

Teachplus Terms of Use

1 Application of Terms

- 1.1** These Terms apply to your use of the Service (as that term is defined below). By setting up an account or accessing and using the Service:
- a)** you agree to these Terms; and
 - b)** where your access and use is on behalf of another person (including, for example, a company, school or other organisation), you confirm that you are authorised to, and do in fact, agree to these Terms on that person's behalf and that, by agreeing to these Terms on that person's behalf, that person is bound by these Terms.
- 1.2** If you do not agree to these Terms, you are not authorised to access and use the Service, and you must immediately stop doing so.

2 Changes

- 2.1** Subject to clause 2.3:
- a)** we may change these Terms at any time by notifying you of the change by email or by posting a notice on the Website; and
 - b)** unless stated otherwise, any change takes effect from the date set out in the notice, which must be no less than 7 days from the date of the notice.
- 2.2** You are responsible for ensuring you are familiar with the latest Terms.
- 2.3** These Terms were last updated on Thursday 4 July 2024.

3 Interpretation

In these Terms:

Confidential Information means any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the provision and use of the Service. Our Confidential Information includes Intellectual Property owned by us (or our licensors), including the Teachplus Software. Your Confidential Information includes the Data.

Customer Data means any Personal Information including Student Personal Information and Other Personal Information.

Data means all data, content, and information held, used or created by you or on your behalf that is stored using, or inputted into, the Service or held, used, created or generated by the Service. This will include assessment material, student assessment responses, grades and results, but will not include their Student Personal Information.

Force Majeure means an event that is beyond the reasonable control of a party, excluding:

- a)** an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or
- b)** a lack of funds for any reason.

Including and similar words do not imply any limit.

Intellectual Property Rights includes copyright and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. Intellectual Property has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

Other Personal Information means personal information relating to other persons (other than students), such as your personnel.

personal information means information about an identifiable, living person as defined in any applicable privacy laws.

personnel includes students, officers, employees, contractors and agents, but a reference to your personnel does not include us.

Service means the pre-launch trial program for the service having the core functionality described in the Schedule.

Start Date means the date that you first set up an account or first access or use the Service.

Student Personal Information means personal information relating to your students.

Subscription Period refers to the period for which you have paid for the use of Teachplus software.

TeachPlus Privacy Policy means our privacy policy, which is available at www.teachplus.ai.

TeachPlus Software means the software owned by us (and our licensors) that is used to provide the Service.

Terms means these terms titled Teachplus Terms of Use.

Underlying Systems means the Teachplus Software, IT solutions, systems and networks (including software and hardware) used to provide the Service, including any third party solutions, systems and networks.

We, us or our means Teachplus Limited, company number 9158920.

Website means the internet site at www.teachplus.ai, or such other site notified to you by us.

You or your means you or, if clause 1.1b) applies, both you and the other person(s) on whose behalf you are acting.

Words in the singular include the plural and vice versa.

A reference to a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them.

4 Provision of the Service

- 4.1** We must use reasonable efforts to provide the Service in accordance with these Terms and New Zealand law.
- 4.2** Our provision of the Service to you is non-exclusive. Nothing in these Terms prevents us from providing the Service to any other person.
- 4.3** Subject to clause 4.4, we will use reasonable efforts to ensure the Service is available during normal business hours in New Zealand. However, it is possible that on occasion the Service may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. We will use reasonable efforts to publish on the Website details of any unavailability.
- 4.4** Through the use of web services and APIs, the Service interoperates with a range of third party service features. We do not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third party feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, we may cease to make available that feature to you. To avoid doubt, if we exercise our right to cease the availability of a third party feature, you are not entitled to any refund, discount or other compensation.

5 Your Obligations

- 5.1** You and your personnel must:
 - a)** use the Service in accordance with these Terms solely for lawful purposes (including complying with the Unsolicited Electronic Messages Act 2007); and
 - b)** not resell or make available the Service to any third party, or otherwise commercially exploit the Service.

