

Ask Annie App – Terms and Conditions

Centre for Dementia Learning

These Terms and Conditions constitute an agreement (this **Agreement**) between Dementia Australia Limited ABN 79 625 582 771 (**Dementia Australia**) and any person who downloads and/or uses the Ask Annie application (**you** or the **User**). This Agreement governs your access to and use of the Application.

You accept this Agreement when you download and/or use the Application. If you do not agree to the terms and conditions of this Agreement, you must delete your Account, immediately stop using the Application and remove the Application from your Device.

By downloading or using the Application or registering for an Account, you warrant to Dementia Australia that you are at least 18 years of age, that you are a resident of Australia and that you are legally capable of entering into binding contracts including this Agreement.

Where you have been granted access to the Application through an organisation that has acquired a licence from Dementia Australia, your access to and use of the Application is governed by the terms agreed between that organisation and Dementia Australia. You must also comply with this Agreement to the extent it is not inconsistent with those terms.

1. DEFINITIONS

- (a) **Account** means a user account to access and use the Application.
- (b) **Application** means the Ask Annie mobile education Application, including any Updates from time to time.
- (c) **Consequential Loss** means any special, incidental, punitive, exemplary, indirect or consequential losses, as well as business interruption losses, loss of revenue, loss of anticipated savings, loss of profits, loss of goodwill, loss of reputation, loss of interest or business opportunity, costs of procurement or substitution of any goods, technology or application, and loss or corruption of information or data (including the costs of recovering or reconstructing any lost or corrupted data).
- (d) **Content** means any material in electronic format (which may include software) provided by Dementia Australia through the App.
- (e) **Device** means an Apple Inc. iOS-compatible or Android-compatible mobile device.
- (f) **Harmful Code** means "back door", "time bomb", "logic bomb", "Trojan Horse", "worm", "drop dead device", "DoS attacks", "DDoS attacks", "virus" or any other malware, spyware or computer software routine having the effect of permitting unauthorised access to or use of any system, network or software, or disabling, damaging, corrupting, interrupting or erasing, or disrupting or impairing the normal operation of, any part of any system, network or software.
- (g) **Intellectual Property Rights** means any intellectual property rights subsisting anywhere in the world, whether or not now existing, including rights in relation to copyright (registered or unregistered), inventions (including patents, innovation patents and utility models), confidential information, technical information and know-how, registered and unregistered designs, registered and unregistered trade marks, and circuit layout rights, topography rights and rights in databases.
- (h) **Notification** means any alert, update or message that the Application initiates and sends to the User through their Device.
- (i) **Personal Information** has the meaning set out in the Privacy Act.
- (j) **Privacy Act** means the *Privacy Act 1988* (Cth).
- (k) **Start Date** means the date the User first downloads or uses the Application (whichever comes first).

- (l) **Third Party Websites** means any websites operated by third parties
- (m) **Update** means an update or any modifications to the Application, which may include changes to the Application to maintain it, to add or remove features or functionality, or to redesign it.
- (n) **User Data** means any information that the User provides through the Application, which may include Personal Information.

2. TERM

This Agreement commences on the Start Date and will continue until terminated in accordance with the terms of this Agreement.

3. ACCOUNT

- (a) The User can register for an Account through the Application by providing Dementia Australia with their full name and email address. The User must only register for an Account in their own name, and must not provide another person's Personal Information to register an Account.
- (b) The User must keep their password, and any record of it, confidential and must secure it from any unauthorised access or use.
- (c) The User is responsible for all activity on their Account, except where unauthorised activity occurs due to Dementia Australia's failure to take reasonable steps to prevent it.
- (d) The User must notify Dementia Australia as soon as practical if the User becomes aware of any unauthorised access to or use of their Account and must also then take reasonable steps as soon as practical to re-secure the Account.

4. APPLICATION

- (a) Dementia Australia provides access to the Application for use by the User on a limited, non-exclusive and non-transferable basis in accordance with the terms and conditions set out in this Agreement.
- (b) Dementia Australia will use commercially reasonable efforts to ensure the Application is available 24 hours a day, 7 days per week, however the Application may become unavailable from time to time for any scheduled Updates or as a result of events beyond Dementia Australia's reasonable control.

