



TERMS OF USE

A. ACCEPTANCE OF TERMS OF USE

1. Please carefully review these Terms of Use (collectively with Avail’s Privacy Policy, the “Terms of Use”) before using the Avail applications (the “Applications”), www.availsupport.ie (the “Site”) and the services, features, content, goods or applications offered by Avail Support Limited (“Avail”, “we”, “us” or “our”) (together with the Applications and the Site, the “Services”). These Terms of Use set forth the legally binding terms for your use of the Applications, Site and the Services.

By registering for and/or using the Services in any manner, including but not limited to downloading the Application or visiting or browsing the Site, you agree to these Terms of Use and all other operating rules, policies and procedures that may be published from time to time on the Site or the Applications by us, each of which is incorporated herein by reference and each of which may be updated from time to time without notice to you.

2. Certain of the Services may be subject to additional terms and conditions specified by us from time to time; your use of such Services is subject to those additional terms and conditions, which are incorporated into these Terms of Use by this reference.

3. **ARBITRATION NOTICE AND CLASS ACTION WAIVER: WITH THE EXCEPTION OF CERTAIN TYPES OF DISPUTES DESCRIBED IN THE ARBITRATION SECTION BELOW, YOU AGREE THAT DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.**

B. SERVICES

1. The Services provide users with guidance and information on learning and independence for children and adults with developmental disabilities, however Avail is NOT A MEDICAL ORGANIZATION, AND YOU SHOULD NOT RELY ON THIS GUIDANCE AND INFORMATION AS A SUBSTITUTE FOR, NOR DOES IT REPLACE, PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS, OR TREATMENT. Our user experience, even if they if it is tailored to individual users, should not be misconstrued as medical advice, diagnoses or treatment. IF YOU HAVE ANY CONCERNS OR QUESTIONS ABOUT YOUR HEALTH, YOU SHOULD ALWAYS CONSULT WITH A PHYSICIAN OR



OTHER HEALTHCARE PROFESSIONAL. THE USE OF ANY INFORMATION OR PROGRAMS PROVIDED ON THE SERVICES IS SOLELY AT YOUR OWN RISK.

C. CONTENT

1. **Definition:** For purposes of these Terms of Use, the term “Content” includes, without limitation, information, data, text, photographs, videos, audio clips, written posts and comments, software, scripts, graphics, and interactive features generated, provided, or otherwise made accessible on or through the Services.

2. **Notices and Restrictions:** The Services may contain Content specifically provided by us, our partners or our users and such Content is protected by copyrights, trademarks, service marks, patents, trade secrets or other proprietary rights and laws. You shall abide by and maintain all copyright notices, information, and restrictions contained in any Content accessed through the Services.

3. **Use License:** Subject to these Terms of Use, we grant each user of the Services a worldwide, non-exclusive, non-sublicensable and non-transferable personal license to use (i.e., to download and/or display locally) Content solely for purposes of using the Services. Use, reproduction, modification, distribution or storage of any Content for other than purposes of using the Services is expressly prohibited without prior written permission from us. You shall not sell, license, rent, or otherwise use or exploit any Content for commercial use or in any way that violates any third party right. As between you and Avail, Avail shall own all title, ownership rights, and intellectual property rights in and to the Services, and any copies or portions thereof. You agree not to share the password you use to access the Avail Services with any third party, and agree that any such sharing constitutes a breach of this agreement and can lead to termination of your access to the Services.

4. **Multi-learner license.** If you obtained the avail software under a multi learner and or facilitator license with avail, the terms of your multi learner and or facilitator License 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 license shall apply to your use of the avail software obtained under a multi user license. If you obtained the avail software as a monthly payment license, the license 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 License, at the conclusion of the agreed term of the license, the license shall terminate.



5. Availability of Content: We do not guarantee that any Content will be made available on the Applications or the Site or through the Services. We reserve the right to, but do not have any obligation to, (i) remove, edit or modify any Content in our sole discretion, at any time, without notice to you and for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content or if we are concerned that you may have violated these Terms of Use), or for no reason at all and (ii) to remove or block any Content from the Services.

6. Consent to Use of 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 License. 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.

D. CONDUCT

1. As a condition of use, you promise not to use the Services for any purpose that is prohibited by these Terms of Use. You are responsible for all of your activity in connection with the Services.

