

Terms and Conditions of Use

1. Definitions

In this Agreement words beginning with capital letters must be interpreted by reference to the use of those words as they appear in **bold** on the front page:

- **“Agreement”** means the School Software Services Agreement between the School and TTS and includes these Terms and Conditions of Use, and also includes the User Guidelines attached to this Agreement and the Universal Privacy Policy.
- **“Infringement Notice”** means a written notice issued to TTS by the School’s Contact Person specifying TTS’s default of a material duty or obligation under this Agreement. Such Infringement Notice must specify the alleged breach and must be specifically headed “Infringement Notice”.
- **“School”** means that party stated on the front page of the relevant Software Services Agreement next to “School”, and includes all staff and teachers operating from the Location, and where the context permits includes persons under the control of the School.
- **“Services”** means those services as described on the front page of this Agreement.
- **“Term”** means the initial fixed period set out in the School Software Services Agreement between the School and TTS, together with any annual periods thereafter unless this Agreement is terminated in accordance with this Agreement.
- **“TTS”** means Telco Technology Services Limited and any successor or assign.
- **“User”** means students enrolled at the School who have access to the Services.

2.2. Enjoying Universal

2.1 Universal provides for a cloud based digital platform for schools, offering a selection of education materials and other content. Certain Universal services are provided to the School

free-of-charge. Other Universal services require payment before the School can access them. The Universal services that may be accessed by the School after payment are referred to as the “Premium Service”. The Universal services that do not require payment are referred to as the “Free Service”. The School can learn more about these services by visiting the TTS Universal website.

- 2.2 The Premium Service may not be available to all Schools. TTS will explain which services are available to the School prior to the School signing this Agreement.
- 2.3 From time to time, TTS or others on behalf of TTS, may offer start-up trials or a new release trial or trials of the Premium Service to schools or others for a specified period without payment or at a reduced rate of payment determined by TTS (a “Trial”). TTS reserves the right, in its absolute discretion, to determine the School’s eligibility for a Trial, and to withdraw or modify a Trial at any time without prior notice, and with no liability to TTS.
- 2.4 For some Trials, TTS may agree with the School to provide payment details before the start-up of that Trial. At the end of that Trial, TTS may automatically commence charging the School for the Premium Service at the relevant Price on a recurring monthly basis, unless the School advises TTS in writing immediately following completion of the Trial that the School wishes to cease access to the Premium Service.

3. Rights Granted to the School

- 3.1 The Universal software applications, the Services and the Content are the property of TTS or the licensors to TTS. By virtue of this Agreement only, TTS grants to the School a limited, non-exclusive and revocable license for the School to make personal and non-commercial use of the Content (“the License”) for education purposes only during the Term, and only for use amongst the School. This license shall remain in effect for the Term of this Agreement only. The School warrants to TTS that:

