

MATHU BOOTCAMP TERMS OF SERVICE

Important Notice

- Please read our Terms of Use carefully. Your use of our services will be subject to the then current version of these terms published on our web site or mobile application at the time of your use. If you do not accept our Terms of Use, you may not use our services.
- Our terms contain specific provisions to limit our liability, allocate risk or liability to you or constitute acknowledgement of facts by you. **These terms have been set out in bold.** You should pay particular attention to these terms since they limit your ability to recover losses that you may incur in connection with your use of our services.
- We may change our Terms of Use from time to time. Such changes will take effect as and when published. Therefore, you should keep up-to-date with their content and read these Terms of Use at all times prior to using our services since the then current version of the terms will apply to your use.

1 Interpretation

- 1.1 In this Agreement, unless inconsistent with or otherwise indicated by the context, the following words and phrases shall have the meanings ascribed thereto:-
- 1.1.1 “the/this Agreement” means the agreement contained in this document as well as the Framework agreement signed between MTE and the Client;
 - 1.1.2 “the Client” means the school who has entered into a framework agreement with MTE to host and/or provide MathU bootcamps;
 - 1.1.3 “Day” means a business day which is not a Saturday, Sunday or official public holiday in the Republic of South Africa;
 - 1.1.4 “MathU App” refers to the software made available by MTE for installation and use on supported mobile devices or personal computers to use the Service;
 - 1.1.5 “MTE” means MathU Teaching Emporium (Pty) Ltd, a Private company duly incorporated under the laws of the Republic of South Africa, having its usual place of business at 359 Pienaar Street, Brooklyn, Pretoria with registration number 2016/150475/07
 - 1.1.6 “Parties” means, collectively, MTE and the Client, including its agents and representatives, and “Party” means either of them;
 - 1.1.7 “the Service” means the means the services provided by MathU from time to time as set out in terms of this Agreement, including, but not limited to, services provided via the MathU Application and MathU Websites, the general nature of which relates to online education and curation of digital content;
- 1.2 In this Agreement any reference to:-
- 1.2.1 the singular includes the plural and *vice versa*;
 - 1.2.2 natural persons includes juristic persons and *vice versa*;
 - 1.2.3 any one sex or gender includes the other sexes or genders, as the case may be;
 - 1.2.4 “including” (or words of similar meaning) means to include without limitation and “include” shall have a corresponding meaning;
 - 1.2.5 “law” means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law as at the Signature Date and as amended or re-enacted from time to time;

- 1.2.6 “person” means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality;
- 1.2.7 “writing” (or words of similar meaning) means legible writing and in English and includes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, No. 25 of 2002, and “written” or “writing” shall have a corresponding meaning;
- 1.2.8 a Party includes a reference to that Party’s successors in title and assignees allowed at law.
- 1.3 The words “shall” and “will” and “must” used in the context of any obligation or restriction in this Agreement imposed on a Party have the same meaning.
- 1.4 The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.5 Words and expressions defined in any sub-clause in this Agreement shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in the sub-clause.
- 1.6 If any provision in a definition in this Agreement is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to that provision as if it were a substantive clause in the body of the agreement, notwithstanding that it is only contained in the interpretation clause.
- 1.7 If any period is referred to in this Agreement by way of a reference to a number of days or weeks or months or other intervals, the period shall be reckoned exclusively of the 1st (first) day and inclusively of the last day of the relevant interval, unless the last day falls on a day which is not a Day as defined in this Agreement, in which case the last day shall be the next Day as defined.
- 1.8 If any obligation or act is required to be performed on a particular day in this Agreement it shall be performed (unless otherwise stipulated) by 16:00 (local time at the place where the obligation or act is required to be performed) on that day.
- 1.9 This Agreement shall be governed, interpreted and enforced in accordance with the laws of the Republic of South Africa.
- 1.10 A reference to any statutory enactment in this Agreement shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- 1.11 If amounts or figures are specified in numerals and in words in this Agreement and if there is any discrepancy between the numerals and the words then the words shall apply.
- 1.12 The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply and no provision herein shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision.

2 Provision of Services to the Client

- 2.1 MTE will provide the Client, and in particular its learners, with a range of customisable educational interventions in the manner and style of an exam preparation ‘bootcamps,’ facilitated through the use of the MathU App.
- 2.2 During the time that this Agreement is in effect, MTE will
 - 2.2.1 Provide access to the MathU App for the Client and its users for a reasonable period prior to, during and after a scheduled bootcamp session (the timeframe of which MTE will determine in its sole discretion);
 - 2.2.2 Provide digital course content aligned with the 2021 CAPS Curriculum for the subjects and grades stipulated in the framework agreement signed between the parties.
 - 2.2.3 Facilitate the preparation, marking and distribution of assessments pertaining to the above designated subjects insofar as it relates to a bootcamp session;
 - 2.2.4 Insofar as is reasonable and practicable, facilitate bootcamp sessions at a Client if it is, in MTE’s sole discretion, designated as a host school;