2. You shall not (and shall not permit any third party to) either (a) take any action or (b) upload, download, post, submit or otherwise distribute or facilitate distribution of any Content on or through the Service, that:

- infringes any patent, trademark, trade secret, copyright, right of publicity or other right of any other person or entity or violates any law or contractual duty (see our DMCA Copyright Policy, located at the end of these Terms of Use);
- you know is false, misleading, untruthful or inaccurate;
- is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, otherwise harms a third party, tortious, obscene, vulgar, pornographic, offensive, profane, contains or depicts nudity, contains or depicts sexual activity, or is otherwise inappropriate as determined by us in our sole discretion;



- constitutes unauthorized or unsolicited advertising, junk or bulk e-mail (“spamming”);
- contains software viruses or any other computer codes, files, or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any system, data, password or other information of ours or of any third party;
- impersonates any person or entity, including any of our employees or representatives; or
- includes anyone’s identification documents or sensitive financial information.

3. You shall not: (i) take any action that imposes or may impose (as determined by us in our sole discretion) an unreasonable or disproportionately large load on our (or our third party providers’) infrastructure; (ii) interfere or attempt to interfere with the proper working of the Services or any activities conducted on the Services; (iii) bypass, circumvent or attempt to bypass or circumvent any measures we may use to prevent or restrict access to the Services (or other accounts, computer systems or networks connected to the Services); (iv) run any form of auto-responder or “spam” on the Services; (v) use manual or automated software, devices, or other processes to “crawl” or “spider” any page of the Applications or the Site; (vi) harvest or scrape any Content from the Services; or (vii) otherwise take any action in violation of our guidelines and policies.

4. You shall not (directly or indirectly): (i) decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Services (including without limitation any application), except to the limited extent applicable laws specifically prohibit such restriction, (ii) modify, translate, or otherwise create derivative works of any part of the Services, (iii) copy, rent, lease, distribute, use the Services for timesharing or service bureau purposes or otherwise transfer any of the rights that you receive hereunder, or (iv) remove or obscure any proprietary notices on the Services. You shall abide by all applicable local, state, national and international laws and regulations.

5. We also reserve the right to access, read, preserve, and disclose any information as we reasonably believe is necessary to (i) satisfy any applicable law, regulation, legal process or governmental request, (ii) enforce these Terms of Use, including investigation of potential violations hereof, (iii) detect, prevent, or otherwise address fraud, security or technical issues, (iv) respond to user support requests, or (v) protect the rights, property or safety of us, our users and the public.



E. PAYMENTS & BILLING

1. **Paid Services:** Certain of our Services are subject to payment (the “Paid Services”). Please note that any payment terms presented to you in the process of using or signing up for a Paid Service are deemed part of this Agreement.

2. **Billing:** We use a third-party payment processor (the “Payment Processor”) to bill you through a payment account (your “Billing Account”) for use of the Paid Services. The processing of payments will be subject to the terms, conditions and privacy policies of the Payment Processor in addition to this Agreement. We are not responsible for error by the Payment Processor. By choosing to use Paid Services, you agree to pay us, through the Payment Processor, all charges at the prices then in effect for any use of such Paid Services in accordance with the applicable payment terms and you authorize us, through the Payment Processor, to charge your chosen payment provider (your “Payment Method”). You agree to make payment using that selected Payment Method. We reserve the right to correct any errors or mistakes that it makes even if it has already requested or received payment.

3. **Payment Method:** The terms of your payment will be based on your Payment Method and may be determined by agreements between you and the financial institution, credit card issuer or other provider of your chosen Payment Method. If we, through the Payment Processor, do not receive payment from you, you agree to pay all amounts due on your Billing Account upon demand.

4. **Recurring Billing:** Some of the Paid Services may consist of an initial period, for which there is a one-time charge, followed by recurring period charges as agreed to by you. By choosing a recurring payment plan, you acknowledge that such Services have an initial and recurring payment feature and you accept responsibility for all recurring charges prior to cancellation. WE MAY SUBMIT PERIODIC CHARGES (E.G., MONTHLY) WITHOUT FURTHER AUTHORIZATION FROM YOU, UNTIL YOU PROVIDE PRIOR NOTICE (RECEIPT OF WHICH IS CONFIRMED BY US) THAT YOU HAVE TERMINATED THIS AUTHORIZATION OR WISH TO CHANGE YOUR PAYMENT METHOD. SUCH NOTICE WILL NOT AFFECT CHARGES SUBMITTED BEFORE WE REASONABLY COULD ACT. TO TERMINATE YOUR AUTHORIZATION OR CHANGE YOUR PAYMENT METHOD, GO TO WWW.AVAILSUPPORT.IE

