

EDUCATION PERFECT LIMITED STANDARD TERMS AND CONDITIONS

1. Application

1.1 **Terms.** Unless otherwise expressly agreed in writing by Education Perfect Limited (NZCN 6584033) (**Education Perfect**), the terms and conditions set out in this document (**Terms**) apply to all subscriptions by a customer (**Customer**) to use Education Perfect's online learning platform, software and related components, products and services including all competitions operated by Education Perfect (**Online Learning Tool**). By accessing and using the Online Learning Tool, or providing it to other persons, including teachers, students and parents (**Users**), to use in accordance with these Terms, the Customer agrees to comply with these Terms and to ensure that each User complies with these Terms (to the extent applicable) and any additional terms set out in the subscription form agreed with the Customer (**Subscription Form**). These Terms and the Subscription Form are legally binding on the Customer.

1.2 **Amendment.** These Terms may be amended from time to time by Education Perfect by updating the version of these Terms uploaded to the Education Perfect website (www.educationperfect.com).

1.3 **Inconsistency.** If there is any inconsistency between these Terms and any other agreement between the Customer and Education Perfect, these Terms will prevail unless expressly agreed otherwise in writing between the Customer and Education Perfect.

2. Subscription

The Customer may agree to subscribe to the Online Learning Tool by completing and submitting a Subscription Form, in the prescribed form and on the terms approved by Education Perfect. Each validly completed and executed Subscription Form sent by a Customer to Education Perfect will constitute an offer which will be capable of acceptance by Education Perfect upon written confirmation to the Customer or upon Education Perfect providing the Customer with access to the Online Learning Tool. Education Perfect may make available an online portal for Customers to submit an online Subscription Form which will also be subject to these Terms and where applicable, the Data Processing Addendum. Education Perfect may in its sole discretion accept or decline a Subscription Form in whole or in part.

3. Term

3.1 **Subscription Period.** Unless otherwise agreed in writing by Education Perfect, the subscription period will be the period set out in the Subscription Form (**Subscription Period**), typically on an annual basis. If no Subscription Period is stated in a Subscription Form, a Customer will be provided with 12 months' access to the Online Learning Tool on the terms set out in the Subscription Form, or such other period agreed in writing with Education Perfect.

3.2 **Commencement of Subscription.** For Customers who are based in the southern hemisphere, each Subscription Period will commence on and from 1 January of the calendar year to which your subscription to the Online Learning Tool relates (as set out in your Subscription Form) and end on 31 December in the same calendar year, or in such later year in which your stated Subscription Period ends. For Customers who are based in the northern hemisphere, each Subscription Period will commence on and from 1 July of the calendar year to which your

subscription to the Online Learning Tool relates (as set out in your Subscription Form) and end on 30 June in the following year, or in such later calendar year in which your stated Subscription Period ends. Education Perfect may, in its sole discretion, determine to extend the length of the Subscription Period if requested by a Customer.

3.3 **Renewal.** The Customer agrees that its subscription to the Online Learning Tool will automatically renew upon expiry of the Subscription Period. These Terms will continue to apply to a renewed period for a period equivalent to the Subscription Period after the expiry of the current Subscription Period, provided that the Customer pays Education Perfect the agreed fees in the Subscription Form for the additional term. The Subscription Period will not be automatically renewed if either party gives at least 30 days' written notice to the other party prior to the expiry of the current Subscription Period.

4. Price and Payment

4.1 **Price.** The price payable for a Customer's subscription to the Online Learning Tool (**Price**) will be (i) the price set out in the Subscription Form or otherwise agreed in writing between Education Perfect and the Customer; or (ii) in the absence of agreement, Education Perfect's standard prices applicable at the time the relevant Subscription Form is accepted by Education Perfect.

4.2 **Payment.** The Price will be payable by the Customer: (i) on or before the date(s) agreed in writing between Education Perfect and the Customer, in the manner specified by Education Perfect; or (ii) in the absence of agreement, 30 days from the date of invoice (**Due Date**). Unless expressly stated in writing, all amounts payable to Education Perfect will be exclusive of goods and services tax (**GST**).

