

Terms and Conditions

Preamble

Avallain (Owner) offers a Software as a Service (SaaS) that enables organisations and institutions (Customers) which operate a business as educators/trainers to third parties with a suite of digital education features. End users (learners, teachers) are using the **Avallain Magnet** learning platform, which can be branded according to the Customers' needs, to learn and teach with digital means and with digital teaching materials that are at least partially created with the included **Avallain Author** content authoring tool.

These Terms and Conditions apply to the Owner's applications **Avallain Magnet** and **Avallain Author** (Applications) in individual and combined use.

Avallain does not offer content or teaching/tutoring services. Avallain merely provides the infrastructure and tools for its Customers to act as virtual education providers and content creators. Avallain charges fees to its Customers for this infrastructure and the tools. Avallain does not charge the end users (learners/teachers) themselves. Avallain only provides support to its Customers.

These Terms govern

- the use of one or both of these Applications, and,
- any other related Agreement or legal relationship with the Owner in a legally binding way.

Capitalised words are defined in the relevant dedicated section of this document.

The Customer must read this document carefully.

The Owner can offer its Applications through the Apple App Store or Google Play Store or Microsoft Store. Although the entire contractual relationship relating to these Products is entered into solely by the Owner and Customers, Customers acknowledge and agree that Apple or Google or Microsoft may enforce these Terms as a third-party beneficiary.

This Application is provided by:

Avallain AG, Gstalden, Lustmühle 9062 AR, Switzerland

Owner contact email: info@avallain.com

Reference to the Application(s) also includes

- this website, including its subdomains and any other website through which the Owner makes its Service available;
 - applications for mobile, tablet and other smart device systems;
 - the Application Program Interfaces (API);
 - the service of providing the Applications for download (when applicable) and use in accordance with the Terms and Conditions (the Service);
 - any applications, sample and content files, source code, engines, scripts, instruction sets or software included as part of the Service, as well as any related documentation.
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TERMS OF USE

Unless otherwise specified, the terms of use detailed in this section apply generally when using this Application.

Single or additional conditions of use or access may apply in specific scenarios and in such cases are additionally indicated within this document.

By using this Application, Customers confirm to meet the following requirements:

- Customers are not end customers (as defined in the relevant laws) who use the Applications for private purposes;
- Customers are not subject to export controls, embargoes or other trade restrictions bindingly issued by the UN, the US, the EU or Switzerland be it because of their business location, government affiliation or their staff when entering into this Agreement or during the term of this Agreement.
- Customers will not knowingly allow other organisations or institutions the use of the Applications which are subject to the aforementioned trade restrictions.

Account registration

To use the Applications the Customer must register or create a Customer account, providing all required data or information in a complete and truthful manner. Failure to do so will cause unavailability of the Service.

Customers are responsible for keeping their login credentials confidential and safe. For this reason, Customers are also required to choose passwords that meet the highest standards of strength permitted by this Application.

By registering, Customers agree to be fully responsible for all activities that occur under their username and password and under their Application instance.

Customers are required to immediately and unambiguously inform the Owner via the contact details indicated in this document, if they think their personal information, including but not limited to end user accounts, access credentials or personal data, have been violated, unduly disclosed or stolen.

Conditions for account registration

Registration of Customer accounts on this Application is subject to the conditions outlined below.

By registering, Customers agree to meet such conditions.

- Accounts registered by bots or any other automated methods are not permitted.
- Unless otherwise specified, each Customer must register only one account.
- Unless explicitly permitted, a Customer account may not be shared with other Customers.

Account termination

Customers can terminate their account and stop using the Service at any time by doing the following:

- By directly contacting the Owner at the contact details provided in this document.

However, termination of the account will not be possible until the subscription period paid for by the Customer has expired.

Account suspension and deletion

The Owner reserves the right, at its sole discretion, to suspend or delete at any time and with 1 (one) workable week notice, Customer accounts, Customer Content and all materials created within the Application by the Customer which it deems inappropriate, offensive or in violation of these

Terms. The same applies if the Customer stops or delays its payments or the Owner has reason to believe that the Customer will not be able to make payments.

The suspension or deletion of Customer accounts does not entitle Customers to any claims for compensation, damages or reimbursement.

The suspension or deletion of accounts due to causes attributable to the Customer does not exempt the Customer from paying any applicable fees or prices.