5. **Current Information Required.** YOU MUST PROVIDE CURRENT, COMPLETE AND ACCURATE INFORMATION FOR YOUR BILLING ACCOUNT. YOU MUST PROMPTLY UPDATE ALL INFORMATION TO KEEP YOUR BILLING ACCOUNT CURRENT, COMPLETE AND ACCURATE (SUCH AS A CHANGE IN



BILLING ADDRESS, CREDIT CARD NUMBER, OR CREDIT CARD EXPIRATION DATE), AND YOU MUST PROMPTLY NOTIFY US OR OUR PAYMENT PROCESSOR IF YOUR PAYMENT METHOD IS CANCELED (E.G., FOR LOSS OR THEFT) OR IF YOU BECOME AWARE OF A POTENTIAL BREACH OF SECURITY, SUCH AS THE UNAUTHORIZED DISCLOSURE OR USE OF YOUR USER NAME OR PASSWORD. IF YOU FAIL TO PROVIDE ANY OF THE FOREGOING INFORMATION, YOU AGREE THAT WE MAY CONTINUE CHARGING YOU FOR ANY USE OF PAID SERVICES UNDER YOUR BILLING ACCOUNT UNLESS YOU HAVE TERMINATED YOUR PAID SERVICES AS SET FORTH ABOVE.

6. **Change in Amount Authorized:** If the amount to be charged to your Billing Account varies from the amount you preauthorized (other than due to the imposition or change in the amount of state sales taxes), you have the right to receive, and we shall provide, notice of the amount to be charged and the date of the charge before the scheduled date of the transaction. Any agreement you have with your payment provider will govern your use of your Payment Method. You agree that we may accumulate charges incurred and submit them as one or more aggregate charges during or at the end of each billing cycle.

7. **Reaffirmation of Authorization:** Your non-termination or continued use of a Paid Service reaffirms that we are authorized to charge your Payment Method for that Paid Service. We may submit those charges for payment and you will be responsible for such charges. This does not waive our right to seek payment directly from you. Your charges may be payable in advance, in arrears, per usage, or as otherwise described when you initially selected to use the Paid Service.

F. TERMINATION

1. We may terminate your access to all or any part of the Services at any time, with or without cause, with or without notice, effective immediately, which may result in the forfeiture and destruction of all information associated with your subscription. Upon termination, you agree that you shall no longer access (or attempt to access) the Services, and that your personal license to use the software will be considered void. If you wish to terminate your Account, you may do so by contacting us at lisamarie@availsupport.ie. Any fees paid hereunder are non-refundable. All provisions of these Terms of Use which by their nature should survive termination shall survive termination, including, without limitation, licenses of User Content, ownership provisions, warranty disclaimers, indemnity and limitations of liability.



G. WARRANTY

1. We have no special relationship with or fiduciary duty to you. You acknowledge that we have no duty to take any action regarding:

- which users gain access to the Services;
- what Content you access via the Services; or
- how you may interpret or use the Content.

2. You release us from all liability for you having acquired or not acquired Content through the Services. We make no representations concerning any Content contained in or accessed through the Services, and we will not be responsible or liable for the accuracy, copyright compliance, or legality of material or Content contained in or accessed through the Services.

3. THE SERVICES AND CONTENT ARE PROVIDED “AS IS”, “AS AVAILABLE” AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. WE, AND OUR DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, PARTNERS AND CONTENT PROVIDERS DO NOT WARRANT THAT: (I) THE SERVICES WILL BE SECURE OR AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; (II) ANY DEFECTS OR ERRORS WILL BE CORRECTED; (III) ANY CONTENT OR SOFTWARE AVAILABLE AT OR THROUGH THE SERVICES IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR (IV) THE RESULTS OF USING THE SERVICES WILL MEET YOUR REQUIREMENTS. YOUR USE OF THE SERVICES IS SOLELY AT YOUR OWN RISK. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

H. INDEMNIFICATION

You shall defend, indemnify, and hold harmless us, our affiliates and each of our and their respective employees, contractors, directors, suppliers and representatives from all liabilities, claims, and expenses, including reasonable attorneys’ fees, that arise from or relate to your use or misuse of, or access to, the Services, Content, or otherwise from your User Content, violation of these Terms of Use, or infringement by you, or any third party using your Account or identity in the Services, of any intellectual property or other right of any person or entity. We reserve the



right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will assist and cooperate with us in asserting any available defenses.

