

TERMS AND CONDITIONS OF USE

of

AFES NTE Website

V1 | Last updated 15 September 2020

1. PLEASE READ THESE TERMS AND CONDITIONS OF USE (“THE TERMS”) CAREFULLY BEFORE ACCEPTING OR AGREEING TO THEM. THIS IS A LEGALLY BINDING AGREEMENT.

1.1. YOU MAY ACCEPT OR AGREE TO THE TERMS BY:

1.1.1. CLICKING “ACCEPT” OR “AGREE” TO THESE TERMS WHERE THIS OPTION IS MADE AVAILABLE TO YOU IN THE USER INTERFACE THE AFES NTE WEBSITE (“**THE WEBSITE**”) OR

1.1.2. BY ACTUALLY USING OR ACCESSING EITHER:

1.1.2.3. THE WEBSITE; OR

1.1.2.4. THE WEBSITE’S SERVICES (“**THE SERVICES**”). THE SERVICES INCLUDE BUT ARE NOT LIMITED TO TEXT, GRAPHICS, LOGOS, BUTTON ICONS, VIDEO IMAGES, AUDIO CLIPS, SOFTWARE AND OTHER CONTENT (“**CONTENT**”), PRODUCTS, SOFTWARE, OR WEBSITES ON, OR CONNECTED WITH THE WEBSITE.

1.2. YOU UNDERSTAND AND AGREE THAT YOUR USE OF THE WEBSITE OR THE SERVICES (“**USER ACTIVITY**”) AMOUNTS TO ACCEPTANCE OF, AND AGREEMENT TO THE TERMS FROM THAT TIME ONWARD.

2. ABOUT THE AFES NTE WEBSITE

2.1. Welcome to the AFES NTE Website. The website is owned by Australian Fellowship of Evangelical Students (**ABN 91 509 626 599**) (“**AFES**”). AFES is an Australian, Not-For-Profit organisation. It operates as an interdenominational, Bible-preaching student ministry dependent on God, whose vision is to proclaim Jesus Christ at university to present everyone fully mature in Him.

2.2. The website is operated by AFES in conjunction with Cadence Media (**ABN: 36 615 271 451**) (“**Cadence Media**”) (collectively “**AFES and Cadence Media**”).

- 2.3. Access to, and use of the website, or any of its Services, is provided by AFES and Cadence. Please read these Terms carefully. By using, browsing and/or reading the website, this signifies that you have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must immediately cease using the Website and the Services.
- 2.4. AFES and Cadence Media reserve the right to review and change any of the Terms by updating this page at its sole discretion. When AFES and Cadence Media update the Terms, they will use reasonable endeavours to provide you with notice of updates to the Terms. Any changes to the Terms take immediate effect from the date of their publication. Before you continue, we recommend you keep a copy of the Terms for your records.
- 2.5. In order to access some of the Website's Services, you may first complete the **User Registration Process**. Once you have completed the User Registration Process, you will be a Registered User ("**User**") of the Website. Both Registered Users (Users) and Unregistered Users (**Users**) agree to be bound by the Terms. As a Registered User you will be:
- i. 2.5.1. Generated a **Website Account**, accessible to you via a unique Username and Password; and
 - ii. 2.5.2. Immediately able to access the Website and the Services via your Website Account.

3. GOVERNING JURISDICTION

- 3.1. The Website and the Services offered by AFES and Cadence Media are intended for consumption by residents of Australia. In the event any Dispute is formally litigated, you agree that the exclusive venues for litigating any Dispute shall be the courts of NSW or Australian Federal courts (collectively "**Governing Jurisdiction**").

4. GOVERNING LAW

- 4.1. The Website and the Services offered by AFES and Cadence are intended for consumption by residents of Australia. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to New South Wales ("**NSW**") and Australian Federal law (collectively "**Governing Law**"), without reference to conflict of law principles, notwithstanding mandatory rules.
- 4.2. The validity of this Governing Law Clause is not contested. The Terms shall be binding to the benefit of the parties hereto, and their successors and assigns.

