

SMARTR – END USER LICENCE AGREEMENT

PLEASE READ CAREFULLY BEFORE DOWNLOADING OR STREAMING THE APP FROM THIS WEBSITE.

This end-user licence agreement (**EULA**) is a legal agreement between you (**End-user** or **you**) and Romkii Pty Ltd ACN 616 190 286 of '2055 Ambience', 2-14 The Esplanade, Burleigh Heads, Queensland 4220 (**Licensor, us** or **we**) for:

- SMARTR VERSION 1 mobile application software (**App**); and
- any online or electronic documents provided to you in connection with the App (**Documents**).

We licence use of the App and Documents to you on the basis of this EULA and subject to any rules or policies applied by any appstore provider or operator from whose site, located at <https://itunes.apple.com/app/id1220731845> (**App Store**), the End-user downloaded the App (**Appstore Rules**). We do not sell the App or Documents to you. We remain the owners of the App and Documents at all times.

Operating system requirements This App requires an iPhone device with a minimum of 35 megabytes of memory. Internet access and the Apple iOS 10X.

Important notice:

- By downloading the App from this website or clicking on the "BY PROCEEDING USERS AGREE TO THE TERMS AND CONDITIONS IN THIS EULA" button below you agree to the terms of the licence which will bind you. The terms of the licence include, in particular, the privacy policy defined in condition 1.6 and limitations on liability in condition 7.
- If you do not agree to the terms of this licence, we will not license the App and Documents to you and you must stop the downloading process now [**by clicking on the "Cancel" button below**]. In this case, the downloading process will terminate.

You should print a copy of this EULA for future reference.

AGREED TERMS

1. ACKNOWLEDGEMENTS

1.1 The App is a student to tutor service which, once you have downloaded it, provides a platform that enables an individual currently studying for a specific qualification (**Students**) and an individual knowledgeable and / or experience in the specific given area of study (**Tutors**) to connect to arrange tutoring sessions on an agreed topic (**Tutoring Sessions**). Details on how to arrange Tutoring Sessions with Tutors are further set out in the App and the Documents. By downloading the App and accessing the Documents you agree and acknowledge:

- (a) the services we provide to you are limited to the services accessible through the App which primarily consists of providing a forum through which Students and / or their parents and Tutors can connect to arrange Tutoring Sessions, which can take place either in person, via online video chat, or by other means agreed between the Student and the Tutor (**Services**);
- (b) we do not arrange the Tutoring Sessions; and
- (c) we have no control the actions of the Students or Tutors and accept no responsibility or liability for loss or damage caused by either party by providing or failing to provide the services to which they agreed through the App.

- 1.2 The terms of this EULA apply to the App or any of the Services, including any updates or supplements to the App or any Service, unless they come with separate terms, in which case those terms apply. If any open-source software is included in the App or any Service, the terms of an open-source licence may override some of the terms of this EULA.
- 1.3 We may change these terms at any time by sending you an SMS with details of the change or notifying you of a change when you next start the App. The new terms may be displayed on-screen and you may be required to read and accept them to continue your use of the Services.
- 1.4 From time to time, updates to the App may be issued through the Appstore. Depending on the update, you may not be able to use the Services until you have downloaded or streamed the latest version of the App and accepted any new terms.
- 1.5 You will be assumed to have obtained permission from the owners of the mobile telephone or handheld devices that are controlled, but not owned, by you and described in condition 2.2(a) (**Devices**) to download or stream a copy of the App onto the Devices. You and they may be charged by your and their service providers for internet access on the Devices. You accept responsibility in accordance with the terms of this EULA for the use of the App or any Service on or in relation to any Device, whether or not it is owned by you.
- 1.6 The terms of our privacy policy from time to time, available at smartrtheapp.com (**Privacy Policy**), are incorporated into this EULA by reference and apply to the provision of the Services. Additionally, by using the App or any Service, you acknowledge and agree that internet transmissions are never completely private or secure. You understand that any message or information you send using the App or any Service may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.
- 1.7 By using the App or any of the Services, you consent to us collecting and using technical information about the Devices and related software, hardware and peripherals for Services that are internet-based or wireless to improve our products and to provide the Services to you.
- 1.8 We may use location data sent from the Devices in the provision of the Services to you. You can turn off this functionality at any time by turning off the location services settings for the App on the Device. Turning off the location services may affect your use of the Services. If you use the Services, you consent to us and our affiliates' and licensees' transmission, collection, maintenance, processing and use of your location data and queries to provide and improve location-based and road traffic-based products and services. You may withdraw this consent at any time by turning off the location services settings on your Device.
- 1.9 The App or any Service may contain links to other independent third-party websites (**Third-party Sites**). Third-party Sites are not under our control, and we are not responsible for and do not endorse their content or their privacy policies (if any). You will need to make your own independent judgement regarding your interaction with any Third-party Sites, including the purchase and use of any products or services accessible through them.