I. LIMITATIONS OF LIABILITY

IN NO EVENT SHALL WE, NOR OUR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS, VENDORS OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SERVICES (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, COMPENSATORY OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, EVEN IF FORESEEABLE, SUBSTITUTE GOODS OR SERVICES (HOWEVER ARISING), (II) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGIN), OR (III) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) \$100.00 (U.S.). THE FOREGOING LIMITATIONS SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

J. ARBITRATION CLAUSE AND CLASS ACTION WAIVER – IMPORTANT – PLEASE REVIEW AS THIS AFFECTS YOUR LEGAL RIGHTS.

1. Arbitration. YOU AGREE THAT ALL DISPUTES BETWEEN YOU AND US (WHETHER OR NOT SUCH DISPUTE INVOLVES A THIRD PARTY) WITH REGARD TO YOUR RELATIONSHIP WITH US, INCLUDING WITHOUT LIMITATION DISPUTES RELATED TO THESE TERMS OF USE, YOUR USE OF THE SERVICES, AND/OR RIGHTS OF PRIVACY AND/OR PUBLICITY, WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION UNDER THE AMERICAN ARBITRATION ASSOCIATION'S RULES FOR ARBITRATION OF CONSUMER-RELATED DISPUTES AND YOU AND WE HEREBY EXPRESSLY WAIVE TRIAL BY JURY. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION. As an alternative, you may bring your claim in your local "small claims" court, if permitted by that small claims court's rules and if within such court's jurisdiction, unless such action is transferred, removed or appealed to a different court. You may bring claims only on your own behalf. Neither you nor we will participate in a class action or class-wide arbitration for any claims covered by this agreement to arbitrate. YOU ARE GIVING UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS. You also agree not to participate in claims



brought in a private attorney general or representative capacity, or consolidated claims involving another person's account, if we are a party to the proceeding. This dispute resolution provision will be governed by the Federal Arbitration Act and not by any state law concerning arbitration. In the event the American Arbitration Association is unwilling or unable to set a hearing date within one hundred and sixty (160) days of filing the case, then either we or you can elect to have the arbitration administered instead by the Judicial Arbitration and Mediation Services. Judgment on the award rendered by the arbitrator may be entered in any court having competent jurisdiction. Any provision of applicable law notwithstanding, the arbitrator will not have authority to award damages, remedies or awards that conflict with these Terms of Use.

2. Severability. If the prohibition against class actions and other claims brought on behalf of third parties contained above is found to be unenforceable, then all of the preceding language in this Arbitration section will be null and void. This arbitration agreement will survive the termination of your relationship with us.

K. Governing Law and Jurisdiction

These Terms of Use shall be governed by and construed in accordance with the laws of the State of New York, including its conflicts of law rules, and the United States of America. You agree that any dispute arising from or relating to the subject matter of these Terms of Use shall be governed by the exclusive jurisdiction and venue of the state and Federal courts of New York, New York.

L. Modification

We reserve the right, in our sole discretion, to modify or replace any of these Terms of Use, or change, suspend, or discontinue the Services (including without limitation, the availability of any feature, database, or content) at any time. We may also impose limits on certain features and services or restrict your access to parts or all of the Services without notice or liability. It is your responsibility to check these Terms of Use periodically for changes. Your continued use of the Services following notification of any changes to these Terms of Use constitutes acceptance of those changes.

M. MISCELLANEOUS



1. Entire Agreement and Severability: These Terms of Use are the entire agreement between you and us with respect to the Services, including use of the Applications and the Site, and supersede all prior or contemporaneous communications and proposals (whether oral, written or electronic) between you and us with respect to the Services, and all modifications to these Terms of Use must be in writing and signed by both parties, except as otherwise provided herein. If any provision of these Terms of Use is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that these Terms of Use will otherwise remain in full force and effect and enforceable. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder
2. Force Majeure: We shall not be liable for any failure to perform our obligations hereunder where such failure results from any cause beyond our reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation (including “line-noise” interference).
3. Assignment: These Terms of Use are personal to you, and are not assignable, transferable or sublicensable by you except with our prior written consent. We may assign, transfer or delegate any of our rights and obligations hereunder without consent.
4. Agency: No agency, partnership, joint venture, or employment relationship is created as a result of these Terms of Use and neither party has any authority of any kind to bind the other in any respect.
5. Notices: Unless otherwise specified in these Term of Use, all notices under these Terms of Use will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service. Electronic notices should be sent to lisamarie@avail.ie.
6. No Waiver: Our failure to enforce any part of these Terms of Use shall not constitute a waiver of our right to later enforce that or any other part of these Terms of Use. Waiver of compliance in any particular instance does not mean that we will waive compliance in the future. In order for any waiver of compliance with these Terms of Use to be binding, we must provide you with written notice of such waiver through one of our authorized representatives.
7. Headings: The section and paragraph headings in these Terms of Use are for convenience only and shall not affect their interpretation.

