



Whizz Education Inc. Standard Terms and Conditions

- 1.1 On behalf of our parent company, Whizz Education Limited, which is registered in the United Kingdom, Whizz Education Inc, a Washington corporation, whose principal office mailing address is P.O. Box #2323, Lynnwood, WA, 98036 (“**Whizz**” or “**We**” or “**Us**”) shall provide to the Client (as described on the latest Order Form, the “**Client**” (also referred to herein as “**You**”)) (together the **Parties**) the services as set out in the Description of Services in the Order Form (**Services**). We will discuss the substance of your instructions with you on an ongoing basis and any specific requirements or changes beyond the scope of this letter will be agreed in writing between you and us.
- 1.2 The Payment Terms are set out in Appendix A. The Term and Multi-Term Price Advantage (“Whizz Contribution”) Terms are set out in Appendix B.
2. **Party Obligations**
 - 2.1 Whizz shall provide the Services:
 - (a) in accordance with the Description of Services in the Order Form;
 - (b) to a professional standard;
 - (c) using reasonable skill and care, having allocated sufficient resources and appropriate expertise;
 - (d) at the times and on the dates agreed; and
 - (e) in compliance with all law.
 - 2.2 Furthermore, Whizz shall co-operate with the Client and the school(s) it operates on all aspects connected with the delivery of the Services and ensure that Whizz employees comply with any reasonable instructions including any security requirements.
 - 2.3 The Client terms of access for the Math-Whizz services are set out as follows: [Math-Whizz Tutor](#) and [Math-Whizz Teachers’ Resource](#) (if included in your Service provision in accordance with 2.1).
 - 2.4 Whizz Service Standards with respect to the services Math-Whizz Tutor are as follows: Whizz Education will use commercially reasonable efforts to make Math-Whizz Tutor available to you 24 hours a day except for : (a) planned downtime, of which Whizz Education will give you reasonable notice where possible; and/or (b) any force majeure event causing unavailability beyond Whizz Education's reasonable control including Internet service provider failures or delays beyond the demarcation point of Whizz Education. In the event that Math-Whizz Tutor becomes unavailable to you during normal school hours for a whole day or more, other than as a result of a force majeure event or a failure of your own IT systems, Whizz Education will compensate you by an extension of your contract term without charge for an additional period equivalent to the period of unavailability.



- 2.5 The Client will use its best efforts to procure that its employees, and those of its schools, co-operate with Whizz in assuring:
- (a) the timely provision to Whizz, or its authorized partners, of student and other data required for delivery of the Services,
 - (b) organization and attendance at training and review meetings with Whizz at mutually agreed times,
 - (c) sufficient usage by students of Services at agreed levels; and,
 - (d) responsiveness to course corrections suggested by Whizz, all in accordance with the implementation plans (if included in your Service provision in accordance with 2.1) for the Services which are agreed between the Parties. The Client and Whizz agree to adopt the Partnership Charter appended.

3. Data Protection and Anti-Bribery

- 3.1 Data Protection and other issues remain significant responsibilities and our terms of operation relating to each are as set out below:
- (a) The Whizz Education Inc Privacy Policy is set out [here](#), and the Data Protection Supplementary Statement for Schools can be found [here](#). As stated in the Privacy Policy Whizz complies in the United States with the Family Educational Rights and Privacy Act 1974 (FERPA), the Children's Online Privacy Protection Act 1998(COPPA), the Protection of Pupil Rights Amendment (PPRA), the California Student Online Personal Information Protection Act 2014 (SOPIPA), and all applicable state or federal student data privacy protection laws; and
 - (b) The Whizz Education Limited Anti-Bribery Policy is set out [here](#).

4. Limitation of liability

- 4.1 **Background to the limits and exclusions on the Supplier's liability.** Whizz has obtained insurance cover in respect of certain aspects of its own legal liability. The limits and exclusions in this clause reflect the insurance cover the Client has been able to arrange, and the Client is responsible for making its own arrangements for the insurance of any excess liability.
- 4.2 **Scope of this clause.** References to liability in this clause **4** include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 4.3 **Liabilities which cannot legally be limited.** Nothing in this agreement limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence; and
 - (b) fraud or fraudulent misrepresentation.
- 4.4 **Cap on the Whizz's liability.** Whizz's total liability to the Customer shall not exceed a sum equal to the total amount paid to Whizz by the Customer in the 12 months



immediately preceding the incident leading to the liability or \$50,000 whichever is the lesser.

