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LearnPrimary

LEARN PRIMARY PTY LTD ABN 19 613 684 665

TERMS OF SERVICE

INTRODUCTION

The Company provides the LearnPrimary online application that provides individualised learning processes for children from kindergarten to year 6, aligned with the Australian Curriculum. Use of LearnPrimary is subject to these Terms of Service.

DEFINITIONS

The following terms are used regularly throughout these Terms of Service and have a particular meaning:

- (a) **ABN** means Australian Business Number.
- (b) **Account** means a registered account with LearnPrimary.
- (c) **Administrator** means the User authorised to administer LearnPrimary on behalf of a School, as appointed by the School from time-to-time
- (d) **Agreement** means the agreement formed between the Users and the Company under, and on the terms of, these Terms of Service.
- (e) **Assessment** means a recorded assessment of a Student's learning outcomes within LearnPrimary.
- (f) **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.
- (g) **Company** means Learn Primary Pty Ltd ABN 19 613 684 665.
- (h) **Customer** means the User responsible for paying Fees and includes Schools or Parents (as the case may be).
- (i) **Fee** means a fee charged by the Company for use of LearnPrimary.
- (j) **GST** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (k) **Intellectual Property** means all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, registered or unregistered trademarks, brand names, business names, domain names and other forms of intellectual property.
- (l) **Learning Tools** means any of the tools made available as part of the learning process in LearnPrimary, and includes (without limitation):
 - i Lesson;
 - ii Practice; and
 - iii Assessments.
- (m) **LearnPrimary** means:
 - i The LearnPrimary digital platform accessible from the Site; and/or

- ii Any LearnPrimary mobile application accessible for a Mobile Application Marketplace.
- (n) **Lesson** means educational content for a particular subject matter within LearnPrimary.
- (o) **Material** means educational information provided within LearnPrimary including (without limitation) animation, video, games, text or other media.
- (p) **Mobile Application Marketplace** means an online marketplace for access to LearnPrimary and other applications for mobile devices, such as the App Store.
- (q) **Parent** means a registered user of LearnPrimary that uses the features associated with a Parent Account and licences LearnPrimary on behalf of a Student as the Student's parent or legal guardian.
- (r) **Partner** means a third-party business from whom Reward may be redeemed for a discount, good or service.
- (s) **Practice** means an unrecorded test of a Student's learning outcomes within LearnPrimary.
- (t) **Privacy Act** means the *Privacy Act 1988* (Cth).
- (u) **Privacy Policy** means the Company's privacy policy as updated from time-to-time, which can be found at the Site.
- (v) **Reward** means any form of in-app reward for performance made available within LearnPrimary, and generally refers to "Gems" and "Coins" as they are referred to in LearnPrimary.
- (w) **Subscription Fee** means a Fee charged by the Company for use of LearnPrimary on a periodical basis, as advertised on the Site and/or agreed with the Customer from time-to-time.
- (x) **Tax Invoice** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (y) **School** means an educational organisation that licences LearnPrimary on behalf of its Teachers and Students.
- (z) **Site** means <https://learnprimary.com.au/> or such other URL the Company may adopt from time-to-time.
- (aa) **Student** means a registered user of LearnPrimary that uses the features associated with a Student Account.
- (bb) **Teacher** means a registered user of LearnPrimary that uses the features associated with a Teacher Account, and generally refers to a teacher of a Student.
- (cc) **Terms of Service** means the terms and conditions of using LearnPrimary, as updated from time-to-time, which can be found at the Site.
- (dd) **TPS** means an online third-party service provider with whom a User holds an account.
- (ee) **User** means any registered user that uses LearnPrimary and includes Schools, Administrators, Teachers, Parents and Students.

- (ff) **User Content** means images, information, documents, or other data that is uploaded or input into LearnPrimary by the User or that forms part of the User's Intellectual Property.