5. YOUR PRIVACY

- 5.1. As part of the User Registration Process, or as part of your continued access to the Website and the Services, you may be required to provide "**Personal Information**" as defined by the *Privacy Act 1988* (Cth): Personal Information includes (but is not limited to) your:
- 5.1.1. Email address;

- 5.1.2. Preferred username; and
 - 5.1.3. Password.
- 5.2. AFES and Cadence Media take your privacy seriously. Any Personal Information provided by you through the Website or the Services is managed in compliance with:
- 5.2.1. NSW and Australian Federal Privacy Law;
 - 5.2.2. **AFES's Privacy Policy**, available on both the Website and AFES's website; and
 - 5.2.3. **Cadence Media's Privacy Policy**.
- 5.3. As a User, you agree that you have sole responsibility for protecting the confidentiality of records made or kept by you of your Personal Information. You agree to immediately notify AFES and Cadence Media of any unauthorised use of your password or email address, or of any breach of security of which you have become aware by emailing office@afes.org.au.

6. USER OBLIGATIONS

- 6.1. As a User, you agree to abide by **User Obligations** set out in the Terms (including but not limited to those set out in this Clause) and the Governing Law. You agree you will only use the Website and the Services for purposes that are permitted by the Terms and the Governing Law.
- 6.2. You accept your User Obligations include refraining from using the Website and the Services for any illegal and/or unauthorised use. This includes, but is not limited to the following:
- 6.3.1. Access and use of the Website is limited, non-transferable and allows for the sole use of the Website by you for the purposes of AFES and Cadence Media providing the Services. Any use of your Personal Information to access the Website or the Services by any other person, or third-parties, is strictly prohibited;
 - 6.3.2. Any automated use of the Website or Services is prohibited, including but not limited to:
 - 6.3.2.1. The collection of information about other Users in an automated fashion ("**Scraping**");
 - 6.3.2.2. The collection of email addresses of Users by electronic or other means for the purpose of sending unsolicited email ("**Spam**");
 - 6.3.2.3. Unauthorised framing, or unauthorised linking with the Website's Services, and the Website's Content, Commercial advertisements, affiliate links, and other forms of solicitation may be removed from the Website without notice; or
 - 6.3.2.4. Create User Accounts by automated means.
 - 6.3.3. Harassment or perceived harassment of another person is prohibited;
 - 6.3.4. Harmful, offensive, and abusive language, including but not limited to: hate speech, expletives, harassment, obscenities, vulgarities, sexually explicit language or images, video, or other objectionable content (e.g. nudity, bestiality, pornography) is prohibited;
 - 6.3.5. The Website and the Services may allow Users to post their own Content ("**User**

Content"). Users must not post **Prohibited User Content**, which includes (but is not limited to) Content that is:

- 6.3.5.1. Inappropriate based on the subject matter and the audience;
- 6.3.5.2. Encrypted or that contains viruses or any other computer programming routines that are intended to damage, interfere with, intercept, or appropriate any system or information;
- 6.3.5.3. Violates intellectual property rights of any person;
- 6.3.5.4. Publishes private or confidential information of any third party without their express consent, including, without limitation, personally identifiable information, addresses, phone numbers, email addresses, Social Security numbers, and credit card numbers;
- 6.3.5.5. In the sole judgment of AFES and Cadence Media violates or may violate the Terms or the Governing Law;
- 6.3.5.6. In the sole judgment of AFES and Cadence Media, may expose AFES and Cadence Media to any harm or liability of any type.
- 6.3.6. Impersonating any person or entity or otherwise misrepresenting your affiliation with a person or entity is prohibited. You agree that you will only publish User Content that you believe to be true and you will not:
 - 6.3.6.1. Purposefully provide false or misleading information;
 - 6.3.6.2. Use the Website or the Services to violate the security of any computer network, crack passwords or security encryption codes; transfer or store illegal material including anything deemed threatening or obscene;
 - 6.3.6.3. Create User Accounts under false or fraudulent pretenses.
- 6.4. You agree that AFES and Cadence Media reserve the right to investigate and take appropriate action (including legal action) at their sole discretion against User who breaches, or is reasonably suspected of breaching their User Obligations.
- 6.5. You agree that breach or reasonable suspicion of breach of User Obligations may result in one or more of the following:
 - 6.5.1. The immediate removal of offensive or unauthorised User Content or User Activity, without notice;
 - 6.5.2. The immediate termination of your Website Account, use of, and access to the Website and the Services, without notice; or
 - 6.5.3. Appropriate legal action being taken by AFES and/or Cadence Media for any illegal or unauthorised use of the Website or the Services.