5. ACCEPTABLE USE

The User must not, and not permit any person to:

- (a) use the Application for any purpose other than in accordance with this Agreement;
- (b) reverse-engineer, decompile, translate or disassemble the Application or any Content (except as may be permitted by statute);
- (c) bypass, or attempt to bypass, any security features of the Application, or introduce, upload or transmit any Harmful Code to the Application;
- (d) copy, reproduce, distribute, publish or otherwise use the Application or any Content in any manner or for any purpose not expressly authorised by this Agreement;
- (e) assign, transfer, sell, lease, license or sub-license the Application to any third party or dispose of, encumber or charge the Application in favour of a third party;
- (f) provide any third party with access to the Application other than as expressly permitted under this Agreement;
- (g) challenge or repudiate or take any action to impair, prejudice or diminish the Intellectual Property Rights in the Application or any Content;
- (h) make any representations to a third party or the public in regard to the Application, any Content or the Intellectual Property Rights in the Application or any Content;
- (i) remove or interfere with any copyright or trade mark notices contained within the Application or any Content;
- (j) demonstrate the Application for the purpose of engaging a person to replicate the functionality or features contained in the Application; or
- (k) modify any documentation, instructions or manuals provided or made available in relation to the Application or any Content.

6. DEVICES

- (a) Dementia Australia does not warrant that all Devices can access and use the Application.
- (b) The User may incur charges from their mobile service provider for using the Application. These charges are the User's responsibility and any matters regarding these charges should be raised with the relevant mobile service provider directly.

7. NOTIFICATION

- (a) The User may select whether or not they agree to receive Notifications. The User may change their selection at any time by following the prompts on the Application.
- (b) In some circumstances, Notifications may not reach the User's Device due to the requirements or limitations of the communications network or system outages or due to factors beyond Dementia Australia's control, such as the User's internet connection.
- (c) Dementia Australia does not guarantee that the Application will provide any Notifications.

8. THIRD PARTY WEBSITES

Dementia Australia may include links to Third Party Websites on the Application. These links are provided for the User's convenience only and you acknowledge and agree that those Third Party Websites do not form part of the Application and are not under Dementia Australia's control. The User accesses those Third Party Websites at their own risk. Dementia Australia is not responsible for any loss or damage you may suffer as a result of accessing any Third Party Website.

9. ACCURACY, RELIABILITY AND ERRORS

The User acknowledges and agrees that Dementia Australia does not guarantee that the Application is accurate, reliable or error-free. Dementia Australia will use commercially reasonable endeavours to maintain and keep the Application

accurate, available and current in accordance with good industry practice.

10. UPDATES

- (a) From time to time, Dementia Australia may provide Updates to the Application. Dementia Australia is not required to give the User any prior notice before implementing an Update.
- (b) If the User provides Dementia Australia with any feedback, suggestion or comment regarding the Application, the User grants to Dementia Australia a worldwide, irrevocable, perpetual, sub-licensable, transferable, royalty-free licence to use and exploit any such feedback, suggestion or comment for any purpose without any obligation or compensation to the User.

11. PAYMENT

- (a) Dementia Australia will not charge the User for downloading the Application.
- (b) Dementia Australia will provide some Content on the Application free of charge.
- (c) The User may gain access to additional Content on the Application by paying a subscription fee, which will be charged directly by Dementia Australia or through a third party supplier. The User will not incur or be charged any fee unless they expressly consent to incurring such fee through the Application.
- (d) Subscription fees must be paid yearly in advance by the User, unless another payment period is offered for the Application on your Device or is communicated to you by email, in which case the subscription fees must be paid by the User in accordance with the time period selected by the User.
- (e) If the User pays a subscription fee through a third party supplier, separate terms and conditions with such party may apply to your payment of the fee.
- (f) If the User has paid a subscription fee for additional Content, the User's subscription and payment will automatically terminate at the end of the applicable subscription period, unless they renew their subscription for the additional Content through the Application.
- (g) If the User cancels their subscription or their subscription expires, they will be downgraded to the free version of the Application the day after the last day of the then-current subscription period.
- (h) Dementia Australia may from time to time change the price for access to the paid Content, including recurring subscription fees, and will communicate the price change to the User by email with reasonable advance notice if they have a then-current subscription for such Content. Any such price change will take effect from the next subscription period following the date of the price change.