4.3 **Failure to Pay.** If the Customer fails to pay any amount due to Education Perfect on or before the Due Date, Education Perfect will be entitled to charge interest on any amount overdue for payment by the Customer until payment of that amount is received in full, together with any costs (legal or otherwise) incurred by Education Perfect relating to the payment of the overdue amount. Education Perfect may in its discretion charge interest on any overdue amount at the rate of 2% per calendar month compounded monthly. This provision shall not constitute a waiver of any default and the default interest is not an extension of credit to the Customer.

4.4 **No Refund.** The Customer will not be entitled to a refund or reduction of the Price if the Customer chooses to cancel its subscription of the Online Learning Tool before the end of the Subscription Period.

5. Permitted Access and Use

5.1 **Licence.** Upon receipt of payment of the Price by the Customer, Education Perfect will grant to the Customer a limited, non-exclusive, non-transferable licence to access the Online Learning Tool for the Subscription Period in accordance with these Terms. The Customer may procure access to the Online Learning Tool is made available to such number of Users specified in the Subscription Form, but to no other persons without the prior written consent of Education Perfect. The Customer shall provide all necessary details of Users to Education Perfect for the purpose of enabling access to the Online Learning Tool and will promptly notify Education Perfect when any User account should be disabled (e.g. because a student leaves the school or is otherwise no longer permitted to access the Online Learning Tool).

5.2 Intellectual Property.

- (a) The Customer acknowledges that, as between Education Perfect and Customer, Education Perfect owns all of the intellectual property rights (whether registered or unregistered) relating to the Online Learning Tool (**Intellectual Property**) and all rights and title to any development or improvement in the Online Learning Tool or the Intellectual Property (**Developed IP**). The Customer acknowledges that it will not at any time acquire any right, title or interest in any kind in the Intellectual Property or the Developed IP relating to the Online Learning Tool.
- (b) Where the Customer generates or uploads new content on the Online Learning Tool ("**Customer Generated Content**"), the Customer retains the ownership in the intellectual property that is generated. By posting or otherwise providing Customer Generated Content to or through the Online Learning Tool, the Customer grants Education Perfect a non-exclusive, royalty-free, transferable, irrevocable, perpetual (or if not permitted under applicable laws, for the term of your use of our Services plus twenty (20) years) worldwide license and right to use, display and otherwise make available such Customer Generated Content on the Online Learning Tool for the purpose of providing the Online Learning Tool. Where the Customer has also chosen to share such Customer Generated Content with other users of the Online Learning Tool, the Customer grants Education Perfect, and any other such users with whom Customer Generated Content is shared, a non-exclusive, royalty-free, transferable, irrevocable, perpetual (or if not permitted under applicable laws, for the term of your use of our Services plus twenty (20) years) worldwide license and right to use, display, publicly perform, reproduce, distribute, publish, modify, adapt, translate, create derivative works of, make available and sublicense and otherwise use and exploit such Customer Generated Content. The Customer represents and warrants that it owns and controls all of the rights to the Customer Generated Content, and has the lawful right to post the Customer Generated Content on the Online Learning Tool and otherwise provide Education Perfect with the Customer Generated Content.

5.3 **Use of Results.** The Customer agrees that Education Perfect may use the results of User tests, exams and other assessments conducted via the Online Learning Tool for research and development and other reasonable commercial purposes, on a fully anonymized and de-identified basis such that the materials no longer contain personal data. Education Perfect will comply with applicable privacy laws and the [Privacy Notice](#) in connection with the use of personal information relating to a User which has been collected from the Online Learning Tool.

5.4 **Modification of Content.** The Customer acknowledges that any modification of content in the Online Learning Tool made by the Customer or any User is the responsibility of the Customer and made at its own risk. The Customer agrees to indemnify Education Perfect in full upon demand for any loss or damage incurred by Education Perfect (or its affiliates) as a result of any claim or action commenced in relation to the use of third party information or breach of third party intellectual property rights relating to the use or modification of the Online Learning Tool.

5.5 **Suspension of Access.** If Education Perfect believes in its sole opinion that the Online Learning Tool is at risk or subject to damage for any reason, including (without limitation) due to the manner of its use by a Customer or any external event impacting

the security of the Online Learning Tool, Education Perfect may immediately suspend or terminate access to the Online Learning Tool in respect of any or all Customers and Users for such period of time deemed necessary to protect the Online Learning Tool from damage.