7. CONSENT TO RECEIVE EMAILS AND NOTIFICATIONS

- 7.1. By using the Website and the Services, you consent to receive emails from AFES and Cadence Media. You consent to AFES and Cadence Media using Personal Information provided by you for the purposes of communicating with you by email.
- 7.2. As long as you maintain an Website Account, you may not "opt out" of receiving account-

related emails. You may “opt out” of receiving marketing or promotional email from AFES or Cadence Media by following “unsubscribe” instructions or using “unsubscribe” links within communications we send.

- 7.3. The parties hereto may give legal notice by means of electronic mail, which shall be considered delivered when sent to a party’s Notice Address. The **Notice Address** of AFES and Cadence Media shall be office@afes.org.au (or such other address as provided by AFES or Cadence Media to you). Your Notice Address shall be the current email address listed by you in your Website Account.

8. THIRD PARTY CONTENT, ADVERTISEMENTS & PROMOTIONS, GOODS & SERVICES

- 8.1. AFES and Cadence Media may:
- 8.1.1. Provide links to webpages and Content of third parties (“**Third Party Content**”) as a Service to those interested in such links and Content;
 - 8.1.2. Post Third-Party Content; or
 - 8.1.3. Allow Users to post their own content (“**User Content**”).
- 8.2. AFES and Cadence Media does not monitor or have any control over any Third-Party Content, third-party websites, User Content, or websites recommended by Users. AFES and Cadence Media do not endorse or adopt any such Content or websites, and can make no guarantee as to their accuracy or completeness. AFES and Cadence Media do not represent or warrant the accuracy of any information contained therein and undertake no responsibility to update or review Third-Party Content, third-party websites, User Content, or websites recommended by Users.
- 8.3. You understand that by using the Services you may be exposed to Content that you may find offensive, indecent or objectionable and you use links, Third-Party Content, third-party websites, User Content, or websites recommended by Users at your own risk.
- 8.4. AFES and Cadence Media are not the publishers or authors of Third-Party Content, third-party websites, User Content, or websites recommended by Users. The Website a passive service for the storage and dissemination of the ideas and opinions that AFES and Cadence Media users and vendors may choose to post. AFES and Cadence Media do not screen works before they are posted, and no prior approval is required for posting.
- 8.5. AFES and Cadence Media may run advertisements and promotions from third parties as part of the Services. Your business dealings or correspondence with, or participation in promotions of, advertisers other than AFES and Cadence Media, and any terms, conditions, warranties or representations associated with such dealings, are solely between you and such third party. AFES and Cadence Media is not responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such third-party advertisers on the Services.

- 8.6. The Services may also provide information regarding or link to certain websites, goods, and/or services provided or offered by third parties (“**Third-Party Goods and Services**”). AFES and Cadence Media is merely an information provider and is not a referral service, and it does not recommend or endorse any such Third-Party Goods and Services or monitor or have any control over such Third-Party Goods and Services. Therefore, AFES and Cadence Media makes no guarantee, representation, or warranty of any kind as to the quality, competency, value, reliability, responsiveness, accuracy, or completeness of any such Third-Party Goods and Services or the results obtained therefrom, and AFES and Cadence Media assumes no responsibility or liability for any Third-Party Goods and Services or for the actions or failure to act of those providing such Third-Party Goods and Services. You assume full responsibility for your use of any such Third-Party Goods and Services. In the event of a dispute between any consumer and vendor, the parties will work out the dispute themselves.

9. INTELLECTUAL PROPERTY

- 9.1. Content on the Website is protected by copyright under the laws of Australia and through international treaties. AFES, Cadence Media and their contributors retain all other intellectual property rights, title and interests arising out of the Website and the Services, including their Content and compilation.
- 9.2. Nothing you do on, or in relation to the Website or the Services will transfer to you:
- 9.2.1. The business names, trading names, domain names, trademarks, industrial designs, patents, registered designs or copyright of AFES, Cadence Media or their contributors; or
 - 9.2.2. The right to use or exploit a business name, trading name, domain name, trade mark or industrial design of AFES, Cadence Media or their contributors; or
 - 9.2.3. The right to replicate a system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a system or process) of AFES, Cadence Media or their contributors.
- 9.3. You may not, without the prior written permission of AFES and/or Cadence Media and any other relevant rights owners, deal with the Website's content (including third-party content) in any way that:
- 9.3.1. Broadcasts, republishes, or uploads content to an unauthorised platform;
 - 9.3.2. Transmits, posts, distributes, shows or plays content in public; or
 - 9.3.3. Adapts or changes content.
- This prohibition does not apply to content that is freely available for reuse, or that is already in the public domain.
- 9.4. You agree that by accepting these Terms, or by posting User Content, you:
- 9.4.1. Grant AFES and its affiliates the perpetual, irrevocable, worldwide, royalty-free, freely transferable, non-exclusive right to create derivative works of, use, reproduce, modify, transmit, publish, publicly display and distribute, and advertise on and around, and search for purposes of providing relevant advertisements, and creating