12. GST

- (a) If GST is payable on any supply made under or in relation to this Agreement, the recipient of the supply must pay the GST Amount to the supplier in addition to and at the same time as the net amount payable for the supply.
- (b) If a party is required to make any payment or reimbursement, that payment or reimbursement must be reduced by the amount of any input tax credits or reduced input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled, for any acquisition relating to that payment or reimbursement.
- (c) Terms used in this clause 12 and not defined in this Agreement have the same meaning as under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

13. INTELLECTUAL PROPERTY RIGHTS

- (a) As between the parties, the title to and ownership of the Application, including all Intellectual Property Rights in the

Application, the Content and any Updates, remains with Dementia Australia.

- (b) Any rights that are not expressly granted to the User in this Agreement are expressly reserved by Dementia Australia.
- (c) The User grants Dementia Australia:
 - (i) a non-exclusive, non-transferable, sub-licensable, royalty-free licence to use the User Data for the purposes of providing the Application in accordance with this Agreement or otherwise exercising its rights under this Agreement; and
 - (ii) a non-exclusive, non-transferable, sub-licensable, perpetual and irrevocable royalty-free licence to use the User Data in a de-identified and aggregated form for research purposes and for the purposes of creating analytics and databases to improve or otherwise develop the Application. As between the parties, Dementia Australia owns all right, title and interest in such research, analytics and databases.

14. PRIVACY

- (a) In performing this Agreement each party will comply with the Privacy Act including the Australian Privacy Principles as may be applicable to that party.
- (b) Dementia Australia may collect your Personal Information in order to allow you to establish an Account and use the Application, to operate and improve the Application, to send you direct marketing communications and to administer Dementia Australia's relationship with you.
- (c) Dementia Australia will only send you direct marketing communications (by email), including about offers, news, promotions, or events, where you have consented to Dementia Australia doing so.
- (d) You may opt-out of receiving direct marketing communications at any time by contacting Dementia Australia or by following the opt-out instructions provided in the direct marketing communications.
- (e) Dementia Australia also collects technical information and general analytics in a de-identified form arising from your use of the Application. This information is used for the purpose of gauging visit traffic and trends to improve our Application.
- (f) Dementia Australia may disclose your Personal Information to its service providers in connection with these purposes, e.g. any third party payment processor or IT service provider. From time to time, Dementia Australia uses web-based programs for particular activities such as email broadcast which may be hosted offshore. As such, your information may be disclosed to parties located internationally. Dementia Australia's privacy policy, which you can find on Dementia Australia's website at dementia.org.au, contains information about how you may seek to access or correct the Personal Information that Dementia Australia holds about you, how you may complain about a privacy breach and how Dementia Australia will deal with such a complaint.

15. CONFIDENTIALITY

- (a) In relation to the other party's confidential information, each party will (and Dementia Australia will take reasonable steps to ensure that any person employed or engaged by it who receives that information will):
 - (i) keep that information confidential and secure;
 - (ii) not disclose or permit disclosure of that information to any person other than as reasonably required for the purposes of this Agreement; and
 - (iii) not use or permit the use of that information other than as reasonably required for the purposes of this Agreement.

- (b) The source code and object code in the Application, and the Content, is Dementia Australia's confidential information.
- (c) Clause 13(a) does not apply to the extent that information:
 - (i) is publicly available, other than due to a breach of this Agreement;
 - (ii) was known to the relevant party prior to the execution of this Agreement; or
 - (iii) must be disclosed by a party under an applicable law.