Content on this Application

This Application allows the Customer to upload its own content and thus publish it in the circles the Customer chooses (e.g. within the Customer's learning organisation).

The Owner does not claim any ownership rights to any text, images, files, photos, videos, music, copyrights or other materials the Users posts on the Application (Customer Content). After posting Customer Content, the Customer retains all ownership rights, and continues to have the right to use the content. By publishing the Customer Content on or through the Application, the Customer grants the Owner a non-exclusive, sub-licensable, transferable, royalty-free, worldwide licence to use, modify, publicly display and perform, copy and distribute the Customer Content on or through the Application on behalf and for the purpose of the Customer solely for the operation and maintenance of this Application as contractually required until the Customer removes the Customer Content from the Application.

The Customer represents and warrants that: (i) it owns the Customer Content posted on the Application or has the right to grant the licence set forth above; and (ii) the posting of the Customer

Content on the Application does not violate any privacy rights, publicity rights, copyrights, trademarks, contract rights or other rights of any person or entity.

The Owner makes no warranties, express or implied, about Customer Content or its accuracy or reliability, or about any material or information the Customer transmits to end users. The Customer is prohibited from posting or transmitting any illegal, threatening, libellous, defamatory, obscene, scandalous, inflammatory, or pornographic material or any material that could constitute or encourage criminal conduct and give rise to any civil liability or violation of law.

The Owner reserves the right to remove any information or data posted or transmitted by anyone in violation of these T&C. The Owner will fully cooperate with any law enforcement authorities or court order requesting or directing us to disclose the identity of anyone posting any such information or materials.

The Customer ensures that these rules are complied with by the end users it invites to the Application and informs the end users accordingly. It is the responsibility of the Customer to monitor content posted on the Application by its invited end users. The Owner and the Customer agree that based on complaints or by otherwise becoming aware of violations by the Customer or end users of the Customer, the Owner is entitled but not obliged to remove and/report content that violates these rules. Measures include the Owner's right to remove, delete, block or rectify such content at its own discretion and to, without prior notice, deny the uploading Customer access to this Application.

Such measures may be promoted by a security alert. In such case, the Owner is entitled to investigate such alert without prior notification or approval and to undertake the necessary steps to secure the Application. This may be done by targeted access to a Customer's account and/or by non-targeted measures. To the extent a notification is reasonable and/or practicable and/or required

to change Customer or end user behaviour, the targeted Customer will be notified within a reasonable time.

Such measures may also be prompted by a Customer's or its end users' violation of the Owner's T&C and/or the law but does not necessarily constitute a security issue that requires immediate action and resolution based on a security alert. In such a case, either the Customer directly, or its end user need to be notified, depending on the nature of the required further investigations and measures. In general, the Customer shall be made aware of the issue directly and be involved in resolving the issue and how to avoid it in the future. Should, however, a more in-depth investigation without the involvement of the Customer be warranted, for example, to secure evidence of a suspected wrongdoing that potentially violates the Owner's policies and/or laws, the Owner shall decide on at its sole discretion on such measures. The Customer shall be notified of this investigation within a reasonable time when and if such notification does not compromise the investigation efforts. While conducting such measures, the Owner will safeguard the Customer's interests and its end users' privacy. Such measures shall be documented for transparency and legal reasons.

The removal, deletion, blocking or rectification of content shall not entitle the Customer that has provided such content or that is liable for it, to any claims for compensation, damages or reimbursement.

Rights regarding content on this Application other than Customer Content

This Application and the information, text, images, photographs, audio and video clips, designs, graphics, logos, icons, names, product and company names contained therein, as well as all software subsiding in this Application and all other files, and their selection and arrangement

(Application Content), are protected by intellectual property rights, in particular copyright, trademark and design rights (Intellectual Property Rights). These Intellectual Property Rights belong to the Owner or its licensors, except in the case of Customer Content. The Application Content may not be modified, copied, distributed, framed, reproduced, published, downloaded, displayed, posted, transmitted or sold in any form or by any means, in whole or in part, without the Owner's prior written permission; in the case of Customer Content, with the consent of the respective Customer. Furthermore, it is prohibited to copy digital Application Content of any kind into other programs without the Owner's prior written permission.