- derivative work; and
- 9.4.2. You waive any moral or intellectual property rights you may have in posted User Content under the laws of any relevant jurisdiction.
- 9.5. You agree that by accepting these Terms, or by posting User Content, you represent and warrant that:
- 9.5.1. You own and control all of the rights to the User Content that you post, or otherwise have the right to post such User Content and to grant the rights set out in this clause of the Terms;
- 9.5.2. The User Content is accurate and not misleading; and
- 9.5.3. The substance of the User Content posted by you does not violate the Terms, or the laws of any relevant jurisdiction.

10. GENERAL DISCLAIMER

- 10.1. Nothing in these Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by **NSW and Federal Australian Consumer Law** (or any liability under them) which by law, may not be limited or excluded. Subject to this clause, and to the extent permitted by law:
- 10.1.1. All terms, guarantees, warranties, representations or conditions which are not expressly stated in these Terms are excluded; and
- 10.1.2. AFES and Cadence Media will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Website, the Services or the Terms (including as a result of not being able to use the Website or the Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.
- 10.2. You acknowledge that your use of the Website and the Services is at your own risk, and that while AFES and Cadence Media will make every effort to ensure Services are accurately depicted on the Website, Services may differ from what is depicted.
- 10.3. You agree that the Website and the Services are provided to you on an “as is” and “as available” basis, and that AFES and Cadence Media do not make any terms, guarantees, warranties, representations or conditions whatsoever – whether express or implied - regarding the Website and the Services, other than those provided for by these Terms, NSW Consumer Law, and Federal Australian Consumer Law. In particular, you agree that AFES and Cadence Media make no guarantees, warranties, representations or conditions in relation to the following, and are not responsible for any loss or damage you might suffer as a result:
- 10.3.1. Failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third-party conduct, or theft, destruction, alteration or unauthorised access to records;

- 10.3.2. The accuracy, suitability or currency of any information on the Website and the Services, including third party-material and advertisements on the Website;
- 10.3.3. Costs incurred as a result of your use of the Website or the Services;
- 10.3.4. The content or operation of any links provided for the User's convenience (including links provided by Users or Third-Party Contributors);
- 10.3.5. Any failure to complete a transaction, or any loss arising from e-commerce transacted on the Website or the Services; or
- 10.3.6. Any defamatory, threatening, offensive or unlawful conduct of third-parties, or publication of any materials relating to, or constituting such conduct.

11. LIMITATION OF LIABILITY

- 11.1. AFES and Cadence Media's total liability arising out of or in connection with the Website and the Services, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the most recent Purchase Price paid by you, or where you have not paid a Purchase Price, then the total liability of AFES and Cadence Media is resupply of Services.
- 11.2. You expressly understand and agree that AFES and Cadence Media, their affiliates, employees, agents, contributors, third party content providers and licensors shall not be liable to you for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you, however caused and under any theory of liability. This shall include, but is not limited to, any loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.
- 11.3. AFES and Cadence Media are not responsible or liable in any manner for any site content (including Third- Party Content) posted on the Website or in connection with Services, whether posted or caused by users of the Website, by third parties, or by any of the Products, Services or Content offered by AFES and Cadence Media.

12. INDEMNITY

- 12.1. You agree to indemnify AFES and Cadence Media, its affiliates, employees, agents, contributors, third party content providers and licensors from and against:
 - 12.1.1. All actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with any Content you post through the Website;
 - 12.1.2. Any direct or indirect consequences of you accessing, using or transacting on the Website or attempts to do so and any breach by you or your agents of these Terms; and/or
 - 12.1.3. Any breach of the Terms.