- 2.3 It is a resolute condition of this Agreement that the Client must ensure that:
- 2.3.1 All participating learners and parents download and install the MathU App onto their mobile devices;
 - 2.3.2 All participating complete the assessments set by MTE for the bootcamp sessions;
 - 2.3.3 At the request of MTE, the Client will print copies of the assessments related the bootcamp sessions, which will be at the Client's expense;
 - 2.3.4 All participating learners complete the prescribed assessments and pathways set out for a bootcamp session; and
 - 2.3.5 Inform parents of the bootcamp sessions and also distribute any marketing materials provided by MTE to the Client.
- 2.4 The Client agrees that usage of the MathU App will be in accordance with MTE's terms of use for the MathU App, the content of which is hereby incorporated by reference into this Agreement, and that breach of the Terms of Use by the Client or its users will constitute a breach of this Agreement.
- 2.5 It is specifically recorded that MTE shall only provide the Service as set out in terms of this Agreement, and that any additional services rendered shall be at the discretion of MTE, and which may be subject to scheduling constraints and an additional fee calculated at MTE's prevailing job card rates or the conclusion of a new agreement regulating the rendering of such additional services between the Parties.

3 Duration of Agreement

- 3.1 The Term of this Agreement shall commence and terminate on the dates stipulated in the framework agreement.
- 3.2 In the event where any action or omission of the Client, or any third party instructed by or related to the Client causes a delay in MTE's ability to render the Service in the manner as agreed upon in terms of clause 2, then the time-frame for the Service shall be extended by the same period as such delay, and the delay shall not constitute a breach of this Agreement.

4 Warranty on Services Rendered

MTE hereby guarantees that the Services rendered to the Client will be carried out in a proper and professional manner in accordance with the technical and functional standards as set by the relevant industry.

5 Warranties by Client

The Client hereby warrants that:

- 5.1 **Its users' devices comply with the relevant technical and functional standards to ensure optimum performance of the MathU App (for reference, the current supported mobile operating systems are Android 5.1 and up, iOS 13 and up, and iPadOS 13 and up);**
- 5.2 **If designated as a host school, it has the necessary technological infrastructure at its premises to ensure optimum performance of the MathU App; and that**
- 5.3 **It will ensure that exceptions on its security systems (including but not limited to virtual private networks and firewalls) will be created to allow for the functioning and optimum performance of the MathU App.**

6 Payment for Services

- 6.1 The Client will reimburse MTE for any reasonable disbursements incurred in relation to the hosting of a bootcamp session.

- 6.2 MTE will generate an invoice calculated with reference to the amount of learners in attendance at a particular bootcamp session in accordance with the fee advertised for such sessions from time to time. Whereas it is acknowledged by MTE that parents of participating learners will pay the Client a session, it is the Client who provides details of the amount of participants to MTE, and who is ultimately liable for any amounts on invoices raised by MTE
- 6.3 MTE may, at its discretion, discount a portion of the amount of an invoice rendered to the Client, which will usually be done for the purposes of marketing and/or corporate social responsibility. In the event of such discount being provided, the benefit of the discount must be passed along to the parents of participating learners in the same manner.
- 6.4 Client will pay MTE any invoiced amount within 5 (FIVE) working days after presentation of MTE's invoice to the Client.
Payment shall be effected by means of a bank transfer into the account designated on the invoice.
- 6.5 It is specifically recorded that MTE's fees are stated exclusive of VAT which may be chargeable in addition at the applicable rate current from time to time.

7 Intellectual Property Rights

- 7.1 Insofar as it is applicable, MTE hereby grants the Client a non-exclusive, non-transferable, revocable licence to utilise its intellectual property to the extent in which it is necessary to ensure the proper enjoyment of any work product related to the services provided to the Client by MTE.
- 7.2 The licence granted in terms of Clause 7.1 above will automatically be revoked at the moment of termination, expiration or cancellation of this Agreement.

8 Relationship

This Agreement does not constitute either of the Parties an agent or legal representative of the other for any purposes whatsoever and neither of the Parties shall be entitled to act on behalf of, or to represent the other unless duly authorised thereto in writing.

9 Breach and termination

- 9.1 Without prejudice to any other rights or remedies which either of the Parties may otherwise have in terms of the Agreement or at law, either of the Parties shall be entitled to terminate the Agreement by written Notice to the other, in the event that:
- 9.1.1 MTE infringes the copyright, trade secrets or patent of any third party in order to meet all or some of its obligations contained in the Agreement;
 - 9.1.2 either of the Parties are finally liquidated;
 - 9.1.3 the controlling interest or ownership in either of the Parties becomes vested in a competitor of either of the Parties. For the purpose of this clause, the party who makes this allegation shall carry the burden to prove same;
 - 9.1.4 either of the Parties commits a breach of the terms and conditions of the Agreement and fails to remedy such breach within 7 (seven) calendar days after receiving Notice from the other party to the Agreement.
- 9.2 The termination of the Agreement, for whatever reason, shall not affect the rights of either of the Parties:
- 9.2.1 that may have accrued before the termination of the Agreement; or
 - 9.2.2 which specifically or by their nature survives the termination of the Agreement.