6. Undertakings and Acknowledgments

6.1 **Ownership and Risk.** The Customer acknowledges that Education Perfect (and its related companies, as applicable) is the exclusive owner of the Online Learning Tool and the Online Learning Tool (including its content, but except any User Generated Content) remains the property of Education Perfect at all times, subject to any validly existing third party rights at law. The Customer must not sell, dispose, grant any third party right or licence or part with possession or do anything else inconsistent with Education Perfect's ownership of the Online Learning Tool.

6.2 **Education Perfect's Undertakings.** Education Perfect undertakes with the Customer that it will: (i) arrange for the Online Learning Tool to be available throughout the Subscription Period in good operational working order and accessible; (ii) provide upgrades or new versions of software (if available) from time to time to the extent considered necessary by Education Perfect; and (iii) provide (by telephone and email) adequate support services for the Online Learning Tool during its business hours. The Customer acknowledges and agrees there may be times when the Online Learning Tool is temporarily closed for maintenance or for reasons beyond Education Perfect's control. Education Perfect does not accept any liability or responsibility for the period the Online Learning Tool is unavailable.

6.3 **No Warranties.** Whilst Education Perfect will use reasonable efforts to ensure that the data and information contained in the Online Learning Tool is accurate and appropriate, to the full extent permitted by law, Education Perfect does not accept any liability for loss or damage arising (directly or indirectly) from the Customer's or any User's use of the Online Learning Tool, including in respect of its content or any omissions from the content. The content of the Online Learning Tool is provided "as is" without warranties of any kind, express or implied including warranties as to its effectiveness or accuracy. The Customer acknowledges that Education Perfect makes no representation or warranty to the Customer regarding the suitability of the Online Learning Tool for use in respect of the Customer or any User. Any condition or warranty expressed or implied by law in respect of the subscription of the Online Learning Tool (including without limitation the Contract and Commercial Law Act 2017, Consumer Guarantees Act 1993, Fair Trading Act 1986 and equivalent legislation in other jurisdictions) is expressly excluded to the maximum extent permitted by law. To the full extent permitted by law, the Customer agrees not bring or threaten to bring any claim against Education Perfect for loss or damage incurred or threatened against the Customer or arising directly or indirectly from the Customer's use of the Online Learning Tool.

6.4 **Customer's Undertakings.** The Customer undertakes with Education Perfect that it: (i) will not reverse engineer, reverse assemble, decompile, enhance, copy, modify or distribute the Online Learning Tool or prepare any derivative works; (ii) will take proper and reasonable care of the Online Learning Tool and only use it for the purpose it was provided for; (iii) will comply with Education Perfect's reasonable restrictions and instruction in relation to the use of the Online Learning Tool; (iv) will install any upgrade, fix, patch or new version of software provided by Education Perfect as soon as reasonably possible; (v) will satisfy itself that the Online Learning Tool is suitable for

the Customer's intended use; (vi) will use the Online Learning Tool in a lawful manner with due regard to all laws and regulations pertaining to its use; (vii) will adequately supervise and control use of the Online Learning Tool by Users and monitor compliance with the end user licence terms applicable to all Users; (viii) will not permit any unauthorised third party to examine, repair or in any way alter the Online Learning Tool without Education Perfect's consent; (ix) will be responsible for ensuring that the Customer has appropriate computer hardware and software to run the Online Learning Tool; (x) will not sell, assign, sublicense or transfer the Online Learning Tool, or otherwise part with possession of, or mortgage, charge or encumber the Online Learning Tool in any way; (xi) will follow any directions from Education Perfect, government and local authorities, regulators, court orders and codes of practice relating to the use and safety of the Online Learning Tool; and (xii) will comply with all obligations and restrictions in relation to the use and control of the Online Learning Tool under these Terms.

7. **Data Protection.**

7.1 The Customer hereby represents and warrants that it will comply with applicable laws related to data protection, including, if applicable, the General Data Protection Regulation (EU) 2016/679 ("**GDPR**"). In particular, the Customer shall be responsible for ensuring that: (i) any personal data transferred by Customer to Education Perfect is done so in compliance with applicable laws; and (ii) that all users are made aware of the processing by Education Perfect for the purpose of providing the services under any subscription. Education Perfect represents and warrants that it will comply with applicable data protection laws and, where applicable, the Data Processing Addendum (available on the Education Perfect website) to the extent applicable to its processing of personal data under these Terms.