13. TERMINATION

- 13.1. The Terms will continue to apply until terminated by either you, or by AFES and/or Cadence Media as set out by this clause.
- 13.2. If you want to terminate the Terms, you may do so by notifying AFES and Cadence Media by:
- 13.2.1. Closing your accounts for the Website or Services online via the Website;
 - 13.2.2. Emailing a written notice of termination to office@afes.org.au or
 - 13.2.3. Mailing a written notice of termination to AFES, PO Box 684, Kingsford NSW 2032.
- 13.3. Subject to local applicable laws, AFES and Cadence Media reserve the right to discontinue or cancel your Website Account, and or may suspend or deny, in its sole discretion, your access to all or any portion of the Website or the Services if:
- 13.3.1. The manner of your use, or conduct breaches any provision of the Terms, breaches any applicable law, impacts upon AFES and Cadence Media's name or reputation, or violates the rights of any other person or organisation;
 - 13.3.2. A party upon whom AFES or Cadence Media relies to provide the Website or the Services has terminated its relationship with AFES or Cadence Media, or ceased to offer the Services made available to you on, or in connection with the Website;
 - 13.3.3. AFES and Cadence Media is transitioning to no longer providing the Website or the Services to Users in the country in which you are resident, or from which you use the service; or
 - 13.3.4. The provision of the Website or the Services to you by AFES and Cadence Media are, in the opinion of AFES and Cadence Media, no longer commercially viable.
- 13.4. When the Terms are terminated, all of the legal rights, obligations and liabilities that you and AFES and Cadence Media have benefited from, been subject to (or which have accrued over time whilst the Terms have been in force) or which are expressed to continue indefinitely, shall be unaffected, and the provisions of the Terms shall continue to apply to such rights, obligations and liabilities indefinitely.

14. DISPUTE RESOLUTION

- 14.1. If a dispute arises out of, or relates to the Terms ("**a Dispute**"), and arises between:
- 14.1.1. AFES and/or Cadence Media; and
 - 14.1.2. User(s) and/or parties to these Terms ("**collectively 'the Parties'**"); neither Party may commence any Tribunal or Court proceedings in relation to the Dispute unless the following sub-clauses have been complied with (except where urgent interlocutory relief is sought).
- 14.2. A Party claiming a Dispute has arisen ("**the Complainant Party**") must provide the other Party ("**the Respondent Party**") with a **Written Notice**, detailing all of the following:
- 14.2.1. The nature of the Dispute;
 - 14.2.2. The desired outcome; and

- 14.2.3. The action proposed with a view to settling the Dispute.
- 14.3. Within 60 days of the Respondent Party receiving the Written Notice (“**the Negotiation Period**”), the Parties must each endeavor in good faith to resolve the Dispute expeditiously by Negotiation, or by other means upon which the Parties mutually agree. All communications made by the Parties in the course of Negotiation are confidential and to the extent possible, must be treated as “without prejudice” for the purpose of applicable laws of evidence.
- 14.4. If for any reason the Dispute remains unresolved when the Negotiation Period expires, the Parties agree to participate in a **Mediation** and:
- 14.4.1. Appoint a **Mediator** by agreement within 14 days; and failing agreement within 14 days, jointly request that an appropriate Mediator be appointed by the Director of the **Australian Mediation Register** or their nominee; and
- 14.4.2. Endeavor in good faith to resolve the Dispute expeditiously via Mediation;
- 14.4.3. That Parties are equally liable for the reasonable costs and fees of the Mediator, and the Mediation’s venue;
- 14.4.4. That Parties are otherwise each responsible for, must each pay their own costs associated with participating in Mediation;
- 14.4.5. That any Mediation in person will be conducted in Sydney, NSW, Australia;
- 14.4.6. That all communications made by the Parties in the course of Mediation are confidential and to the extent possible, must be treated as “without prejudice” for the purpose of applicable laws of evidence.

15. INDEPENDENT LEGAL ADVICE

- 15.1. You confirm and declare that:
- 15.1.1. The provisions of the Terms are fair and reasonable;
- 15.1.2. The Terms are not against public policy on the grounds of inequality, bargaining power, or on general grounds of restraint of trade; and
- 15.1.3. You have had reasonable opportunity to obtain independent legal advice.

16. SEVERANCE

- 16.1. If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of the Terms shall remain in force.