicable acknowledgements, licensing terms and disclaimers for such material are contained in the electronic documentation for the avail software, and your use of such material is governed by their respective terms.

#### **11 Amendment to Licence terms and conditions**

avail reserves the right to vary any terms and conditions of this Licence from time to time as its absolute discretion with or without notice to any Licensee.