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## TERMS OF USE

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### 1 OUR OBLIGATIONS

We will provide the following Services to You:

- (a) access to and use of the System in accordance with Your Subscription Type, including for You to search, download and use the Material, and use templates and materials for the production and uploading of New Material; and
- (b) ensure the System in good working order, subject to internet and network connection issues which are beyond Our control.

### 2 YOUR OBLIGATIONS

You must give Us all relevant information required to facilitate Your access to the System, including:

- (a) Your school;
- (b) Your identity and contact details (and, if applicable, those of the Moderator);
- (c) Your credit card information for billing;
- (d) Your address; and
- (e) any other information which may affect or assist Our ability to provide access to the Services as reasonably required by Us.

You must keep Us up to date with any changes to Your information.

We will manage Your personal information in accordance with Our Privacy Policy which can be found at <https://www.amt.edu.au/privacy-policy>.

You must use reasonable efforts to prevent unauthorised third parties from accessing the Services including by use of strong passwords.

This Agreement is binding on You and any additional Users authorised by this Agreement and, subject to the licence We grant to You, You must not allow any other person or entity to use or have access to the System at any time, unless otherwise agreed to in writing by Us.

You must use the System in accordance with this Agreement and any other terms or policies notified to You by Us.

### 3 USE OF THE SYSTEM

#### Your Use of the System

As a User of the System, You agree to comply with the following:

- (a) the System is for Your non-commercial, educational use only and You must not use the System for business purposes;



- (b) You must not hack or extract data (except as permitted by this Agreement) from the System, including data regarding other Users, or otherwise interfere with the security or software of the System;
- (c) You must not use the System for any fraudulent or illegal purposes;
- (d) You must not engage in any conduct which restricts or inhibits any other customer from using or enjoying the System; and
- (e) the provision of the System does not include the provision of a computer or other equipment to access the System.

To use the System, You will require internet connectivity. You are responsible for any third party charges regarding this connectivity.

## **New Material**

You are responsible for any New Material uploaded to the System and any opinions and views expressed in any New Material represents the opinions and views of the User who uploaded them.

The uploading of New Material to the System does not represent Our endorsement or support of any views or opinions in that New Material.

You warrant that You have all required Intellectual Property Rights for any New Material You upload to the System and to allow Us and other Users to use the New Material in accordance with the licence You grant to Us.

You must not post any New Material on the System that:

- (a) is offensive, unlawful, defamatory, false or misleading or contrary to any of Our guidelines as notified to You from time to time;
- (b) is reasonably likely to offend another User;
- (c) contains advertising or is otherwise uploaded for commercial purposes;
- (d) contains financial, legal, medical or other professional advice;
- (e) infringes the intellectual property or other rights of any other person or entity; or
- (f) contains the personal information of any person.

## **4 SUBSCRIPTION TYPE**

### **School Subscription**

If Your Subscription Type is 'School', then the following conditions apply to Your use of the System:

- (a) You may download, print and use the Material for the purposes of providing teaching and educational services within Your school;
- (b) You may allow access to the System to Your teachers and other necessary staff as notified to and approved by Us;
- (c) except where Your Subscription Type includes a Free Trial Period (and only for the duration of the Free Trial Period), You must appoint a Moderator, who must comply with their obligations; and
- (d) You must not use the System or the Material for any purpose not expressly set out in this Agreement or authorised by Us.



## **Individual Teacher Subscription**

If Your Subscription Type is 'Individual Teacher', then the following conditions apply to Your use of the System:

- (a) You may download, print and use the Material for the purposes of providing teaching and educational services for Your class only;
- (b) You may not allow access to the System to any other person;
- (c) You are the Moderator and must comply with Your obligations; and
- (d) You must not use the System or the Material for any purpose not expressly set out in this Agreement or authorised by Us.

## **5 MODERATOR**

Note: This clause (5) does not apply during the Problemo Pilot as New Material cannot be shared with Users from other schools during the Pilot.

The Moderator is responsible for:

- (a) reviewing New Material uploaded onto the System by another User at the Moderator's school, prior to that New Material being shared onto the System for access by Users from other schools;
- (b) informing Us of all changes to information; and
- (c) any contact with Us regarding use of the System.

Where Your Subscription Type includes a Free Trial Period, You are not required to appoint a Moderator for the duration of the Free Trial Period.

## **6 PAYMENT**

Note: No fees are charged to participants during the Problemo Pilot period.

You must pay to Us the Fees as and when they are due and payable under this Agreement.

However, where Your Subscription Type includes a Free Trial Period, You are not required to pay Fees for the duration of the Free Trial Period.

The Fees will be billed as a recurring payment in advance on a monthly basis.

Any sum due to Us, including the Fees, is due and payable 30 days after the date the relevant Tax Invoice is rendered to You.

Where applicable, You authorise Us to charge Your credit card on an ongoing basis for payment of Our Fees.

