

TERMS AND CONDITIONS

- A. This Agreement is entered into between Tone Pitman (ABN 97 986 022 981) trading as TalkingWise (**we, us or our**) and you, the individual signing up to the Course (**you or your**), together the **Parties** and each a **Party**.
- B. This Agreement forms the agreement under which we agree to provide you the Course and ancillary services (together, the **Services**).

1 Term

- 1.1 You accept this Agreement by the earlier of (i) accepting the Agreement online and (ii) making payment of any part of the Fees.
- 1.2 This Agreement will commence on the date you accept these Terms and will continue until we have provided the Services to you, unless earlier terminated in accordance with its terms.

2 The Course

Our obligations

- 2.1 In consideration of your payment of the Fees, and subject to your compliance with the terms of this Agreement, we will provide the Services in accordance with this Agreement, whether ourselves or through our Personnel.
- 2.2 Once you have made payment, we will provide you with the details enabling you to attend the Course either live or to view a recorded version of the Course after each session. The details of the Course (timing, inclusions, how to connect) are set out on our Site or in the email we send to you prior to you purchasing our Services.
- 2.3 We may need to change the timing of the live sessions due to circumstances beyond our reasonable control. If you cannot attend the rescheduled session, you will be able to watch the recording of the session.

Your obligations

- 2.4 You agree:
 - (a) to comply with this Agreement and all of our reasonable requests or requirements (including the Content Licence);
 - (b) you have all the hardware, software (including video conferencing facilities), licences and services which are necessary to access and participate in the Course;
 - (c) you have not relied on any representations or warranties made by us in relation to the Services (including as to whether the Services are or will be fit or suitable for your particular purposes), unless expressly stipulated in this Agreement;
 - (d) you will inform us if you have reasonable concerns relating to our provision of the Services under this Agreement, with the aim that the Parties will use all reasonable efforts to resolve your concerns; and
 - (e) the Services are provided to you primarily for your benefit and you will not (or you will not attempt to) disclose, or provide access to, the Course (including the Content) to third parties for commercial purposes without our prior written consent.

3 The Community

- 3.1 As part of the Services, we may grant you access to an online community where other students can connect, share experiences and continue their Conversational Equality journey.
- 3.2 You must not post, share or publish any material in the Community which is indecent, offensive, in breach of any laws, or in breach of any intellectual property rights. We reserve the right to, at any time, remove any content you share in the Community, and remove your access to the Community.
- 3.3 You may be permitted to post, create, upload, publicise or otherwise submit content (**Submit**), such as comments, questions, pictures, and testimonials in the Community (**User Content**). You must Submit User Content in accordance with this Agreement.
- 3.4 We ask you to limit your discussions to topics which are relevant to the Course. We have the right but not the obligation to appoint moderators for the Community from time to time to ensure that all voices are heard and no inappropriate thread or topic is discussed on the forum.
- 3.5 We ask that you remain polite and considerate at all times when using the Community. You must not use the Community to:
 - (a) defame, harass, threaten, stalk, menace, track, monitor, mistreat, offend or otherwise hurt any person;
 - (b) use obscene or foul language;
 - (c) include link(s) to inappropriate, offensive or illegal material;

- (d) gossip;
 - (e) pass judgement on others;
 - (f) make any comment that could be considered intolerant of a person's race, culture, appearance, gender, sexual preference, religion or age; or
 - (g) interfere with another user.
- 3.6 If you do not comply with these expectations, we may remove your User Content from the Community, and/or limit your access to Submitting User Content.
- 3.7 We are not responsible for the conduct of any user of our Community. You agree and acknowledge that you participate on the forum including by Submitting User Content at your own risk.
- 3.8 By making available any User Content on or through the Community, you grant to us a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free licence to use the User Content, with the right to use, view, copy, adapt, modify, distribute, license, transfer, communicate, publicly display, publicly perform, transmit, stream, broadcast, access, or otherwise exploit such User Content.
- 3.9 You agree that you are solely responsible for all User Content that you make available on or through the forums. You represent and warrant that:
- (a) you are either the sole and exclusive owner of all User Content or you have all rights, licences, consents and releases that are necessary to grant to us the rights in such User Content (as contemplated by this Agreement); and
 - (b) neither the User Content nor the posting, uploading, publication, submission or transmission of the User Content or our use of the User Content on, through or by means of our Community will infringe, misappropriate or violate a third party's intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.
- 3.10 This clause will survive termination of this Agreement.