- at all times the School is and will use the Content for only such uses permitted in this clause 3.1; and
 - the School will not at any time redistribute or transfer the Services or the Content in breach of this Agreement.
- 3.2 The Universal software applications, the Services and the Content are licensed but not sold to the School, and TTS and its licensors retain ownership of all copies of the Universal software applications, the Services and the Content even after installation on the School's or the School's user's personal computers, mobile devices, tablets and/or other user devices ("Devices").
- 3.3 All Universal trademarks, service marks, trade names, logos, domain names and any other features of the Universal brand ("Brand Features") are the sole property of TTS or licensors from TTS. This Agreement does not grant to the School or any School user any rights to use any of the Universal Brand Features, whether for non-commercial or education purposes. The School warrants at all times to:
- abide by the Universal User Guidelines attached to this Agreement; and
 - not use the Services or the Content or any parts thereof,
- in any manner not expressly permitted by this Agreement. Except to the extent expressly granted to the School in this Agreement, TTS grants no right, title or interest to the School or any School user in any of the Services or any of the Content.
- 3.4 Third party software (for example, open-source software or software available via the Universal dashboard) included in the Services are licensed to the School only under this Agreement, or where that third party's license terms are published, then pursuant to that third party's license terms.
- 4. School Generated Content**
- 4.1 The School is encouraged to create, post, upload and/or contribute content to the Services ("User Content"). The School warrants to TTS that any User Content that the School (including persons under the control of the School) posts on the Services:
- the School at all times has the right to post such User Content; and
 - such User Content, or its use by TTS as contemplated under this Agreement, does not at any time breach this Agreement or any applicable laws or regulations, or the intellectual property (including, without limitation, copyright) publicity, personality, or other rights of other persons, or imply any affiliation with or endorsement of the School or the School's User Content by TTS or any person or other legal entity without the express prior written consent from such person or other legal entity.
- 4.2 TTS may, but has no obligation to, monitor, review or edit User Content. TTS reserves the right to remove or disable access to any User Content if, in TTS's discretion, such User Content is in breach of this Agreement.
- 4.3 The School is at all times solely responsible for all User Content posted by the School, including persons under the control of the School. TTS is not responsible for any User Content, nor does TTS endorse any perspective or opinion contained in any User Content. The School indemnifies TTS and shall hold TTS harmless from and against all claims, damages, losses and expenses of any kind (including legal costs) arising from any claim related to any User Content.
- 5. Rights Granted to TTS**
- 5.1 In consideration of the rights granted to the School pursuant to this Agreement, the School grants to TTS the right to:
- allow the Services to use the processors, bandwidth and storage hardware on any School Device and/or any Device of a School user for the sole purpose to allow the operation of the Service; and
 - a non-exclusive, transferable, perpetual and royalty-free license, to use, reproduce and

make available to others any of the User Content in any manner and by any means, provided the School receives an acknowledgement as to the original source of that User Content. Except those rights specifically granted in this clause 5, as between the School and TTS, the School retains ownership of all rights and intellectual property rights in the User Content.

6. *Supply of Services*

6.1 TTS must employ suitably qualified and trained people to enable TTS to undertake the Services and its obligations under this Agreement. TTS must ensure that TTS and those for whom it is responsible for:

- exercises all reasonable skill, care and diligence in performing the Services;
- performs the Services in a proper, safe, timely and workmanlike manner within the agreed time frames; and
- otherwise complies with the provisions of this Agreement to be performed or observed by TTS.

6.2 The School acknowledges that:

- all of the Services are professional services only and the Services do not result in a supply of “goods” to the School;
- the School will not disclose to third parties any confidential information relating to TTS, TTS’s business or any processes, ideas, concepts or techniques developed or deployed by TTS as part of the Services;
- all advice, the Services and all digital application software resulting therefrom are provided by TTS solely for the benefit of the School and no advice or any part of the Services or other information provided by TTS is to be passed on, or made available, or relied upon by a third party. TTS has no liability whatsoever to any such third party, and the School will indemnify TTS against any claim arising from any third party relying on any of the Services or any advice or any information or any digital application software provided by TTS; and
- where the Services include a requirement for TTS to register a domain name on behalf of

the School, TTS will provide an electronic message reminder to the School for the renewal of that domain name, but otherwise the Services do not include an obligation for TTS to renew the domain name and it shall be the obligation of the School to renew the domain name.

7. *Service Limitations*

7.1 The School acknowledges that digital application software and the use of the internet is of such complexity and resulting instability that certain technical difficulties may, from time to time, result in temporary interruptions or slowness of operation of the Services. TTS will make all commercially reasonable efforts to keep the Services operational. The School acknowledges that its sole remedy against TTS for any interruption or slowness in operating the Services is for TTS to exercise its reasonable commercial efforts within a reasonable time to correct any temporary interruptions or slowness of operation after TTS is first notified by the School in writing (including email).

7.2 Except where prohibited by law, TTS reserves the right, periodically and at any time, to modify or discontinue (temporarily or permanently), functions and/or features of the Services, with or without notice, without liability to the School or any other party. If the School has prepaid for the Premium Service and TTS permanently discontinues that Premium Service prior to the end of the prepaid period, TTS will refund the School the prepaid sum attributable to the period after the discontinuation.