1 USING LEARNPRIMARY

1.1 General

- (a) The licence granted for LearnPrimary under this Agreement shall be ongoing until terminated in accordance with these Terms of Service.
- (b) The User agrees that all use of LearnPrimary is subject to these Terms of Service and must immediately cease to use LearnPrimary if the User can no longer adhere to these Terms of Service.
- (c) The Company may suspend the account or restrict the access of any User that breaches these Terms of Service.
- (d) For clarity:
 - i LearnPrimary is made available on an individual Parent basis and organisational School basis;
 - ii Parents may obtain a licence to LearnPrimary on behalf of one or more Students (where the parent or legal guardian of the Student);
 - iii Schools may obtain a licence to LearnPrimary on behalf of Teachers and Students within its organisation; and
 - iv Fees will vary depending on how many Student Accounts are subscribed for by the Parent or School (as the case may be).

1.2 Account

- (a) To use LearnPrimary, the User must log into LearnPrimary and have set up their Account.
- (b) The User must provide accurate and complete information when setting up an Account and, if necessary, update the Account to ensure that such information is maintained as current for the duration of these Terms of Service.
- (c) A Student is not regarded as an independent user of LearnPrimary and must only use LearnPrimary with their parent or legal guardian's consent.
- (d) By creating a Student Account and providing the Student with access to LearnPrimary, the School or Parent (as the case may be) represents and warrants to the Company that the Student's parent or legal guardian has given consent.

1.3 Features

The Company shall provide the User with access to and use of the features as agreed between the parties and provided within LearnPrimary from time-to-time

1.4 User Responsibilities

- (a) Parents shall be responsible for:
 - i Creating and managing their Parent Account;
 - ii Creating and managing Student Accounts on behalf of a Student as the Student's parent or legal guardian;
 - iii Assisting a Student with accessing their Student Account and using LearnPrimary as necessary;
 - iv Monitoring Student progress;
 - v Paying the Fees for Student Accounts associated their Parent Account; and
 - vi Each Student's use of LearnPrimary that the Parent authorises.
- (b) Schools shall be responsible for:
 - i Creating their School Account;
 - ii Authorising an Administrator to manage their School Account;
 - iii Paying the Fees for Student Accounts associated with their School Account; and
 - iv Each Teacher and Student's use of LearnPrimary that the School authorises.
- (c) Administrators shall be responsible for:
 - i Managing the School Account;
 - ii Creating and managing Teacher Accounts and Students Accounts;
 - iii Assisting a Teacher with accessing their Teacher Account and providing Student login details as necessary; and
 - iv Assigning Teachers and Students into groups and classes.
- (d) Teachers shall be responsible for:
 - i Managing their Teacher Account;
 - ii Assisting a Student with accessing their Student Account and using LearnPrimary as necessary; and
 - iii Implementing Learning Tools and assigning tasks for Students; and
 - iv Monitoring Student progress.

1.5 Learning Tools

- (a) The Company has designed Learning Tools to gamify the learning process and align them with the Australian Curriculum for Students attending kindergarten up to year 6.

- (b) The Learning Tools made available to Students adapt based on the Student's year level and performance.
- (c) LearnPrimary may also provide the User with some level of customization of the Learning Tools a Student has access to. Such customization may be used (without limitation) in order to align the Learning Tools with the Student's homework.
- (d) Individual results of Students may vary.
- (e) The Company does not guarantee that a Student will achieve any particular outcomes.