All amounts payable under this Agreement are expressed exclusive of GST, and GST must be paid by You in respect of any taxable supply, subject to the receipt by You of a valid Tax Invoice.

Failure to make the required payments within Our payment terms will result in suspension of your access to the System.

## **7 SUBSCRIPTION LICENCE**

We grant You a non-exclusive, world-wide, non-transferable licence to use the System and the Material for the purpose of:



- (a) teaching students within Your school;
- (b) allowing Your teachers to access and use the System for the purpose of teaching; and
- (c) uploading New Material onto the System,

subject to and in accordance with the terms and conditions set out in this Agreement.

You must not:

- (a) use the System for any purpose or in any manner other than as set out in this Agreement;
- (b) permit any third party to use the System except as otherwise permitted by this Agreement;
- (c) reproduce, make error corrections to or otherwise modify or adapt the System or the Material;
- (d) de-compile, disassemble or otherwise reverse engineer the System or permit any third party to do so; or
- (e) modify or remove any copyright or proprietary notices on the System or the Material.

## **8 ACKNOWLEDGEMENTS**

You acknowledge and agree that:

- (a) We do not warrant that access and use of the System will be uninterrupted, error-free, or completely secure;
- (b) We do not warrant that the System will be compatible, or operate in any combination with Your equipment and other programs which may be selected for use by You;
- (c) Access to the System depends on your internet provider and other external factors and We do not guarantee the availability of the System at all times or at any specific times;
- (d) While We take reasonable precautions to ensure the System is secure, We do not guarantee the System to be free from virus, spyware or malware (as those terms are generally understood in the IT industry);
- (e) We do not warrant that any New Material will be protected from misuse by third parties and We are not responsible for any infringement of copyright in New Material by other Users; and
- (f) We may monitor access and use of the System by You.

## **9 INTELLECTUAL PROPERTY RIGHTS**

Nothing in this Agreement constitutes a transfer of any Intellectual Property Rights.

You acknowledge that We own all Intellectual Property Rights in the System and the Material, where uploaded by Us.

By uploading New Material onto the System, You:



- (a) grant Us a royalty free, non-exclusive, world-wide, perpetual licence to use the New Material for the purpose of including it on the System for use by other Users;
- (b) consent to Us using and publishing Your name and other necessary details which is contained in the New Material or within Your account details, as is reasonably required for Our allowed use of the New Material;
- (c) grant other Users a non-exclusive, world-wide, non-transferable licence to use the New Material in line with their licence to use other Material on the System; and
- (d) consent to any act or omission that would otherwise infringe Your Moral Rights in the New Material.

You must not directly or indirectly do anything that would or might invalidate or put in dispute Our title in the System, the Material or any of Our registered or unregistered trade marks (**Trade Marks**).

You must comply with Our reasonable usage guidelines and directions with respect to the System and the Trade Marks as notified to You from time to time.

## 10 TERMINATION

If You breach this Agreement, We may suspend or terminate Your use of the System at Our discretion.

If We suspend Your use of the System, We may refuse to allow You to use the System until You have rectified the breach of this Agreement and confirm that there will be no further breaches.

If this Agreement is terminated or expires for any reason, then, in addition and without prejudice to any other rights or remedies available:

- (a) each party retains the Claims it has against the other;
- (b) Your right to use the System, the Material and the Trade Marks immediately ceases and the licences granted under this Agreement terminate; and
- (c) You must immediately remove all of Our System, Material and Trade Marks from Your electronic devices.

## 11 DISCLAIMER & LIABILITY

The System, Material and related content is provided as a general information resource only and is not designed to replace professional advice.

While We have made every effort to provide accurate advice and information through the System, We do not make any representations or warranties that the information provided in the System is reliable, accurate or complete.

We are not liable for any loss or damage resulting from any action taken or reliance made by You on any information contained within the System.

We are not liable for the actions of any other Users on the System, including any New Material they upload onto the System.

You acknowledge that the System is provided as is and as available and Your use of the System is entirely at Your own risk.



You warrant that You have satisfied Yourself as to the description and condition of the System provided and its fitness for the purpose to which it was ordered.

The website links provided in the System are provided for Your convenience only. We do not take any responsibility for their content or endorse any opinions or recommendations provided in those websites. By clicking on those website links, You agree that You are solely responsible for agreeing to the terms and conditions of those websites and for any damages or loss caused from following those links.

To the full extent permitted by law, We exclude all liability in respect of Your use of the System, loss of data, interruption of business, wasted management time or any consequential or incidental damages, even if We had been advised by You or should have reasonably been aware of the possibility of such loss.

To the full extent permitted by law, except as expressly set out in this Agreement and except for any Prescribed Terms, all conditions, warranties, terms and obligations expressed or implied by law or otherwise relating to this Agreement or the performance of the obligations by Us under this Agreement, are excluded.

Subject to liability for breaches of Prescribed Terms, Our total aggregate Liability for all Claims is limited to the total amount paid by You to Us for use of the System and the Material.