2. GRANT OF SCOPE AND LICENCE

- 2.1 In consideration of you agreeing to abide by the terms of this EULA, we grant you a non-transferable, non-exclusive licence to use the App on the Devices, subject to these terms, the Privacy Policy and the Appstore Rules, incorporated into this EULA by reference. We reserve all other rights.
- 2.2 You may:
 - (a) download or stream a copy of the App onto your Device and view, use and display the App on the Device for your personal purposes only; and

- (b) use the Documents for your personal purposes only.

3. LICENCE RESTRICTIONS

Except as expressly set out in this EULA or as permitted by any local law, you agree:

- (a) not to copy the App or Documents except where such copying is incidental to normal use of the App, or where it is necessary for the purpose of back-up or operational security;
- (b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the App or Documents;
- (c) not to make alterations to, or modifications of, the whole or any part of the App, or permit the App or any part of it to be combined with, or become incorporated in, any other programs;
- (d) not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the App or attempt to do any such thing except to the extent that such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the App with another software program, and provided that the information obtained by you during such activities:
 - (i) is used only for the purpose of achieving inter-operability of the App with another software program;
 - (ii) is not unnecessarily disclosed or communicated without our prior written consent to any third party; and
 - (iii) is not used to create any software that is substantially similar to the App;
- (e) to keep all copies of the App secure and to maintain accurate and up-to-date records of the number and locations of all copies of the App;
- (f) to include our copyright notice on all entire and partial copies you make of the App on any medium;
- (g) not to provide or otherwise make available the App in whole or in part (including object and source code), in any form to any person without prior written consent from us; and
- (h) to comply with all technology control laws and regulations that apply to the technology used or supported by the App or any Service (**Technology**), together **Licence Restrictions**.

4. ACCEPTABLE USE RESTRICTIONS

You must:

- (a) not use the App or any Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this EULA, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, including viruses, or harmful data, into the App, any Service or any operating system;
- (b) not infringe our intellectual property rights or those of any third party in relation to your use of the App or any Service (to the extent that such use is not licensed by this EULA);
- (c) not transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the App or any Service;
- (d) not use the App or any Service in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users; and

- (e) not collect or harvest any information or data from any Service or our systems or attempt to decipher any transmissions to or from the servers running any Service.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 You acknowledge that all intellectual property rights in the App, the Documents and the Technology anywhere in the world belong to us or our licensors, that rights in the App are licensed (not sold) to you, and that you have no rights in, or to, the App, the Documents or the Technology other than the right to use each of them in accordance with the terms of this EULA.
- 5.2 You acknowledge that you have no right to have access to the App in source-code form.

6. AUSTRALIAN CONSUMER LAW

- 6.1 Insofar as the Services are provided to Students free of charge and we do not supply the goods or services offered by the Tutors, Students agree that Schedule 2 of the Competition and Consumer Act 2010 (Cth) does not apply to this EULA or any other agreement we have with any Student.
- 6.2 If it is found by a court of competent jurisdiction that the Services provided to Students under this EULA do constitute a contract for the provision of services as defined under Schedule 2 of the Consumer Act, then clause 6.3 applies to the Services provided to Students as well as to the Services provided to the Tutors.
- 6.3 Our liability for a breach of a condition or warranty implied by Schedule 2 Part 3-2 Division 1 of the Consumer Act is hereby limited to:
 - (a) The supplying of the services again; or
 - (b) The payment of the cost of having the services supplied again.

7. LIMITATION OF LIABILITY

- 7.1 You acknowledge that the App has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the App as described in the Documents meet your requirements.
- 7.2 We only supply the services as described in condition 1.1, and we have no liability for a Student's performance or grade in any subject, test, exam, or other assigned work regardless of the number of Tutoring Sessions arranged with a Tutor.
- 7.3 We only supply the App and Documents for domestic and private use. You agree not to use the App and Documents for any commercial, business or resale purposes, and we have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- 7.4 By downloading the App you agree to indemnify us from any loss or damage suffered by you or any third party claim against you in connection with your use of this App or the Documents, including any injuries resulting from travel to a Tutoring Session or occurring during a Tutoring Session.
- 7.5 This clause 7 shall survive termination of this EULA.
- 7.6 Nothing in this EULA shall limit or exclude our liability for:
 - (a) death or personal injury resulting from our negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) any other liability that cannot be excluded or limited by Queensland law.