1.6 Rewards

- (a) LearnPrimary incentivises the Student to achieve learning outcomes by providing Rewards.
- (b) Rewards generally take the form of in-app currency referred to as 'Gems' and 'Coins'.
- (c) Rewards are provided as a courtesy only, and the Company is under no obligation to exchange a reward for cash or anything else of value.
- (d) Rewards are not redeemable for cash, however in some instances may be redeemed for:
 - i Access to additional content (including games) within LearnPrimary; or
 - ii Offers from third-party partners (**Partners**).
- (e) The User acknowledges that where the User elects to redeem a Reward with a Partner:
 - i The User redeems a Reward with a Partner completely at their own risk;
 - ii The Company makes no representation that the Partner will honour a Reward or is capable of fulfilling a request to redeem a Reward;
 - iii The Partner remains responsible in relation to any discount, good or service that the Partner agrees to provide the User by honouring a request to redeem a Reward
 - iv In no event will the Company be liable to the User with regard to the redemption (or failure to redeem) a Reward, or any goods or services the User acquires by redeeming a Reward.

1.7 User Content

- (a) The Company accepts no liability for the content of User Content.
- (b) The User is responsible for the accuracy, quality and legality of any User Content uploaded to LearnPrimary and must ensure that it does not infringe or violate the rights of any third party.

- (c) The User is liable for any intentionally or recklessly erroneous, corrupted, or false data uploaded to LearnPrimary and indemnifies the Company for any loss, damage, cost or expense that the Company may suffer or incur as a result of or in connection with that data.
- (d) The User grants the Company an immediate, worldwide, royalty-free license to use and incorporate the User Content within LearnPrimary for the purposes of providing LearnPrimary.
- (e) The Company may suspend accessibility to User Content that the Company determines is illegal, offensive, indecent, or objectionable in its sole discretion.
- (f) The Company may delete User Content from its systems on termination of these Terms of Service.

2 FEES, PAYMENTS & REFUNDS

2.1 Fees

- (a) The primary Fee to use LearnPrimary shall be the Subscription Fee, which shall be payable after any free trial period has expired.
- (b) Each Fee applies in accordance with the number of registered Students associated with the Customer's Account and/or the level of features and/or services subscribed for. The pricing shall be as described on the Site or as otherwise agreed between the Company and the Customer.
- (c) The Customer agrees to make payment for all Fees as and when due and on such dates as the Customer has subscribed for.
- (d) All payments shall be made via the online payment gateway within LearnPrimary, or in such other manner as the Company may direct from time-to-time. The Customer agrees that it has no right to access LearnPrimary if it fails to make payments when due.
- (e) With respect to Parent Accounts:
 - i The Parent may elect a subscription period of varying lengths, such as monthly or annually;
 - ii The Parent must pay the applicable Subscription Fees in advance for each subscription period;
 - iii Subscription Fees will automatically renew on an ongoing basis and be charged to the Parent at the end of the subscription period for an additional period equal in length on the same terms, unless and until cancelled by the Parent; and
 - iv The Parent is responsible for cancelling their subscription before it automatically renews to avoid the billing of the Subscription Fees for the next subscription period; and
 - v The Parent will not receive a refund for the Subscription Fees already paid for the current subscription period and will continue to receive access to LearnPrimary consistent with the subscription until the end of the current subscription period.

- (f) With respect to School Accounts:
 - i The commercial terms of the subscription, including term and Fees, shall be agreed separately in writing between the Company and the School; and
 - ii The Company shall render a Tax Invoice to the School for the Fees based on number of Student Accounts active during a subscription period; and
 - iii No automatic renewals on Subscription Fees shall apply.
- (g) The Company reserves the right to introduce or change any Fees from time-to-time by giving the Customer no less than 14 days' written notice. Any new or changed Fees will apply at the next billing period after the Customer has been given such notice.
- (h) If a Customer does not accept a change to any Fees, then it can simply terminate their Account.

2.2 Currency

All Fees are quoted in Australian dollars, however transactions may be processed in an equivalent foreign currency (such as US dollars or British pounds).

2.3 GST

For Users in Australia, GST is applicable to any Fees charged by the Company to the User. Unless expressed otherwise, all Fees shall be deemed inclusive of GST. The Company will provide the Customer with a Tax Invoice for any payments.

2.4 Refunds

No refunds of Fees are offered other than as required by law.