7.2 These Terms incorporate the [Data Protection Addendum \(DPA\)](#) when the GDPR applies to the processing of personal data on the Online Learning Tool.

8. **Customer Default.** The Customer will be in default if:

- (a) **(Failure to pay)** the Customer fails to pay an amount due under these Terms by the Due Date for payment;
- (b) **(Material breach)** the Customer breaches any material provision of these Terms or the Subscription Form (and such breach remains unremedied following 7 days' notice of such breach), including (without limitation) any unauthorised or prohibited use of the Online Learning Tool by the Customer or any User; or
- (c) **(Insolvency)** the Customer becomes insolvent, is wound up, have a receiver appointed, enter into liquidation, administration or any composition or arrangement with its creditors, or does or omits to do any act rendering the Customer liable to be placed in liquidation, administration or have a receiver appointed, commit an act of bankruptcy, cease to be of full legal capacity or dies.

9. **Consequences of Customer Default.** If the Customer is in default as set out in clause 8 above then Education Perfect may do any one or more of the following: (i) charge the Customer default interest in accordance with clause 4.3; (ii) require the Customer to remedy the default in a particular manner and within a particular period; (iii) suspend or terminate the Customer's subscription with Education Perfect; (iv) de-activate the Customer's access to the Online Learning Tool; (v) at any time cancel these Terms; and (vi) exercise any rights that

Education Perfect has under these Terms or that are available to Education Perfect at law.

10. **Indemnity and Limitation of Liability**

10.1 **Indemnity.** The Customer must indemnify Education Perfect on demand against any claim (including regulatory fines) made by any person against Education Perfect for any loss or damage suffered or liability incurred arising directly or indirectly out of the Customer's use or possession of the Online Learning Tool or any breach of applicable privacy legislation, including the GDPR, by the Customer.

10.2 **Business Purposes.** If the Customer is subscribing for the Online Learning Tool for the purposes of a business as defined in the Consumer Guarantees Act 1993 (or under equivalent foreign legislation) the Customer agrees that:

- (a) any guarantees and undertakings applying to Education Perfect under such legislation are excluded to the maximum extent permitted by law; and
- (b) sections 9, 12A, 13, and 14(1) of the Fair Trading Act 1986 (NZ) do not apply and that the parties have contracted out of these provisions.

10.3 **No Liability.** To the maximum extent permitted by law, entering into these Terms the Customer agrees that Education Perfect shall not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by the Customer or another person and whether in contract, or tort, or otherwise and whether such loss or damage arises directly or indirectly from the Online Learning Tool provided by Education Perfect to the Customer. Notwithstanding the above, to the extent that Education Perfect is liable for any reason for any loss suffered or liability incurred by the Customer arising from any breach of these Terms or for any other reason, such liability is limited to the amount of the Total Subscription Fee the Customer actually paid to Education Perfect over the last 12 months from the date of notification of the claim by the Customer under these Terms.

10.4 **No liability for termination.** Notwithstanding that Education Perfect or the Customer may have terminated a subscription under these Terms, the Customer indemnifies Education Perfect against any cost, claim, damage, expense or liability suffered or incurred by Education Perfect whether arising directly or indirectly from Education Perfect exercising its rights or otherwise acting to recover any monies payable by the Customer under these Terms.

11. **General**

11.1 **Governing Law and Jurisdiction.** These Terms are governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to these Terms.

11.2 **Entire Agreement.** These Terms replace any earlier representations, warranties, understandings and agreements (whether oral or written) between Education Perfect (or any of its subsidiaries) and a Customer, and together with the Subscription Form constitute the entire agreement between parties relating to the subject matter.

11.3 **Force Majeure.** Education Perfect will not be liable for any default under these Terms due any fire, storm, flood, earthquake, landslide, explosion, accident, act of a public enemy, war,

rebellion, insurrection, riot, civil commotion, sabotage, epidemic, quarantine restrictions, labour disputes, transportation embargoes, national or international oil or fuel shortage, acts of God, acts of government or any agency or judicial action or any other event beyond the reasonable control of Education Perfect.

11.4 **No Waiver.** No failure or delay on the part of Education Perfect in exercising any right under these Terms shall operate as a waiver of, or impair, any such right. No single or partial exercise of any such right shall preclude any other or further exercise thereof or the exercise of any other rights. No waiver of any such right shall be deemed a waiver or modification of any other right under these Terms.

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