7.3 The School acknowledges and agrees that TTS has no obligation to maintain, support, upgrade or update the Services, or to provide specific content through the Services. TTS may, from time to time, remove any Content from the Services without notice and without liability to the School or any other party.

7.4 The School acknowledges that the Services are provided “as is” and “as available” without express or implied warranty or condition of any kind. TTS excludes all conditions and warranties in respect to the Services or any digital application software resulting from the Services (whether imposed by statute or by operation of law) not expressly set out in this Agreement. TTS’s maximum liability to the School or any other party pursuant to this Agreement and for

anything whatsoever shall be limited to the aggregate amount of \$1,000.00 (including GST, if any) and at no time shall TTS be liable to the School or any other party for any special or indirect or consequential damages or loss in regard thereto, or any loss resulting from liability to a third party.

7.5 TTS does not warrant that the Services are free of malware or other harmful components, computer viruses or bugs.

7.6 The School acknowledges that the risk and costs resulting either directly or indirectly from any wilful act, theft, hacking or security breach by any third party of any of the Services, or any Device, shall be borne by the School and not by TTS.

7.7 Any claim by the School against TTS must be notified to TTS by the School's Contact Person no later than two (2) months after the date that the School first notifies TTS pursuant to clause 7.1 (time being of the essence) and thereafter any liability of TTS shall cease absolutely.

7.8 The School shall indemnify TTS against any loss suffered or liability incurred by TTS arising from or in connection with:

- any breach by the School of its obligations pursuant to this Agreement or at law;
- any infringement or alleged infringement of any intellectual property of any third party as a result of any documents or information used or supplied by, or on behalf of, the School; and
- any data, images, databases, software, content or material used by the School or on or available through the School's website.

8. *Price*

8.1 The Price is exclusive of goods and services tax, and exclusive of any disbursements which may be incurred by TTS with the School's prior approval.

8.2 At the commencement of each school year, the annual subscription for the Premium Service shall be calculated as at 1 February for that year by multiplying the total number of Users by the respective annual subscription rate specified under Price on the front page of this Agreement. Where the School elects to increase the number

of Users during a School year, then the Price and/or annual subscription rate shall be reviewed with effect from the date that the number of Users increases.

8.3 To assist the School in payment for the Services, payment of the Price shall be spread equally over a calendar year and invoiced monthly in advance, and shall be paid on the 10th day of that month by the School without any deduction or set-off by direct debit or as otherwise required by the Supplier.

8.4 All invoices from TTS to the School shall include sufficient detail for the School to identify the particular service or Services charged for.

8.5 The Price and any rates for the Services (including the annual subscription rate) for the Premium Service may be reviewed by TTS during the Term with effect from each anniversary of the Commencement Date by TTS providing the School written notice specifying any new Price or annual subscription rate no later than one month prior to the relevant anniversary date.

9. *School User Support*

9.1 For customer support with Universal account-related and payment-related questions, please submit a ticket by email to our customer service department using the Customer Service contact form on the TTS Universal website. TTS will use reasonable endeavours to respond to those questions within a reasonable time but TTS makes no guarantee to when those questions will be responded to, or that TTS will be able to satisfactorily answer such questions.

10. *The Relationship Between Us*

10.1 Nothing in this Agreement should be interpreted as constituting either the School or TTS as agent, partner or employee of the other and neither the School nor TTS may represent to anyone that:

- it is the other party or is an agent, partner or employee of the other party; or
- it has any power or authority to incur any obligation of any nature on behalf of the other party.

10.2 The School may not assign or otherwise dispose of its rights under this Agreement without the prior written consent of TTS. Breach of this

clause shall entitle TTS to immediately terminate this Agreement.

10.3 The School acknowledges that TTS may reference work completed pursuant to this Agreement on TTS's website or any advertisement and the School authorises TTS to do so at no cost to TTS.

10.4 The School confirms that it has fully examined the terms on which the Services will be provided under this Agreement and acknowledges that the Price payable for the Services represents fair value for the terms on which the Services are provided.