Our liability for the breach of any Prescribed Term, is limited to (at Our election) to:

- (a) in the case of a major failure (as defined in the Australian Consumer Law), the extent permitted by the Australian Consumer Law; or
- (b) in any other case:
  - (i) in the case of goods, the replacement of the goods, the supply of equivalent goods, the repair of the goods or payment of the costs of repairing the goods or obtaining equivalent goods.
  - (ii) in the case of Services, the supply of the services again or payment of the cost of having the services supplied again.

Where Prescribed Terms apply under the Australian Consumer Law, the following applies:

*Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, You are entitled:*

- *to cancel Your service contract with us; and*
- *to a refund for the unused portion, or to compensation for its reduced value.*

*You are also entitled to be compensated for any other reasonably foreseeable loss or damage.*

*If the failure does not amount to a major failure, You are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel Your contract and obtain a refund for the unused portion of the contract.*

If You wish to make a claim for breach of a Prescribed Term (**Warranty Claim**), You must notify us by contacting Our nominated contact person as soon as reasonably possible after the defect becomes evident setting out the nature of the defect.

If You wish to make a Warranty Claim You must contact:



Australian Maths Trust ABN 39 120 172 502  
Attention: CEO

by email to: mail@amt.edu.au

You must describe the fault in the System at the time of making the Warranty Claim.

If Your claim is valid, Our liability is limited and You will bear any expenses incurred by You that arise from making the Claim.

You are liable to Us, and indemnify Us, for all Claims and Liability suffered by Us as a result of You breaching this Agreement or acting inconsistently with Our policies, except to the extent that we cause or contribute to the relevant Claim or Liability.

## 12 CHANGES TO THE SYSTEM

We may make changes to the System and any information and features contained within. These changes will typically be to improve the System.

We may also remove or disable the System at any time. If We remove or disable the System, We will refund any Fees You have paid for any period after the removal or disablement.

Your access to the System may be occasionally restricted to allow for repairs, maintenance or the introduction of new facilities on the System. We will attempt to restore access to the System as soon as We reasonably can.

## 13 GENERAL

The System may be accessed within Australia and, where permitted by technology and as decided by Us, outside Australia.

The law of the Australian Capital Territory shall apply to this Agreement and You hereby submit to the jurisdiction of the Courts of that Territory.

We may amend this Agreement from time to time. The amended Agreement will be notified to You via the System and will take effect from the date of amendment of the Agreement. If You continue to use the System after We have notified You of the amended Agreement, You are taken to accept and be bound to the amended Agreement.

A provision of or a right under this Agreement may not be waived or varied except in writing signed by the person to be bound.

## 14 DEFINITIONS

14.1 In this Agreement the following definitions apply:

**Australian Consumer Law** means the *Competition and Consumer Act 2010* (Cth), Schedule 2.

**Business Day** means a day which is not a Saturday, Sunday or a public holiday in the Australian Capital Territory.

**Claim** includes any claim, action, demand or proceeding

(a) under, arising out of, or in any way in connection with this Agreement;

(b) arising out of, or in any way in connection with the System or the Material; or



(c) arising otherwise at law including in equity, by statute, tort (whether for negligence or otherwise), contract, for restitution or unjust enrichment.

**GST** has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*, or any other similar tax.

**Intellectual Property Rights** means all intellectual property rights, including all copyright, patents, trade marks, design rights, trade secrets, domain names, know how and other rights of a similar nature, whether registrable or not and whether registered or not, and any applications for registration or rights to make such an application.

**Liability** means all liabilities, costs, damages, losses, expenses and outgoings of whatever description, including the costs and expenses of defending or settling any Claim.

**Material** means any materials uploaded onto the System available for access and use by Users, including any New Material, as well as any documentation for use with the System, including any user's guide.

**Moderator** means where:

- (a) Your Subscription Type is listed as 'School', the moderator nominated by You; or
- (b) Your Subscription Type is listed as 'Individual Teacher', You.

**Moral Rights** means the following rights in respect of any Intellectual Property Rights:

- (a) the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment);
- (b) the right of attribution of authorship of a work; and
- (c) the right not to have authorship of a work falsely attributed,

which are rights created by the *Copyright Act 1968 (Cth)*, and any other similar right capable of protection under the laws of any relevant jurisdiction.

**New Material** means any materials uploaded to the System by You.

**Prescribed Terms** means any terms, conditions and warranties which the law expressly provides may not in respect of this Agreement be excluded, restricted or modified, or may be excluded, restricted or modified only to a limited extent.

**System** means the Online Teacher Resource Platform maintained by Us and containing the Material, which You are granted access to on the terms of this Agreement.

**Tax Invoice** has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Us, We, Our** means the Australian Maths Trust ABN 39 120 172 502 and includes its directors, agents, subcontractors and employees.

**User** means parties using the System.

**You, Your** means the person/entity using the System and includes its directors, agents, subcontractors and employees, as applicable.