Provided the Customer meets the requirements for use of the Application, the Customer is granted a licence, limited in time and scope as confirmed, to access and make appropriate use of the Application and the Application Content displayed thereon, and to download or print a copy of the Application Content, within the scope of the payable Application Content and the purposes and capabilities permitted therein. This licence is subject to the terms of use and does not include any use of data mining, robots, or similar data gathering and extraction tools. Except for Customer Content, the Customer may not upload or republish any Application Content from this Application on any Internet, intranet or extranet site or incorporate it into any other database or compilation.

Liability for provided content

The Customer is solely and fully liable for any content the Customer or its end users upload, post, share, or provide through this Application.

The Customer agrees to hold the Owner, its affiliated companies, and its respective agents, officers, directors, shareholders, partners, employees and licensees, and each of their successors and permitted assigns (collectively, the "Indemnified Parties") harmless and defend them ("defend" only at the Indemnified Parties' option) from and against any and all claims and demands (collectively, "Claims"), brought by a third party based upon or arising in any manner, directly or indirectly, out of

or in connection with Customer's or its end users' violation of these T&C, in particular in respect of Customer Content and content posted by its invited end users. The Customer shall pay all damages and reimburse the Indemnified Parties for the incurred costs, including without limitation, reasonable legal fees arising out of and in connection with any such Claims. The Indemnified Parties must notify the Customer promptly in writing of any claim for indemnification hereunder, and provide, at the Customer's expense (to the extent of out-of-pocket expenses only), all reasonably necessary assistance, information and authority to allow the User to control the defence and settlement of such Claim should the Indemnified Parties have chosen this option. Notwithstanding the foregoing, the Customer shall not enter into any settlement of the defence of such action, other than with respect to the payment of monies, without the Indemnified Parties' prior written consent.

Access to external resources

Through this Application, Customers may have access to external resources provided by third parties. Customers acknowledge and accept that the Owner has no control over such resources and therefore disclaims any liability, especially when it comes to content, functionality, security, data processing and legal compliance.

Conditions applicable to any resources provided by third parties, including those applicable to any possible grant of rights in content, result from each such third parties' terms and conditions or, in the absence of those, applicable statutory law.

The Owner is not responsible for any matters resulting from such interaction with third parties, such as anything resulting from visiting third-party websites or using third-party content.

Acceptable use

This Application and the Service may only be used within the scope of what they are provided for, under these T&C and applicable law.

Customers are solely responsible for making sure that their use of this Application and/or the Service violates no applicable law, regulations or third-party rights.

Therefore, the Owner reserves the right to take any appropriate measure to protect its legitimate interests including denying Customers access to this Application or the Service, terminating contracts, reporting any misconduct performed through this Application or the Service to the competent authorities – such as judicial or administrative authorities — whenever Customers are suspected to be in violation of any laws, regulations, third-party rights and/or these T&C.

Excessive use of the Service

- using a resource of this Application excessively in relation to other Customers or in relation to limits determined by the Owner of this Application – in such cases, the Owner, at its sole discretion, additionally reserves the right to suspend the Customer's account or limit the related activity until the Customer reduces the excessive consumption;

Excessive use of the APIs

- sending abusive or excessively frequent requests to the Service via the API. The Owner will determine what constitutes abuse or excessive usage of the API and additionally reserves the right to temporarily or permanently suspend access to the API by the Customer. In such cases, the Owner will make a reasonable attempt to alert the Customer prior to suspension;

Customer protection

- misappropriating any account in use by another Customer;
- harvesting or collecting any personally identifying information of other Customers including but not limited to their email addresses or contact information, by circumventing the privacy setting of other Customers' accounts on this Application or by any other means;
- using any information relating to other Customers, including personal or contact data, for purposes other than those this Application is intended for;

Software licence

Any intellectual or industrial property rights, and any other exclusive rights on software or technical applications embedded in or related to this Application are held by the Owner and/or its licensors.

Subject to Customers' compliance with and notwithstanding any divergent provision of these T&C, the Owner merely grants Customers a revocable, non-exclusive, non-sub-licensable and non-transferable licence to use the software and/or any other technical means embedded in the Service within the scope and for the purposes of this Application and the Service offered.

This licence does not grant Customers any rights to access, usage or disclosure of the original source code. All techniques, algorithms, and procedures contained in the software and any documentation thereto related is the Owner's or its licensors' sole property.