11. *Changing this Agreement*

The terms of this Agreement may be varied only by a written agreement ("Variation Request") which is signed by the School's Contact Person and TTS's Contact Person and such agreement specifically refers to this clause.

12. *Express Rights*

The exercise by either party of any express right set out in this Agreement (**Express Right**) is without prejudice to any other rights, power or remedies available to that party under this Agreement, at law or in equity, including any rights, powers or remedies which would be available to either party if the Express Rights were not set out in this Agreement.

13. *No Solicitation*

During this Agreement and for one (1) year after the termination or completion of the Services the School will not solicit or canvas the services of any employee of TTS.

14. *Disputes*

14.1 Where a dispute or difference arising from, related to, or concerning this Agreement exists between the parties, either party may serve on the other a notice outlining the nature and general detail of the matters in dispute. The service of such notice shall be a condition precedent to any dispute resolution procedures, and subject to the negotiation provisions of this clause, shall be a submission of such dispute or difference to arbitration.

14.2 Disputes or differences arising between the School and TTS shall preferably be settled by negotiation between the parties.

14.3 If a dispute is not resolved within 14 days of the service of the notice of dispute then the dispute shall be referred to a sole arbitrator by either party in accordance with the Arbitration Act 1996. In any arbitration both parties shall be entitled to be legally represented. If the parties fail to agree on the identity of the sole arbitrator, the parties agree that the President of the New Zealand Law Society shall appoint an arbitrator to hear and determine the dispute. The arbitrator shall not be the person who acted as mediator under this clause 14.

15. *Right of Termination*

15.1 The period of this Agreement continues for the duration of the Term. If at any time during the Term:

- either party is in default of a fundamental duty or fundamental obligation on its part under this Agreement and such default is not remedied within a period of 10 days after and exclusive of the date of such default being brought to that party's attention by written notice from the Contact Person of the other party; or
- TTS receives four Infringement Notices during any single calendar year, whether the defaults the subject of the Infringement Notices are remedied or not; or
- either party becomes insolvent; or
- the School is in breach of its obligations in clause 10.2,

then it will be lawful for the party not being in default to immediately terminate this Agreement by the Contact Person for the party not being in default serving written notice to such effect. Such termination shall not release either party from any liability resulting from any antecedent breach of this Agreement, nor from any liability to pay the Price or any costs, fees or charges payable up to and including the date of termination.

16. *Confidentiality & Privacy*

16.1 TTS will not disclose any confidential information provided by the School without the School's permission except as required by law, regulation, Court or arbitration proceedings, or

regulatory or New Zealand government authorities.

16.2 The School will abide by, and agrees to, the Universal Privacy Policy from time to time available on the TTS Universal website (“Universal Privacy Policy”).

17. Waiver

No rights of either party under this Agreement may be treated as waived except by them giving written notice of such waiver to the other party and no waiver of any right on a single occasion will affect the rights of that party to subsequently enforce that right on other occasions.

18. Entire Agreement

This Agreement constitutes the entire agreement between the parties relating to provision of the Services and replaces all earlier negotiations, representations, warranties, understandings and agreements between the parties (whether oral or written) relating to the provision of the Services. Unless expressly stated in this Agreement, no warranty or obligation at law or in statute shall be implied in respect to the Services or any part of the Services, or any digital application software resulting from the Services or the use thereof.

19. Force Majeure

Neither party will be liable for any act, omission, default or failure to fulfil its obligations (other than, in the case of the School, the School’s payment obligations pursuant to this Agreement) under this Agreement if such act, omission, default or failure arises from death or acts of God or any like cause reasonably beyond that party’s control. The party unable to fulfil its obligations pursuant to this clause 20 will immediately:

- notify the other in writing of the reasons for its failure to fulfil its obligations and the effect of such failure; and
- use all reasonable commercial endeavours to avoid, remove or remedy the cause in a reasonable time.

21. Each Term Separately Binding

Each term of this Agreement is separately binding. If for any reason either party cannot rely on any term then all the other terms remain binding.

22. Legal Jurisdiction

The law of New Zealand shall apply to this Agreement.