2.5 Late Payment

- (a) If the Customer does not pay the full Fees as required, the Company may suspend all User access to LearnPrimary for that Customer Account.
- (b) If Fees are not brought out of arrears within 28 days of becoming overdue, the Company may terminate the Customer's Account in LearnPrimary without notice and end this Agreement.
- (c) The User agrees that the Company shall not be responsible or liable in any way for:
 - i Interruptions to the availability of LearnPrimary or User Content in the event of (a);
 - ii Loss of User Content in the event of (b).

3 THIRD PARTY LOGIN AND INTEGRATION

3.1 Registration & Login.

- (a) A User may be able to register as a User, access LearnPrimary and use integrated features by connecting their account with certain third party services (TPS) (e.g., Facebook, Twitter etc.).
- (b) As part of the functionality of LearnPrimary the User may connect their profile with a TPS by:
 - i Providing their TPS login information to the Company through LearnPrimary; or
 - ii Allowing the Company to access their TPS in accordance with its terms & conditions of service.
- (c) When connecting to LearnPrimary using a TPS the User warrants that they are not in breach any of the TPS' terms & conditions of service.

3.2 Ongoing Availability.

- (a) The User agrees that User access to LearnPrimary may be unavailable if the TPS becomes unavailable, and that the User may lose functionality or content that is shared between the TPS and LearnPrimary.
- (b) The User may disconnect the connection between LearnPrimary and the TPS at any time.
- (c) The Company has no relationship with any TPS and cannot guarantee the efficacy of any TPS connection.

3.3 Data from TPS.

Where a User connects and or registers their account using a TPS, the User authorises the Company to use data from that TPS to create the User's profile within LearnPrimary.

4 GENERAL CONDITIONS

4.1 Licence

- (a) By accepting the terms and conditions of this Agreement, the User is granted a limited, non-exclusive and revocable licence to access and use LearnPrimary for the duration of this Agreement, in accordance with the terms and conditions of this Agreement.
- (b) The Company may issue the licence to the User on the further terms or limitations (including the number of users or volume of use or transactions) as it sees fit.
- (c) The Company may revoke or suspend the User's licence(s) in its absolute discretion for any reason that it sees fit, including for breach of the terms and conditions in this Agreement by the User.

4.2 Modification of Terms

- (a) The Company may, in its sole discretion, modify or update these Terms of Service from time-to-time.

- (b) When the Company changes these Terms of Service in a material manner, it will update the 'last modified' date at the top of these Terms of Service and notify the User that material changes have been made to these Terms.
- (c) The User should review this page periodically for notice of any changes to these Terms of Service.
- (d) The modified terms shall come into effect the next time the User accesses LearnPrimary following the update to the Terms of Service.
- (e) If the User does not accept any changes to the terms of these Terms of Service, the User must immediately cease using LearnPrimary.

4.3 Software-as-a-Service

- (a) The User agrees and accepts that LearnPrimary is:
 - i Hosted by the Company and shall only be installed, accessed and maintained by the Company, accessed using the internet or other connection to the Company servers and is not available 'locally' from the User's systems; and
 - ii Managed and supported exclusively by the Company from the Company servers and that no 'back-end' access to LearnPrimary is available to the User unless expressly agreed in writing.
- (b) As a hosted and managed service, the Company reserves the right to upgrade, maintain, tune, backup, amend, add or remove features, redesign, improve or otherwise alter LearnPrimary.

4.4 Support

- (a) The Company provides user support for LearnPrimary via the email address info@learnprimary.com.au.
- (b) The Company shall endeavour to respond to all support requests within 3 Business Days.

4.5 Use & Availability

- (a) The User agrees that it shall only use LearnPrimary for legal purposes and shall not use it to engage in any conduct that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable by the Company in its discretion.
- (b) The User is solely responsible for the security of its username and password for access to LearnPrimary. The User shall notify the Company as soon as it becomes aware of any unauthorised access of its LearnPrimary account.
- (c) The User agrees that the Company shall provide access to LearnPrimary to the best of its abilities, however:
 - i Access to LearnPrimary may be prevented by issues outside of its control; and
 - ii It accepts no responsibility for ongoing access to LearnPrimary.