4.5 Specific heads of excluded loss

(a) Types of loss wholly excluded:

- (i) Loss of profits.
- (ii) Loss of sales or business.
- (iii) Loss of agreements or contracts.
- (iv) Loss of anticipated savings.
- (v) Loss of use or corruption of software, data or information.
- (vi) Loss of or damage to goodwill.
- (vii) Indirect or consequential loss.

4.6 In addition to the provisions of this clause 4, to the fullest extent allowed by applicable law, you agree that Whizz will not be liable to you for any failure by your permitted users to improve in mathematics, to pass any tests or exams, at school or external, nor for any losses or damage which are not a direct consequence of your or your permitted user(s)' use of the service(s) (including loss of privacy or loss of or damage to data) or which arise as a result of you or your permitted user(s) using the service outside the scope of these terms and conditions.

4.7 **No liability for claims not notified within 3 months.** Unless a party notifies the other party that it intends to make a claim in respect of an event within the notice period, the other party shall have no liability for that event. The notice period for an event shall start on the day on which the party wishing to make a claim became, or ought reasonably to have become, aware of the event having occurred (as opposed to it becoming aware of its having grounds to make a claim in respect of it) and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

5. Confidentiality

5.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by 5.2.

5.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this 5; and



(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

5.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

6. Intellectual Property Rights

6.1 **Intellectual Property Rights** are defined as patents, utility models, rights to inventions, copyright and neighboring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

6.2 The Services incorporate Intellectual Property Rights owned by or used by Whizz, or its authorized partners, and which have been developed independently of this Agreement (whether prior to the date of the Contract or otherwise).

6.3 This Agreement shall under no circumstances be construed as conveying, offering or transferring any ownership, leasing, proprietary or any other interest in any of Whizz's intellectual property rights in the Services or Whizz's trademarks to Client, its schools or any third party on any basis. The Client's use of any of the services is strictly limited to these terms and conditions.

6.4 All rights, title and interest in and to the Service(s), all components thereof and material therein, any Updates and Upgrades thereof, and any and all copies of the same, are owned exclusively by Whizz together with all intellectual property rights in all of the foregoing (including but not limited to copyright, trademarks, database rights, designs and design rights, patents, inventions, know-how, trade secrets, and all other similar rights arising under the laws of any jurisdiction, whether registered or unregistered and including any applications to register the same). As between the parties, Whizz owns any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by You or any other party relating to the Service. Except as expressly provided by this Agreement, you do not have and are not granted any right, title or interest in or to the Service.

7. Termination

7.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

(a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment;

- (b) the other party commits a material breach of any other term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- (f) an application is made to court, or an order is made, for the appointment of an administrator or receiver, or a notice of intention to appoint an administrator or receiver is given or an administrator or receiver is appointed, over the other party (being a company, partnership or limited liability partnership);
- (g) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this clause;
- (h) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

8. Mediation

- 8.1 If any dispute arises in connection with this agreement, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR.

9. Assignment and other dealings

- 9.1 This agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

10. Force majeure

- 10.1 Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations (including but not limited to (a) decision of any court or other judicial body of competent jurisdiction, (b) unavailability of equipment, power or other commodity, (c) failure or non-availability of Internet or telecommunications facilities, computer hardware or Service, (d) act of God, war, riot,



terrorist attack, civil commotion, malicious damage, fires, flood or storm (e) strikes or other industrial disputes (whether involving Our workforce or that of any other party) or (f) acts of government or other prevailing authorities or default of suppliers, sub-contractors or other third parties). If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

11. No partnership or agency

- 11.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorize any party to make or enter into any commitments for or on behalf of any other party.
- 11.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

12. Severance

- 12.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 12.2 If any provision or part-provision of this agreement is deemed deleted under 12.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

13. Successors

- 13.1 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

14. Variation

- 14.1 Subject to 14.2, no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorized representatives).
- 14.2 Whizz reserves the right to update this agreement periodically at its sole discretion. It will notify the other parties of any changes and when they will become operative. Continued use of the Services by the Customer shall constitute acceptance of the new terms as if they had been incorporated into the agreement from the date of commencement of delivery of the Services.