6 Data

- 6.1** You acknowledge that all Data is owned by us, except for any Customer Data.
- 6.2** We grant you a non-exclusive, non-transferable and non-assignable right to access and use the Data to the extent required to give effect to the Agreement during the Subscription Period.
- 6.3** You acknowledge that we use the Data to exercise our rights and perform our obligations under these Terms, and you will arrange all consents and approvals that are necessary for such access.
- 6.4** You acknowledge and agree that:
- a) we may:
 - i. use Data and information about your and your personnel's use of the Service to generate anonymised and aggregated statistical and analytical data (Analytical Data);
 - ii. use Analytical Data or combine Analytical Data with or into other similar data and information available, derived or obtained from other clients, users, or otherwise (when so adapted, modified, combined or incorporated, the Aggregate Data);
 - iii. use Analytical Data and/or Aggregate Data for our internal research and product development purposes and to conduct statistical analysis and identify trends and insights; and
 - iv. use Analytical Data and/or Aggregate Data to provide services (such as consolidated reporting) to you and/or other clients or users;
 - v. use Analytical Data and/or Aggregate Data to inform you and/or other clients or users of any products, software, services or information that we believe you and/or other clients or users may be interested in; and
 - vi. supply Analytical Data to third parties;
 - b) our rights under clause 1.1aii above will survive termination or expiry of these Terms; and
 - c) title to, and all Intellectual Property Rights in, Analytical Data and Aggregate Data is and remains our property.
- 6.5** If we wish to use Data in a way which could identify you (the school) or your student(s), the Distributor will cooperate with you to seek your consent prior to doing so.
- 6.6** You acknowledge and agree that to the extent Data contains Customer Data, in collecting, holding and processing that information through the Service, we are acting as your agent for the purposes of the Privacy Act 2020 and any other applicable privacy law and we will hold that Customer Data in accordance with the Teachplus Privacy Policy. You must obtain all necessary consents from the relevant individual (e.g. students where Student Personal Information will be provided, and personnel where Other Personal Information will be provided) to enable us to collect, use, hold and process that information in accordance with these Terms and grant us a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Customer Data for any purpose in connection with the exercise of our rights and performance of our obligations in accordance with these Terms, on the basis that any use of the Customer Data will be in accordance with the Teachplus Privacy Policy.
- 6.7** While we will take standard industry measures to back up all Data stored using the Service, you agree to keep a separate back-up copy of all Data stored using the Service.
- 6.8** You agree that we may store Data (including any personal information) in secure servers in New Zealand or overseas countries and may access that Data (including any personal information) in New Zealand and overseas countries from time to time.
- 6.9** You indemnify us against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by our solicitors) and loss of any kind arising from any actual or alleged claim by a third party that any Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Data is Objectionable, incorrect or misleading.

7 Fees

- 7.1 Fees will be paid annually or monthly according to the plan selected by you.
- 7.2 Failure to pay fees will result in termination of access to the Teachplus software.

8 Intellectual Property

- 8.1 Title to, and all Intellectual Property Rights in, the Service, the Website, and all Underlying Systems is and remains our property (and our licensors' property). You must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.
- 8.2 We grant you a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Data to enable you to use the Teachplus Software and to perform your obligations in accordance with these Terms.
- 8.3 To the extent not owned by us, you grant us a royalty-free, transferable, irrevocable and perpetual licence to use for our own business purposes any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by us in the provision of the Service.
- 8.4 All Intellectual Property developed during the Trial Program will be exclusively owned by us. Furthermore, if you provide us with ideas, comments or suggestions relating to the Trial, the Service or Underlying Systems (together feedback):
- 8.5 all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), are owned solely by us; and
- 8.6 we may use or disclose the feedback for any purpose.
- 8.7 You acknowledge that the Service may link to third party websites or feeds that are connected or relevant to the Service. Any link from the Service does not imply that we endorse, approve or recommend, or have responsibility for, those websites or feeds or their content or operators. To the maximum extent permitted by law, we exclude all responsibility or liability for those websites or feeds.

9 Confidentiality

- 9.1 Each party must, unless it has the prior written consent of the other party:
 - a) keep confidential at all times the Confidential Information of the other party;
 - b) effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
 - c) disclose the other party's Confidential Information to its personnel or professional advisors on a need to know basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, clauses 1.1a) and 1.1b).
- 9.2 The obligation of confidentiality in clause 9.1 does not apply to any disclosure or use of Confidential Information:
 - a) Where we publicise your involvement, use of, or feedback on the Service, on our website or otherwise to potential customers and other third parties;
 - b) for the purpose of performing a party's obligations, or exercising a party's rights, under these Terms;
 - c) required by law (including under the rules of any stock exchange);
 - d) which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
 - e) which was rightfully received by a party from a third party without restriction and without breach of any obligation of confidentiality; or
 - f) by us if required as part of a bona fide sale of our business (assets or shares, whether in whole or in part) to a third party, provided that we enter into a confidentiality agreement with the third party on terms no less restrictive than this clause 9.