4.6 Privacy

- (a) The Company maintains the Privacy Policy in compliance with the provisions of the Privacy Act for data that it collects about the User and other customers.
- (b) The Privacy Policy does not apply to how the Partner handles personal information. If necessary under the Privacy Act, it is the Partner's responsibility to meet the obligations of the Privacy Act by implementing a privacy policy in accordance with law.
- (c) LearnPrimary may use cookies (a small electronic tracking code) to improve a User's experience while browsing, while also sending browsing information back to the Company. The User may manage how it handles cookies in its own browser settings.

4.7 Data

- (a) **Security.** The Company takes the security of LearnPrimary and the privacy of its Users very seriously. The User agrees that the User shall not do anything to prejudice the security or privacy of the Company's systems or the information on them.
- (b) **Transmission.** The Company shall do all things reasonable to ensure that the transmission of data occurs according to accepted industry standards. It is up to the User to ensure that any transmission standards meet the User's operating and legal requirements.
- (c) **Backup.** The Company shall perform backups of its entire systems in as reasonable manner at such times and intervals as is reasonable for its business purposes. The Company does not warrant that it is able to backup or recover specific User Content from any period of time unless so stated in writing by the Company.

4.8 Intellectual Property

- (a) **Trademarks.** The Company has moral & registered rights in its trade marks and the User shall not copy, alter, use or otherwise deal in the marks without the prior written consent of the Company.
- (b) **Proprietary Information.** The Company may use software and other proprietary systems and Intellectual Property for which the Company has appropriate authority to use, and the User agrees that such is protected by copyright, trademarks, patents, proprietary rights and other laws, both domestically and internationally. The User warrants that it shall not infringe on any third-party rights through the use of LearnPrimary.
- (c) **The LearnPrimary Application.** The User agrees and accepts that LearnPrimary is the Intellectual Property of the Company and the User further warrants that by using LearnPrimary the User will not:
 - i Copy LearnPrimary or the services that it provides for the User's own commercial purposes; and
 - ii Directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, algorithms contained in LearnPrimary or any documentation associated with it.

- (d) **Content.** Notwithstanding User Content, all content submitted to the Company, whether via LearnPrimary or directly by other means, becomes and remains the Intellectual Property of the Company, including (without limitation) any source code, analytics, insights, ideas, enhancements, feature requests, suggestions or other information provided by the User or any other party with respect to LearnPrimary.

4.9 Disclaimer of Third Party Services & Information

- (a) The User acknowledges that LearnPrimary is dependent on third-party services, including but not limited to:
 - i Banks, credit card providers and merchant gateway providers;
 - ii Telecommunications services;
 - iii Hosting services;
 - iv Email services; and
 - v Analytics services.
- (b) The User agrees that the Company shall not be responsible or liable in any way for:
 - i Interruptions to the availability of LearnPrimary due to third-party services; or
 - ii Information contained on any linked third party website.

4.10 Liability & Indemnity

- (a) The User agrees that it uses LearnPrimary at its own risk.
- (b) The User acknowledges that the Company is not responsible for the conduct or activities of any User and that the Company is not liable for such under any circumstances.
- (c) The User agrees to indemnify the Company for any loss, damage, cost or expense that the Company may suffer or incur as a result of or in connection with the User's use of or conduct in connection with LearnPrimary, including any breach by the User of these Terms of Service.
- (d) In no circumstances will the Company be liable for any direct, incidental, consequential or indirect damages, damage to property, loss of property, loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss of anticipated savings or any other similar or analogous loss resulting from the User's access to, or use of, or inability to use LearnPrimary, whether based on warranty, contract, tort, negligence, in equity or any other legal theory, and whether or not the Company knew or should have known of the possibility of such damage, or business interruption of any type, whether in tort, contract or otherwise.
- (e) Certain rights and remedies may be available under the *Competition and Consumer Act 2010* (Cth) or similar legislation of other States or Territories and may not be permitted to be excluded, restricted or modified. Apart from those that cannot be excluded, the Company and the Company's related entities