16. WARRANTY

- (a) The User acknowledges and agrees that the Application cannot be guaranteed error-free.
- (b) Dementia Australia warrants to the User that their access to and use of the Application in accordance with this Agreement will not, to the best of Dementia Australia's knowledge at the date of this Agreement, infringe the Intellectual Property Rights of any third party in Australia.
- (c) On becoming aware of any claim or allegation by a third party against the User alleging that an authorised use by the User of the Application in Australia infringes the Intellectual Property Rights of that third party, the User must:
 - (i) promptly notify Dementia Australia in writing, giving full particulars of any infringement, suspected infringement or alleged infringement;
 - (ii) give Dementia Australia the option to conduct the defence of such a claim, including negotiations for settlement or compromise prior to or after the institution of legal proceedings;
 - (iii) provide Dementia Australia with any assistance in may reasonably require in conducting the defence of such a claim; and
 - (iv) authorise Dementia Australia to:
 - (A) modify the Application or replace elements of it, to render the Application non-infringing without materially diminishing its functionality; or
 - (B) obtain for the User's benefit the authority to continue the access and use of the Application,however, if neither of the above can be achieved using reasonable commercial efforts, Dementia Australia may terminate this Agreement (or the relevant part of it) by written notice to that effect and must in that case provide a pro rata refund of any fees pre-paid by the User for the remainder of the then-current subscription period.
- (d) Dementia Australia's liability in relation to any breach of the warranty in clause 16(b) does not apply where the infringement is caused or contributed to by:
 - (i) the use by the User of the Application in a manner which is inconsistent with the rights granted under this Agreement, or with any documentation or written operating instructions or guidelines provided by Dementia Australia;
 - (ii) use of the Application other than in the normal and customary manner for the purposes for which it is designed;
 - (iii) the combination of the Application with any materials that are not supplied by Dementia Australia; or
 - (iv) data that is provided to Dementia Australia, or that is entered into the Application, by the User, including the User Data.
- (e) Except for any express warranties contained in this Agreement, to the extent permitted by law, Dementia Australia expressly excludes all conditions, guarantees and

warranties, whether express or implied, statutory or otherwise.

17. LIABILITY

- (a) The Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth) and other similar consumer protection laws and regulations may imply certain rights, consumer guarantees, warranties or remedies relating to the Application which cannot be excluded, restricted, qualified or modified by Dementia Australia (**Non-Excludable Rights**). Nothing in this Agreement excludes or attempts to exclude the User's Non-Excludable Rights as a consumer under the ACL.
- (b) Each party's liability arising out of or in connection with this Agreement whether in contract, equity, negligence, tort or for breach of statute or otherwise, including under a warranty or indemnity, will be reduced by the extent, if any, to which the other party's breach of this Agreement or negligence caused or contributed to the liability.
- (c) Neither party will not be liable to the other party, including in negligence, for any Consequential Loss arising out of or in connection with this Agreement (or any breach of it) or the Application.
- (d) To the fullest extent permitted by law, each party's total aggregate liability in connection with this Agreement to the other party (whether under statute, in contract or in tort, including negligence, or otherwise) for any liability, loss, damage or expense suffered or incurred by the other party is limited to \$100 or (if greater) the amount equal to the amounts actually paid by the User to Dementia Australia in the 12 months immediately preceding the event giving rise to the liability.
- (e) If a supply by Dementia Australia under this Agreement is a supply of goods or services to a consumer within the meaning of the ACL, to the extent that the ACL permits Dementia Australia to limit its liability, then Dementia Australia's liability is limited to:
 - (i) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
 - (ii) in the case of goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.

18. TERMINATION

- (a) Without limiting Dementia Australia's rights, Dementia Australia may suspend the User's access to or use of the Application if any use of the Application by the User occurs in breach of this Agreement that in Dementia Australia's reasonable opinion threatens the security, integrity or availability of the Application. Dementia Australia will use commercially reasonable efforts to provide the User with notice of any such suspension.
- (b) Either party may terminate this Agreement by written notice to the other party if:
 - (i) the other party breaches this Agreement and the breach is capable of remedy, but the other party does not remedy that breach within 7 days from the date of receiving written notice by email to do so; or
 - (ii) the other party breaches this Agreement and the breach is not capable of remedy.
- (c) Dementia Australia does not guarantee that the Application will be available forever. If Dementia Australia decides to cease providing the Application, it may terminate this Agreement by written notice to the User. If practical, Dementia Australia will provide the User with at least 30 days notice that Dementia Australia will cease providing the Application. If the User has pre-paid any subscription fees

for additional Content, Dementia Australia will refund to the User any portion of the pre-paid fees which corresponds to the portion of the subscription period that occurs after the Application becomes unavailable.