10 Limitation of Liability

- 10.1 To the extent allowed by law, the Client agrees to indemnify MTE, and MTE will not be liable for any and all damages or losses (be they direct, indirect, consequential special or exemplary) suffered by the Client in connection with any claim by anyone that arises out of MTE's acts, omissions or misrepresentations under this Agreement, regardless of the form of action thereof.
- 10.2 In the instance where MTE is liable to the Client, the cumulative maximum liability of MTE to the Client for all claims, actions, demands and proceedings of whatever nature and however arising (including, without limitation, for breach of contract, in delict, for all acts and omissions, and for negligence) shall in total be limited to the total value of payments actually made to MTE by the Client in terms of this Agreement.

11 Notices and addresses

- 11.1 The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in on the first page of this Agreement above, or at such other address in the Republic of South Africa of which the Party concerned may notify the others in writing provided that no street address shall be changed to a post office box, for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.
- 11.2 The Parties also elect the following addresses which notices and other communications may be delivered for the purposes of this Agreement:
- 11.2.1 MTE by email to the address designated on the first page of the Framework agreement, and marked for the attention of the person designated on the first page of the Framework agreement;
- 11.2.2 the Client by email to the address designated on the first page of the Framework agreement marked for the attention of the designated contact person.
- 11.3 Any notice given in terms of this Agreement shall be in writing and shall:-
- 11.3.1 if delivered by hand be presumed to have been duly received by the addressee on the date of delivery;
- 11.3.2 if transmitted by electronic means be presumed to have been received by the addressee on the day following the date of dispatch.
- 11.4 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another shall be adequate written notice or communication to such Party.
- 11.5 In the event where any of the above contact details change, it is the duty of the relevant party to notify the other of such a change. Up until the time where a notice of such a change has been received, the other party may rely upon the addresses as stipulated in this Agreement.

12 Disputes

- 12.1 Should any dispute (other than a dispute in respect of which urgent relief may be obtained from a court of competent jurisdiction) arise in connection with this Agreement, any documents furnished by the Parties pursuant to the provisions of this Agreement or which relates in any way to any matter affecting the interests of the Parties in terms of this Agreement, the Parties shall forthwith meet to attempt to settle such dispute or difference, and failing such settlement within a period of 14 (fourteen) Days, the said dispute or difference will, if demanded by any Party on written notice to the other Party, be submitted to arbitration in accordance with this clause.
- 12.2 The arbitration shall be held:-
- 12.2.1 at Pretoria;
- 12.2.2 with only the representatives and legal representatives of the parties to the dispute present thereat;

- 12.2.3 otherwise in terms of the Arbitration Act, No. 42 of 1965, it being the intention that the arbitration shall be held and completed as soon as reasonably possible after it was demanded.
- 12.2.4 The arbitrator for such arbitration proceedings will be a practising advocate or attorney with at least 10 years' experience, agreed upon by the Parties and failing agreement, nominated by the chairperson for the time being of the Pretoria Bar Council.
- 12.3 The provisions of this clause are severable from the rest of this Agreement and shall remain in effect even if the agreement contained in this Agreement is terminated for any reason. The Parties shall keep the evidence in the proceedings and any order made by the arbitrator confidential, unless otherwise contemplated herein.
- 12.4 No clause herein which refers to mediation, conciliation or arbitration shall mean or be deemed to mean or interpreted to mean that either of the Parties shall be precluded from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the outcome of mediation, conciliation or decision of the arbitrator.

13 General

- 13.1 The expiration, cancellation or other termination of the agreement contained in this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after such expiration, cancellation or other termination or which of necessity must continue to endure after such expiration, cancellation or other termination, notwithstanding that the relevant clause may not expressly provide for such continuation.
- 13.2 No addition to or variation, consensual cancellation or novation of this Agreement, or of this clause in particular, and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by the parties.
- 13.3 No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Parties in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement, and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.
- 13.4 This Agreement constitutes the whole agreement between the Parties and supersedes all prior verbal or written agreements or understandings or representations by or between the Parties regarding the subject matter of this Agreement, and the Parties will not be entitled to rely, in any dispute regarding this Agreement, on any terms, conditions or representations not expressly contained or referred to in this Agreement.
- 13.5 Save as herein expressly otherwise provided, neither this Agreement nor any part, share or interest therein nor any rights or obligations thereunder may be ceded, assigned, or otherwise transferred without the prior written consent of the other Party.
- 13.6 In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.