exclude all conditions and warranties that may be implied by law. To the extent permitted by law, the Company's liability for breach of any implied warranty or condition that cannot be excluded is restricted, at the Company's option to:

- i The re-supply of services or payment of the cost of re-supply of services; or
- ii The replacement or repair of goods or payment of the cost of replacement or repair.

4.11 Termination

- (a) Either party may terminate this Agreement by giving the other party written notice.
- (b) Termination of this agreement is without prejudice to and does not affect the accrued rights or remedies of any of the parties arising in any way out of this agreement up to the date of expiry or termination.

4.12 Dispute Resolution

- (a) If any dispute arises between the parties in connection with this Agreement (**Dispute**), then either party may notify the other of the Dispute with a notice (**Dispute Notice**) which:
 - i Includes or is accompanied by full and detailed particulars of the Dispute; and
 - ii Is delivered within 10 Business Days of the circumstances giving rise to the Dispute first occurring.
- (b) Within 10 Business Days after a Dispute Notice is given, a representative of each party with the authority to resolve the dispute, must meet (virtually or otherwise) and seek to resolve the Dispute.
- (c) Subject to clause (d), a party must not bring court proceedings in respect of any Dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause.
- (d) Nothing in this clause prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.
- (e) Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this document and any related agreements.

4.13 Electronic Communication, Amendment & Assignment

- (a) The words in this clause that are defined in the *Electronic Transactions Act 1999 (Cth)* have the same meaning.
- (b) The User can direct notices, enquiries, complaints and so forth to the Company as set out in this Agreement. The Company will notify the User of a change of details from time-to-time.
- (c) The Company will send the User notices and other correspondence to the details that the User submits to the Company, or that the User notifies the

Company of from time-to-time. It is the User's responsibility to update its contact details as they change.

- (d) A consent, notice or communication under this Agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law.
- (e) Notices must be sent to the parties' most recent known contact details.
- (f) The User may not assign or otherwise create an interest in this Agreement.
- (g) The Company may assign or otherwise create an interest in its rights under this Agreement by giving written notice to the User.

4.14 General

- (a) **Special Conditions.** The parties may agree to any Special Conditions to this Agreement in writing.
- (b) **Prevalence.** To the extent this Agreement is in conflict with, or inconsistent with any Special Conditions made under this Agreement, the terms of those Special Conditions shall prevail.
- (c) **Disclaimer.** Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.
- (d) **Relationship.** The relationship of the parties to this Agreement does not form a joint venture or partnership.
- (e) **Waiver.** No clause of this Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.
- (f) **Further Assurances.** Each party must do anything necessary (including executing agreements and documents) to give full effect to this Agreement and the transaction facilitated by it.
- (g) **Governing Law.** This Agreement is governed by the laws of New South Wales, Australia. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there.
- (h) **Severability.** Any clause of this Agreement, which is invalid or unenforceable, is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this Agreement.
- (i) **Interpretation.** The following rules apply unless the context requires otherwise:
 - i Headings are only for convenience and do not affect interpretation.
 - ii The singular includes the plural and the opposite also applies.
 - iii If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
 - iv A reference to a clause refers to clauses in this Agreement.

- v A reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
- vi Mentioning anything after *includes, including,* or similar expressions, does not limit anything else that might be included.
- vii A reference to a *party* to this Agreement or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).
- viii A reference to a *person, corporation, trust, partnership, unincorporated body* or other entity includes any of them.
- ix A reference to *information* is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.