- (d) The User may terminate this Agreement at any time by deleting the App and ceasing to use it.
- (e) On expiry or termination of this Agreement for any reason:
 - (i) the expiry or termination is without prejudice to any rights or liabilities of the parties accruing as at the date of termination;
 - (ii) the User must immediately cease using the Application; and
 - (iii) each party must promptly upon the other party's written request return or delete all confidential information of the other party in its possession or control.

19. ADDITIONAL TERMS – APPLE INC.

The following additional terms apply if the User accesses or uses the Application on an Apple Inc. iOS-compatible Device:

- (a) These terms and conditions are between Dementia Australia and you and not with Apple. Dementia Australia, not Apple, is responsible for the Application.
- (b) The User may only access and use the Application on an Apple-branded Device owned or controlled by the User and in accordance with Apple's usage rules as set out in the Apple Media Services Terms and Conditions effective on the date the User downloads the Application.
- (c) Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Application.
- (d) Dementia Australia is solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed. In the event of any failure of the Application to conform to any applicable warranty, the User may notify Apple, and Apple will refund the purchase price (if any) for the Application to the User. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Application.
- (e) Dementia Australia, not Apple, is responsible for addressing any claims relating to the Application or the User's possession and/or use of the Application, including, but not limited to: (i) product liability claims; (ii) any claim that the Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection, privacy, or similar legislation.
- (f) In the event of any third party claim that the Application or the User's possession and use of the Application infringes that third party's Intellectual Property Rights, Dementia Australia, not Apple, will be solely responsible for the investigation, defence, settlement and discharge of any such intellectual property infringement claim.
- (g) The User warrants and represents that it is not:
 - (i) located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; or
 - (ii) listed on any U.S. Government list of prohibited or restricted parties.
- (h) The User must comply with applicable third party terms of agreement when using the Application, for example the User's agreement with their internet service provider.
- (i) Apple, and Apple's subsidiaries, are third party beneficiaries of these terms and conditions and Apple may enforce these terms and conditions against you as a third party beneficiary thereof.

20. ADDITIONAL TERMS – GOOGLE INC.

Google Inc. is not responsible for, and will not have any liability whatsoever under, this Agreement.

21. GENERAL

- (a) In this Agreement the words "including", "include" and similar words are not words of limitation.
- (b) Neither party may assign this Agreement or any right or obligation under it without the prior written consent of the other.
- (c) Any provision of this Agreement that is expressed to survive, or by its nature survives, the termination or expiry of this Agreement (including clauses 14 and 15) will survive the expiry or termination of this Agreement and will continue in effect.
- (d) If any clause or part of any clause of this Agreement is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Agreement without affecting the enforceability, validity or legality of the remaining clauses

(or parts of those clauses) which will continue in full force and effect.

- (e) This Agreement is to be governed and construed in accordance with the laws for the time being in force in Victoria, Australia and the parties irrevocably submit to the jurisdiction of the courts and tribunals having jurisdiction in that State.
- (f) This Agreement constitutes the entire agreement between Dementia Australia and the User in relation to the Application.
- (g) Dementia Australia may vary the terms of this Agreement from time to time. The latest version of this Agreement will be available through a link in the settings screen within the Application. By using the Application, you agree to the latest version of this Agreement. If any variation to the terms of this Agreement is materially detrimental to the User, Dementia Australia will notify the User in writing by email and if the User has paid a subscription fee to access additional Content on the Application, Dementia Australia will upon written request from the User provide a pro rata refund of any fees pre-paid by the User for the remainder of the then-current subscription period.