10 Warranties

- 10.1** You acknowledge and agree that, to the maximum extent permitted by law:
- a) you are using the Service at your own risk; and
 - b) our warranties are limited to those set out in these Terms, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under Part 3 of the Contract and Commercial Law Act 2017) are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to \$1; and
 - c) we are not responsible or liable for, and give no warranties or representations as to:
 - i. the outcomes of the Service, either generally or for you specifically;
 - ii. any results or recommendations provided via the TeachPlus Software; and
 - iii. any of our acts or omissions in relation to the Trial and/or the Service;
 - d) we make no representation concerning the quality of the Service and do not promise that the Service will:
 - i. meet your requirements or be suitable for a particular purpose, including that the use of the Service will fulfil or meet any statutory role or responsibility you may have; or
 - ii. be secure, free of viruses or other harmful code, uninterrupted or error free.
- 10.2** You agree and represent that you are acquiring the Service, and accepting these Terms, for the purpose of trade. The parties agree that:
- a) to the maximum extent permissible by law, the Consumer Guarantees Act 1993 and any other applicable consumer protection legislation does not apply to the supply of the Service or these Terms; and
 - b) it is fair and reasonable that the parties are bound by this clause 10.2.
- 10.3** Without limiting clause 10.1, the parties agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986, and that it is fair and reasonable that the parties are bound by this clause 13.5.

11 Liability

- 11.1** Our maximum aggregate liability under or in connection with these Terms or relating to the Service, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in any Year exceed any fees paid by you to us under these Terms. The cap in this clause 11.1 includes the cap set out in clause 1.1a).
- 11.2** Neither party is liable to the other under or in connection with these Terms or the Service for any:
- a) loss of profit, revenue, savings, business, use, data (including Data), and/or goodwill; or
 - b) consequential, indirect, incidental or special damage or loss of any kind.
- 11.3** Clause 11.2 does not apply to limit your liability under the indemnity in clause 6.9.

12 Term, Termination and Suspension

- 12.1** Unless terminated under this clause 12, these Terms and your right to access and use the Service:
- a) starts on the Start Date; and
 - b) continues until terminated by you or Teachplus.
- 12.2** On notice of termination, your access will terminate at the end of the Subscription Period and all licenses granted to you under these Terms will immediately terminate.
- 12.3** Either party may, by notice to the other party, immediately terminate these Terms and your right to access and use the Service for any reason, upon 14 days' notice.
- 12.4** Termination of these Terms does not affect either party's rights and obligations that accrued before that termination.
- 12.5** No compensation is payable by us to you as a result of termination of these Terms for whatever reason.

12.6 At any time prior to two months after the date of termination, you may request a copy of any Data stored using the Service which you may use pursuant to clause 6.2, provided that you pay our reasonable costs of providing that copy. On receipt of that request, we must provide a copy of the Data in a common electronic form. We do not warrant that the format of the Data will be compatible with any software.

13 General

- 13.1** Neither party is liable to the other for any failure to perform its obligations under these Terms to the extent caused by Force Majeure.
- 13.2** Subject to clause 6.5, we are your independent contractor, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under these Terms.
- 13.3** These Terms, and any dispute relating to these Terms or the Service, are governed by and must be interpreted in accordance with the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with these Terms or the Service.
- 13.4** Clauses which, by their nature, are intended to survive termination of these Terms, including clauses 6.9, 8, 9, 11, 12.4 to 12.6 and 13.3, continue in force.
- 13.5** These Terms set out everything agreed by the parties relating to the Service, and supersede and cancel anything discussed, exchanged or agreed prior to the Start Date.

SCHEDULE – SERVICES

Teachplus will provide access to the LISA online testing platform. LISA provides the following services:

- school administrator functions
 - set up and manage school's access to LISA
 - set up and manage teacher and student users
 - set up and manage tests
 - read, analyse and export student tests and grades

- teacher functions
 - set up and manage tests
 - read and analyse student tests and grades

- student functions
 - sit tests

This list of services does not specify all functionalities of LISA. More detailed information, including user support, is available via the online knowledge base on the Teachplus website.

The services provided in the Teachplus software may change from time to time as it is upgraded and improved. Teachplus will endeavour to communicate changes and updates to you, but doesn't guarantee this.