15. Entire agreement

- 15.1 This agreement and the documents referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.



- 15.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

16. Waiver

- 16.1 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17. Inadequacy of damages

Without prejudice to any other rights or remedies that a Party may have, the other each Party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement. Accordingly, each Party shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.

18. Counterparts

- 18.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

19. Language

- 19.1 The language of this Agreement is English. All documents, notices, waivers, variations and other written communications relating to this Agreement shall be in English.

20. Third party rights

- 20.1 Unless it expressly states otherwise, a separate agreement is in place, or a separate agreement is in place, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

21. Notices

- 21.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 21.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the registered address of the relevant party;



- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.

21.3 With regards to clause 21 Notices:

- (a) this clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution;
- (b) as an exception, notices relating to invoice or service disputes will be accepted by electronic method such as email.

22. Governing Law and Jurisdiction

- 22.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to the conflict of laws provisions thereof. You irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the state and federal courts located in King County, Washington for any litigation, claim, controversy or dispute arising out of or relating to this Agreement and agree not to commence any litigation arising out of or relating to this Agreement except in such courts.



Appendix A - Payment Terms

1. Invoicing and Payments:

- 1.1** Whizz shall invoice the total price of the Services in advance plus any taxes, duties or similar levies, now or hereafter enacted, applicable to the Services where Whizz is required by law to pay or collect them. Whizz shall invoice either to the Client alone and/or, having divided the total price in accordance with the Client's instructions, to the Client in part and to one or more of the schools in part.
- 1.2** If any deduction or withholding is required by law and pursuant to any such treaty to be made from any invoice under this Agreement, the Client shall pay Whizz, at the same time as making the payment in question, such additional amount as will, after such deduction or withholding has been made, leave Whizz with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding. If these circumstances are expected to arise, and before the due date for payment, the Client should request, and Whizz will supply, a revised invoice whose payment after the deduction or withholding of tax was made will produce the result provided for in the previous sentence.
- 1.3** Whizz shall be entitled to suspend the Services to any party receiving an invoice if such invoice remains unpaid more than 60 days after its issue.
- 1.4** If, as and when the Client extends the contract for an additional period, Whizz shall invoice the total price of the Services for such additional period on the same basis as described in Clauses 1.1 and 1.2 above.

2. Money Back Guarantee:

- 2.1** The Money Back Guarantee applies to the following services only: Math-Whizz Tutor
- 2.2** The terms and conditions of Whizz's Money Back Guarantee for U.S. schools are set out at <https://www.whizz.com/en-us/schools-money-back-guarantee/> and are incorporated herein by reference with the clarification that it will be applicable on a school by school basis and if any of the Client's schools qualify to claim under the conditions of the guarantee in respect of their first year of usage, Whizz will refund only the amount paid in respect of adaptive virtual tutoring at the rate per student, as specified in the order form, times the number of students who have used Whizz Services at the qualifying school(s) in such first year.
- 2.3** No refund will be paid in respect of any students attending the Client school which does not itself qualify to claim under the guarantee.



Appendix B - Term

1. Term:

- 1.1 The Term of the Contract shall commence ("Commencement Date") and shall expire ("Expiry Date") as stated on the Order Form (unless it is otherwise extended or terminated in accordance with these terms and conditions).
- 1.2 On the Expiry Date of the initial period chosen and of additional periods, the contract will be automatically extended for an additional period equivalent to the initial period unless, following notice of the extension by Whizz 60 days before the Expiry Date, Client decides to terminate the contract by giving not less than 30 days notice in writing to Whizz prior to the Expiry Date.
- 1.3 If the Term is extended, the Expiry Date shall become the last day of the additional period.
- 1.4 These terms and conditions shall apply throughout any such additional period(s).

2. MULTIYEAR TERMS:

- 2.1 If Client chooses a Term with an Expiry Date more than one year from the start date, it may also choose between paying for the Services either in one amount in advance for the whole of the multiyear term or annually, on an instalment basis.
- 2.2 In the event that Client elects for an instalment basis, Whizz shall guarantee that the pricing parameters employed for the first-year instalment will not be increased for second and subsequent instalments and shall send an annual invoice to Client 30 days before each anniversary of the start date of the multiyear term.