4 Payment

- 4.1 You must make payment of the Fees through our third party booking platform before the start of the Course. Your participation in the Course is not guaranteed until you have made full payment of the Fees.
- 4.2 By making payment through our third party booking platform, you accept the applicable terms and conditions and agree to pay any related processing fees involved in making payment through this platform.
- 4.3 To the maximum extent permitted by law, there will be no refunds or credits for the Fees, subject to clause 10.2.

5 Third Party Inputs

- 5.1 You agree that the provision of the Services may be contingent on, or impacted by, Third Party Inputs.
- 5.2 You agree that the Services may include Third Party Inputs that may interface, or interoperate with, the Services, including third party software or services.
- 5.3 To the extent that you use such Third Party Inputs, you are responsible for:
- (a) the requirements; and
 - (b) the licensing obligations (including any terms and conditions),
related to the applicable Third Party Input, including third party software and services.
- 5.4 Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability, caused or contributed to by, arising from or connected with any Third Party Inputs.

6 Intellectual Property Rights

- 6.1 You agree that all Intellectual Property Rights:
- (a) in the Services, including the Content;
 - (b) in the Intellectual Property developed, adapted, modified or created by us, or our Personnel (including in connection with this Agreement); and
 - (c) Feedback,
- will at all times vest, or remain vested, in us (or, if applicable, our third party service providers). To the extent that ownership of the Intellectual Property Rights do not automatically vest in us, you agree to do all acts necessary or desirable to assure our title to such rights.
- 6.2 We grant you a non-exclusive, worldwide, revocable, non-sublicensable and non-transferable licence, to access, download, display and distribute the Content to other current Course participants and to your friends and

family to discuss the principles of the Course (**Content Licence**). You must not use our Content for your own commercial gain and when using Content, you agree to reproduce it in full (not in part or with any redactions) including any and all branding.

- 6.3 Other than as expressly permitted in this Agreement, you must not, whether directly or indirectly, without our prior written consent:
- (a) copy or use, in whole or in part, any of our Intellectual Property or breach our Intellectual Property Rights in any way;
 - (b) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of our Intellectual Property to any third party;
 - (c) breach any Intellectual Property Rights connected with the Course, including altering or modifying any of our Intellectual Property;
 - (d) cause any of our Intellectual Property to be framed or embedded in another website; or create derivative works from any of our Intellectual Property;
 - (e) resell, assign, lease, hire, sub-license, transfer, distribute or make available the Course to third parties;
 - (f) "frame", "mirror" or serve any of the Course on any web server or other computer server over the Internet or any other network; and
 - (g) alter, remove or tamper with any trademarks, any patent or copyright notices, any confidentiality legend or notice, any numbers or any other means of identification used on or in relation to the Course.
- 6.4 This clause 6 will survive the termination or expiry of this Agreement.

7 Australian Consumer Law

- 7.1 Certain legislation, including the ACL, and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of our services which cannot be excluded, restricted or modified (**Statutory Rights**).
- 7.2 If the ACL applies to you as a consumer, nothing in this Agreement excludes your Statutory Rights as a consumer under the ACL. You agree that our Liability for the Services provided to an entity defined as a consumer under the ACL is governed solely by the ACL and this Agreement.
- 7.3 Subject to your Statutory Rights, we exclude all express and implied warranties, and all material, work and services (including the Course) are provided to you without warranties of any kind, either express or implied, whether in statute, at law or any other basis.
- 7.4 This clause 7 will survive termination or expiry of this Agreement.

8 Privacy

- 8.1 We collect Personal Information about you in order to allow us to provide the Services to you, to contact and communicate with you, to respond to your enquiries and for other purposes set out in our Privacy Policy.
- 8.2 We may disclose that information to third party service providers who help us deliver our Services (including booking platforms, learning management providers, video conferencing facilities, data storage providers, web-hosting and server providers, professional advisors and our business partners) or as required by law. In certain circumstances, we may disclose your Personal Information to third parties located, or who store data, outside Australia.
- 8.3 Our Privacy Policy contains further information about: (i) how we store and use your Personal Information; (ii) how you can access and seek correction of your Personal Information; (iii) how you can make a privacy-related complaint; and (iv) our complaint handling process.
- 8.4 By providing Personal Information to us, you understand:
- (a) we will collect, hold, use and disclose your Personal Information in accordance with our Privacy Policy; and
 - (b) you do not have to provide Personal Information to us, but if you do not provide Personal Information to us this may affect your ability to participate in the Course.