User Guidelines

TTS respects intellectual property rights and expects the School to do the same. TTS has established a few ground rules for the School to follow when using the Services, to make sure Universal stays enjoyable for everyone. Please follow these rules and encourage other users to do the same.

The following is not permitted for any reason whatsoever:

- copying, redistributing, reproducing, “ripping”, recording, transferring, performing or displaying to the public, broadcasting, or making available to the public any part of the Services or the Content, or otherwise making any use of the Services or the Content which is not expressly permitted under this Agreement or applicable law or which otherwise infringes the intellectual property rights (such as copyright) in the Services or the Content or any part of it;
- using the Services to import or copy any local files the School does not have the legal right to import or copy in this way;
- transferring copies of cached Content from an authorized Device to any other Device via any means;
- reverse-engineering, decompiling, disassembling, modifying, or creating derivative works based on the Services, Content or any part thereof unless permitted by applicable law;
- circumventing any technology used by TTS, its licensors, or any third party to protect the Content or the Services;
- selling, renting, sublicensing or leasing of any part of the Services or the Content;
- circumventing any territorial restrictions applied by TTS or its licensors;
- manipulating the number of users of the Services;
- removing or altering any copyright, trademark, or other intellectual property notices contained on or provided through the Services (including for the purpose of disguising or changing any indications of the ownership or source of any Content);
- providing the School’s passwords to any other person or using any other person’s username and password;
- “crawling” the Services or otherwise using any automated means (including bots, scrapers, and spiders) to collect information from TTS; or
- selling a user account, or otherwise accepting any compensation, financial or otherwise, to influence the name of an account or playlist or the content included on an account or playlist.

Please respect TTS, the owners of the Content, and other users of the Services. Don’t engage in any activity, post any User Content, or register and/or use a username, which is or includes material that:

- is offensive, abusive, defamatory, pornographic, threatening, or obscene;
- is illegal, or intended to promote or commit an illegal act of any kind, including but not limited to violations of intellectual property rights, privacy rights, or proprietary rights of TTS or a third party;
- includes the School’s passwords or purposely includes any other user’s password or purposely includes personal data of third parties or is intended to solicit such personal data;
- includes malicious content such as malware, Trojan horses, or viruses, or otherwise interferes with any user’s access to the Services;
- is intended to or does harass or bully other users;
- impersonates or misrepresents your affiliation with another user, person, or entity, or is otherwise fraudulent, false, deceptive, or misleading;
- uses automated means to artificially promote content;

- involves the transmission of unsolicited mass mailings or other forms of spam (“spam”), junk mail, chain letters, or similar, including through the Universal inbox;
- involves commercial or sales activities, such as advertising, promotions, contests, sweepstakes, or pyramid schemes, that are not expressly authorized by TTS;
- links to, references, or otherwise promotes commercial products or services, except as expressly authorised by TTS;
- interferes with or in any way disrupts the Services, tampers with, breaches, or attempts to probe, scan, or test for vulnerabilities in the Service or TTS’s computer systems, network, usage rules, or any of TTS’s security components, authentication measures or any other protection measures applicable to the Service, the Content or any part thereof; or
- conflicts with this Agreement, as determined by TTS.

The School acknowledges and agrees that posting any such User Content may result in immediate termination or suspension of the School’s Universal account. The School also agrees that TTS may also reclaim the School’s username for any reason.

Please be thoughtful about how the School uses the Services and what the School shares. The Services may include social and interactive features, including the ability to post User Content, share content, and make certain information about the School public. Remember that shared or publicly available information may be used and re-shared by other users on the Services or across the web, so please use the Services carefully and be mindful of the School’s account settings. TTS has no responsibility for the School’s choices to post material on the Services.

The School’s password protects the School’s user account, and the School is solely responsible for keeping its password confidential and secure. The School understands that it is responsible for all use of its usernames and passwords on the Services. If the School’s usernames or passwords are either lost or stolen, or if the School believes there has been unauthorized access to its account by third parties, please notify TTS immediately and change the School’s affected password as soon as possible.