8. TERMINATION

8.1 We may terminate this EULA immediately by written notice to you:

- (a) if you commit a material or persistent breach of this EULA which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so; or
- (b) if you breach any of the Licence Restrictions or the acceptable use restrictions set out in condition 4.

8.2 On termination for any reason:

- (a) all rights granted to you under this EULA shall cease;
- (b) you must immediately cease all activities authorised by this EULA, including your access to the App and use of any Services;
- (c) you must immediately delete or remove the App from all Devices, and immediately destroy all copies of the App and Documents then in your possession, custody or control and certify to us that you have done so;
- (d) we may remotely access the Devices and remove the App from all of them and cease providing you with access to the Services; and

9. COMMUNICATION BETWEEN US

9.1 If you wish to contact us in writing, or if any condition in this EULA requires you to give us notice in writing, you can send this to us by e-mail or by prepaid post to Romkii Pty Ltd of '2055 Ambience' 2-14 The Esplanade, Burleigh Heads, Queensland 4220 and sebastian@smartrtheapp.com. We will confirm receipt of this by contacting you in writing, normally by e-mail.

9.2 Any communication from us to you will be deemed provided to you upon us sending you an email to the email address provided by you at the time of creating your account on the App.

10. EVENTS OUTSIDE OUR CONTROL

10.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this EULA that is caused by any act or event beyond our reasonable control, including without limitation failure of public or private telecommunications networks or failure of a Tutor to provide the Tutoring Session (**Event Outside Our Control**).

10.2 If an Event Outside Our Control takes place that affects the performance of our obligations under this EULA our obligations under this EULA will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control.

11. PAYMENT PROVISIONS FOR TUTORING SESSIONS

11.1 There are no fees at the time of purchasing the App or creating an account for either Students or Tutors.

11.2 Upon creating an account, Students must provide their credit card details and Tutors must provide their bank details, for the purpose of the exchange of funds for any future booked Tutoring Sessions.

11.3 Hourly rates for Tutoring Sessions will be set by the Tutors and displayed on their account profiles, which will be inclusive of GST. We do not set any limitations in relation to the hourly rates charged by Tutors. A booked Tutoring Session represents an agreement between the Student and Tutor.

11.4 The following must be agreed and input into the App at the time of booking a Tutoring Session:

- (a) Student and Tutor details;
- (b) the subject matter on which the Tutoring Session will be delivered;
- (c) agreed fees for the Tutoring Session (**Agreed Fee**);
- (d) the medium for delivery of the Tutoring Session, being either in person, via online video chat or by some other agreed means, including full details of venues; and
- (e) the date and time for the delivery of the Tutoring Session.

11.5 A payment hold for the Agreed Fee will be placed on the Student's credit card when the Student books a Tutoring Session with the Tutor through the App. Payments are processed on the App through the Stripe payment gateway.

11.6 Payments will be held for at least 24 hours after a Tutoring Session was scheduled to have occurred. Students must contact us in writing within that 24 hour period detailing any reasons for which the Student believes payment should not be released to the Tutor. If no such contact has been made by a Student within the required timeframe then the Agreed Fee for the Tutoring Session will be released to the Tutor, minus 20% of the Agreed Fee which will be retained by us as a service fee.

11.7 We will handle all payment disputes within a reasonable timeframe, given the particulars of the dispute. Any decision we make in relation to a payment dispute will be final.

11.8 If a Student or Tutor cancels a Tutoring Session at least 24 hours before it was agreed to occur, the payment hold for the Agreed Fee will be removed from the Student's credit card and no fee will be payable to the Tutor for that Tutoring Session or to us.

11.9 If a Student cancels a Tutoring Session less than 24 hours before it was agreed to occur, or fails to attend a booked Tutoring Session, the Student will be charged a late cancellation fee equal to 50% of the Agreed Fee (**Student Cancellation Fee**). In that event, the proceeds of the Student Cancellation Fee will be divided equally between the Tutor and us, and the remaining amount of the Agreed Fee for that Tutoring Session will return to the Student's credit card. For clarity and by way of example, if the Agreed Fee for the Tutoring Session was \$100, the Student Cancellation Fee would be \$50, which would be divided equally between us and the Tutor, and \$50 would return to the Student's credit card.