All rights and licence grants to Users shall immediately terminate upon any termination or expiration of the Agreement.

Without prejudice to the above, under this licence Customers may download, install, use and/or run the software on the permitted number of devices, provided that such devices are common and up-to-date in terms of technology and market standards.

It may not be permitted to run the software on more than one device at a time.

The Owner reserves the right to release updates, fixes and further developments of this Application and/or its related software and to provide them to Customers for free. Customers may need to download and install such updates to continue using this Application and/or its related software.

New releases may only be available against payment of a fee.

Exclusion of liability

The Owner makes no warranty of any kind with respect to content, functionality, security, data processing and legal compliance of the Application.

The Owner also assumes no responsibility, and shall not be liable for, any damages to, or viruses that may infect, the Customer's or its end users' computer equipment or other property on account of access to, use of the Application. The Owner also assumes no responsibility for any material, data, text, images, video or audio recordings presented or downloaded from the Application.

The Owner reserves the right to interrupt or discontinue providing any functionality of this Application at any time. The Owner assumes no responsibility or liability for any interruption or discontinuance of any or all functionality of this Application, whether or not due to any action or inaction by us or any third party.

The Application Content may contain technical inaccuracies or typographical errors. The Owner reserves the right to make changes and/or improvements to the Application Content at any time

without prior notice. While the Owner endeavours to ensure that the Application is available 24 hours a day, no liability will be accepted at any time if for any reason the Application is unavailable for any period of time. Access to the Application may be suspended temporarily and without notice due to system failure, maintenance or repair or for reasons beyond the Owner's control.

API usage terms

Customers may access their data relating to this Application via the Application Program Interface (API). Any use of the API, including use of the API through a third-party product/service that accesses this Application, is bound by these T&C and, in addition, by the following specific terms:

- the Customer expressly understands and agrees that the Owner bears no responsibility and shall not be held liable for any damages or losses resulting from the Customer's use of the API or their use of any third-party products/services that access data through the API.

TERMS AND CONDITIONS OF SALE

Paid Products

All or parts of the Service to use the Applications are provided on the basis of payment.

The fees, duration and conditions applicable to the purchase are described in the dedicated sections of the Application and/or the Owner's Website www.avallain.com and/or the individual contract between Owner and Customer.

Service description

Prices, descriptions, or availability are subject to change without notice unless specified otherwise in an separate agreement between the Owner and Customer.

While the Applications are presented with the greatest accuracy technically possible, their representation through any means (including, as the case may be, graphic material, images, colours, sounds) is for reference only and implies no warranty as to the characteristics of the purchased Applications.

The characteristics of the chosen Application will be outlined during the purchasing process.

Purchasing process

Any steps taken from choosing a Service to order submission form part of the purchasing process.

The purchasing process includes these steps:

- Customers must choose the desired Service and verify their purchase selection.

- After having reviewed the information displayed in the purchase selection, Customers may place the order by submitting it.
- Alternatively, the process involves the Owner Sales department and direct written communication.

Order submission

When and if the Customer submits an order, the following applies:

- The submission of an order determines contract conclusion, acceptance of these Terms and Conditions, and therefore creates for the Customer the obligation to pay the price, taxes and possible further fees and expenses, as specified on the order page.
- In case the purchased Service requires active input from the Customer, such as the provision of personal information or data, specifications or special wishes, the order submission creates an obligation for the Customer to cooperate accordingly.
- Upon submission of the order, Customers will receive a receipt confirming that the order has been received.

All notifications related to the described purchasing process shall be sent to the email address provided by the Customers for such purposes.

Prices

Users are informed during the purchasing process and before order submission, about any fees, taxes and costs (including, if any, delivery costs) that they will be charged.

Prices on this Application are displayed:

- excluding all applicable fees, taxes and costs;

Methods of payment

Information related to accepted payment methods is made available during the purchasing process.

Some payment methods may only be available subject to additional conditions or fees as communicated in the respective order form or contract as and if applicable.

Payment methods marked accordingly are managed directly by the Owner; such are offered to the Customer by the Owner as per respective communication. In this case, the Owner collects and stores the data necessary for the processing of payments and for fulfilling any legal obligation related to them. The Customer may read the privacy notice of this Application to learn more about the data processing and Customers' rights regarding their data.