9 Liability

- 9.1 Despite anything to the contrary, to the maximum extent permitted by law:
- (a) neither Party will be liable for any Consequential Loss;
 - (b) a Party's liability for any Liability under this Agreement will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party, including any failure to mitigate that Liability; and
 - (c) our aggregate liability for any Liability arising from or in connection with this Agreement will be limited to us resupplying the Services to you or, in our sole discretion, to us repaying you the amount of the Fees paid by you to us in respect of the Services to which the Liability relates.

9.2 This clause 9 will survive termination or expiry of this Agreement.

10 Termination

General termination rights

10.1 This Agreement will terminate immediately upon written notice by a Party (**Non Defaulting Party**) if the other Party (**Defaulting Party**) breaches a material term of this Agreement and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non Defaulting Party.

Termination during first week of the Course

10.2 If, after your first online lesson, you do not wish to continue with the Course, you can notify us of this choice in writing within 3 days of the first session and we will provide you a refund of the Fees within 14 days.

10.3 Termination of this Agreement will not affect any rights or liabilities that a Party has accrued under it.

10.4 This clause 10 will survive the termination or expiry of this Agreement.

11 General

11.1 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under this Agreement if such delay is due to any circumstance beyond our reasonable control (including but not limited to fire, flood, earthquake, war, civil unrest, epidemics, pandemics, and Government sanctioned restrictions and orders (including any delay or disruption caused or contributed to by COVID-19), whether known or unknown at the time of entering into this Agreement (**Force Majeure Event**).

11.2 **Amendment:** This Agreement may only be amended by a written instrument executed by the Parties.

11.3 **Assignment:** A Party must not assign or deal with the whole or any of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

11.4 **Counterparts:** This Agreement may be executed in any number of counterparts that together will form one instrument.

11.5 **Dispute:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Society of Tasmania to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

11.6 **Entire agreement:** This Agreement contains the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.

11.7 **Further assurance:** Each Party must promptly do all things and execute all further instruments necessary to give full force and effect to this Agreement and their obligations under it.

11.8 **Governing law:** This Agreement is governed by the laws of Tasmania, Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Tasmania and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

11.9 **Severance:** If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions.

12 Definitions

In this Agreement, unless the context otherwise requires, capitalised terms have the meanings given to them in this Agreement, the Schedule, and:

ACL or Australian Consumer Law means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time;

Agreement means these terms and conditions, all schedules, annexures and attachments included, or referred to, in this agreement;

Business Day means a day on which banks are open for general bank business in Tasmania, excluding Saturdays, Sundays and public holidays;

Consequential Loss includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise;

Content means any content we make accessible to you as part of the Course, including via our online platform, such as written content, video content, quizzes, assessment outlines, podcasts and similar;

Content Licence has the meaning given in clause 6.2;

Course means the online course as set out on our Site or in our email advertisements which may include access to a certain number of online sessions;

Feedback means any idea, suggestion, recommendation or request by you, whether made verbally, in writing, directly or indirectly, in connection with the Course;

Force Majeure Event has the meaning given in clause 11.1;

Intellectual Property means any copyright, registered and unregistered trade marks, designs (whether or not registered or registrable), domain names, know-how, inventions, processes, trade secrets or confidential information; or circuit layouts, software, computer Courses, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing;

Intellectual Property Rights means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to this Agreement or otherwise;

Personal Information has the meaning given in the *Privacy Act 1988* (Cth);

Personnel means, in respect of us, any of our employees, consultants, suppliers, subcontractors or agents;

Privacy Policy means the privacy policy set out on our Site;

Schedule means the schedule attached to these terms and conditions;

Site means our website located at www.talkingwise.com, and as may be available through other addresses and channels; and

Third Party Inputs means third parties or any goods and services provided by third parties, including customers, end users, suppliers, service providers or other subcontractors which the provision of the Course may be contingent on, or impacted by and includes any video conferencing facilities we use to provide the Course.