11.10 If a Tutor cancels a Tutoring Session less than 24 hours before it was agreed to occur, or fails to attend a booked Tutoring Session (**Tutor Cancelled Session**), the full amount of the Agreed Fee for that Tutoring Session will return to the Student's credit card. A late cancellation fee equal to 50% of the Agreed Fee (**Tutor Cancellation Fee**) will be applied to the next Tutoring Session booked with that Tutor (**Subsequent Session**) and deducted from the Agreed Fee payable to the Tutor for the Subsequent Session. For clarity and by way of example, if a Tutor Cancelled Session had an Agreed Fee of \$100 and the Subsequent Session also has an Agreed Fee of \$100 then the Tutor would receive \$30 for the Subsequent Session, after having a \$20 service fee applied for the Subsequent Session and a \$50 Tutor Cancellation Fee applied for the Tutor Cancelled Session, both of which we would retain.

11.11 We will store the last four (4) digits of bank accounts and credit cards on the App.

11.12 Banking and credit card details will be stored on the Stripe payment gateway. This information will not be provided to other third parties.

12. USE OF ACCOUNTS AND CONDUCT OF TUTORING SESSIONS

12.1 Your account is your responsibility and cannot be sold or transferred to any third party.

12.2 You must be over the age of 18 or have the permission of an adult guardian to use the App. If you are under the age of 18, your parent or guardian must assist you in the use of the App and be present during Tutoring Sessions.

12.3 A user may only have one single, active account and any duplicate accounts will be removed.

- 12.4 All account signups must be made with real and verifiable information. We will perform background checks on Tutors, which may include reviewing photo identification and blue card and other accreditation information, before listing them as a Tutor.
- 12.5 Tutors must have a current blue card and any other related qualifications or certifications we deem necessary, if they are to have Tutoring Sessions with Students under the age of 18.
- 12.6 We are not responsible for any incorrect information that is uploaded by users.
- 12.7 The Student and the Tutor are responsible for ensuring that they have access to a suitable premises from which to conduct the Tutoring Session if it is to be conducted in person or a strong internet connection or phone line and appropriate equipment for delivery of the Tutoring Session where the Tutoring Session will take place remotely. We are not responsible for the failure of either party to comply with this clause 12.7.
- 12.8 Any derogatory or hostile behaviour on the App may result in the removal of accounts, including the posting or commenting of vulgarities and insults.
- 12.9 All users of the Services must treat each other with respect.
- 12.10 Students have the option to rate and review Tutors after a Tutoring Session. This information will be displayed on the Tutor's public account profile. If a Tutor receives a negative rating and review from a Student, and the Tutor wishes to dispute it, they may contact us and we will liaise with both parties to determine if the rating and review was justified such that it will remain on the Tutor's profile. Any decision we make in this regard will be made within a reasonable timeframe and is final.
- 12.11 All users agree to fully cooperate in the resolution of disputes and to provide any information requested by us within a reasonable timeframe advised by us. Failure to provide the requested information within the required timeframe may result in a dispute being decided on only the information available at the time.
- 12.12 We reserve the right to take disciplinary action against a user of the Service at our discretion, if they breach these agreed terms, receive multiple negative reviews, or if we are informed by other users that they:
- (a) are consistently late or do not show up to Tutoring Sessions; or
 - (b) behave inappropriately in their use of the App or during a Tutoring Session.
- 12.13 Disciplinary action may include, but is not limited, to:
- (a) a written warning;
 - (b) temporarily being locked out of the App or banned from using the Service; and
 - (c) removing a user's account permanently.

13. PERSONAL SAFETY

- 13.1 We encourage a respectful user experience for Students and Tutors using the App, however, we are not responsible for the conduct of any user on the App or during the Tutoring Sessions. You acknowledge and agree that you should use caution in all of your interactions with other users and that if you are under the age of 18, you will have parent or guardian present during Tutoring Sessions.

14. OTHER IMPORTANT ITEMS

- 14.1 We may transfer our rights and obligations under this EULA to another organisation, but this will not affect your rights or our obligations under this EULA.
- 14.2 Your account is unique to you and you may not transfer your rights or obligations under this EULA.

- 14.3 If we fail to insist that you perform any of your obligations under this EULA, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and it will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.
- 14.4 Each of the conditions of this EULA operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.
- 14.5 This EULA, its subject matter and its formation, are governed by Queensland law. You and we both agree that the courts of Queensland will have non-exclusive jurisdiction.

This agreement has been entered into on the date you accepted it by pressing the button below.

[INSERT 'BY PROCEEDING USERS AGREE TO THE TERMS AND CONDITIONS IN THIS EULA' BUTTON]