Other payment methods – if any – are independently provided by third-party services. In such cases this Application collects no payment information – such as credit card details – but only receives a notification from the relevant third-party provider once the payment has been successfully completed. For more information about what data such providers process, please refer to their respective privacy notices.

If payment through the available methods fail, the Owner shall be under no obligation to fulfil the purchase order. Any possible costs or fees resulting from the failed or refused payment shall be borne by the Customer.

Authorization for future payment

If Customers authorise the payment gateway which allows future purchases, this Application will store an identification code linked to the Customers' account. This will authorise this Application to automatically process payments for future purchases or recurring instalments of past purchases.

This authorization can be revoked at any time, either by contacting the Owner or by changing the user settings offered by the respective payment gateway.

Retention of usage rights

Customers do not acquire any rights to use the purchased Service until the total purchase price is received by the Owner.

Delivery

Performance of services

The purchased Service shall be performed or made available within the timeframe specified on this Application or as communicated before the order submission.

Contract duration

Trial period

Customers may have the option to test this Application or selected Services during a limited and non-renewable trial period, at no cost. Some features or functions of this Application may not be available to Customers during the trial period.

Further conditions applicable to the trial period, including its duration, will be specified on the Application.

Subscriptions

Subscriptions allow Customers to receive a Service continuously or regularly over a determined period of time.

Paid subscriptions begin on the day the payment is received by the Owner.

In order to maintain subscriptions, Customers must pay the required recurring fee in a timely manner. Failure to do so may cause service interruptions.

Termination of open-ended subscriptions

Open-ended subscriptions may be terminated at any time by sending a clear and unambiguous termination notice, in writing to the Owner using the contact details provided in this document or by using an explicit termination feature in the Application, if available. Terminations shall take effect 30 days after the notice of termination has been received by the Owner.

Pre-payment such as in yearly subscriptions will not be refunded.

Terms and conditions applying to extra features

Customers that have an active subscription may add single extra add-ons or features which may be subject to additional terms.

Unless otherwise specified, such extras are subject to the same terms applicable to the main Service, including all provisions of this document.

Common provisions

No Waiver

The Owner's failure to assert any right or provision under these T&C shall not constitute a waiver of any such right or provision. No waiver shall be considered a further or continuing waiver of such term or any other term.

Privacy notice

To learn more about the use of their Personal Data, Users may refer to the [Privacy Notice](#) of this Application.

Changes to these T&C

The Owner reserves the right to amend or otherwise modify these T&C at any time. In such cases, the Owner will appropriately inform the Customers of these changes.

Such changes will only affect the relationship with the Customers for the future.

The continued use of the Service will signify the Customers acceptance of the revised T&C. If Customers do not wish to be bound by the changes, they must stop using the Service. Failure to accept the revised T&C, may entitle either party to terminate the Agreement. As a consequence of this termination, the parties are not entitled to any compensation of any kind.

The applicable previous version will govern the relationship prior to the Customers' acceptance. The Customers can obtain any previous version from the Owner.

Assignment of contract

The Owner reserves the right to transfer, assign, dispose of by novation, or subcontract any or all rights or obligations under these T&C, taking the Customers' legitimate interests into account. Provisions regarding changes of these T&C will apply accordingly.

Customers may not assign or transfer their rights or obligations under these T&C in any way, without the written permission of the Owner.

Contacts

All communications relating to the use of this Application must be sent using the contact information stated in this document unless agreed otherwise with the Customer.

Severability

Should any provision of these T&C be deemed or become invalid or unenforceable under applicable law, the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions, which shall remain in full force and effect.

Authoritative version of these T&C

These T&C are drawn up and revised in English. Other language versions of these T&C are provided for information purposes only. In the event of any inconsistency between different linguistic versions, the original version shall always prevail.

Governing law

These T&C are governed and interpreted in accordance with the laws of Switzerland, without giving effect to its rules of conflict of laws and regardless of the place of its physical execution or performance. The application of the UN Convention on Contracts of the International Sale of Goods (CISG) is excluded.

Venue of jurisdiction

As far as legally permitted, disputes arising out of the conclusion, execution or cancellation of Agreements based on these T&C shall be exclusively decided by the ordinary competent courts of St. Gallen, Switzerland, without restricting any right of appeal. Notwithstanding the above,

each of the parties shall, however be authorized to seek interim orders and injunctive measures before any competent authority worldwide.