



EngageME Mathematics Terms of Use

EngageME Mathematics Pty Ltd ACN 623 649 141

1. Background

Thank you for visiting our Terms of Use (**Agreement**), we are Engageme Mathematics Pty Ltd ACN 623 649 141 of 6 Gladwyn Avenue, Frankston VIC 3199 (**we, our, us** and other similar terms). We provide a platform of educational content to assist teachers and school leaders to enhance the culture of learning mathematics, known as EngageME Mathematics (**EngageME Mathematics**).

This Agreement outlines the terms and conditions associated with your use of EngageME Mathematics. It is your obligation to ensure that you have read, understood and agree to the most recent terms available at www.engagememathematics.com (**Website**).

2. Agreement

2.1 Accepting this Agreement

By creating an EngageME Mathematics Account, you agree to comply with and be legally bound by the terms and conditions of this Agreement. If you do not agree to these terms, you have no right to continue using EngageME Mathematics.

You must not use EngageME Mathematics if you are not able to form legally binding contracts or are under the age of 18. If you create an Account on behalf of your employer or any other entity, you represent and warrant you hold authority to enter into this Agreement on behalf of that entity and that the entity will comply with the obligations contained herein.

2.2 About this Agreement

Throughout the Agreement we use some capitalised words and phrases, like the word Agreement. These capitalised words and phrases are defined in clause 15.1. They aid to clarify the terms and conditions. Please feel free to email us at t.moore@engagememathematics.com if you have any questions.

3. Term

This Agreement will commence when you create an Account for EngageME Mathematics and will continue for the Subscription Period or until the date of termination of this Agreement in accordance with clause 13.

If this Agreement is not terminated in accordance with clause 13, prior to the Renewal Date, this Agreement will automatically renew for a period equal to the current Subscription Period.

4. Licence

We grant you a non-transferrable, non-exclusive and revocable licence to access EngageME Mathematics for the Subscription Period, subject to the terms and conditions of this Agreement.

The grant of the licence to access EngageME Mathematics in clause **Error! Reference source not found.** is subject to:

- (a) and conditional upon you purchasing, and maintaining a subscription to, one of our Subscription Packages; and
- (b) the express prohibitions set out at clause 7.

We reserve the right to limit or suspend your licence to access EngageME Mathematics if you fail to pay the Subscription Fee, or if in our reasonable opinion, you are in breach of any of your obligations or warranties in this Agreement. Suspending your account will not constitute a breach of this Agreement by us, nor will it alter your obligation to pay the Subscription Fee.

5. Payment

We will provide you with a tax invoice for the Subscription Fee, which you agree to pay in accordance with the Payment Terms.

Unless expressed otherwise, Subscription Fees are quoted in Australian Dollars and are inclusive of GST, withholding taxes, duties and charges imposed or levied in Australia, or overseas, in connection with this Agreement.

You are responsible for all bank fees and charges applied by the payment gateway provider.

6. Requirements for use

You acknowledge and agree EngageME Mathematics will only be accessible using the internet, by users with a valid Account and will not be available "locally" from your own servers or devices.

Support for EngageME Mathematics is provided in accordance with the support arrangements as set out on our Website and may vary from time to time.

If it is necessary to interrupt your use of EngageME Mathematics, we will endeavour to provide you with reasonable notice (where possible) of when, and the anticipated duration for which, EngageME Mathematics will be unavailable.

You acknowledge access to EngageME Mathematics may be changed, interrupted or discontinued for many reasons, some of which are beyond our control and during routine maintenance there may be updates to EngageME Mathematics which may change the interface and manner in which it functions.

You agree that we are not liable for any loss, foreseeable or not, arising from any interruption to access, planned or not, and any such interruptions will not constitute a breach by us of these terms.

7. Your use of EngageME Mathematics

7.1 Registering an Account

In order to use EngageME Mathematics, you are required to provide us with Personal Information and create an Account with us.

You agree to provide any information reasonably requested by us for the purpose of setting up your Account. You warrant that all of the information you provide to us is accurate and complete in all respects, you will inform us by updating your Account details whenever any such information changes and you will not provide false or misleading information.

We reserve the right to reject any new Account in our absolute discretion.

7.2 Account security

Maintaining the security of your Account is important to ensuring your Personal Information, and that data which we process on your behalf, remains safe. We work hard to keep EngageME Mathematics secure and we ask you to contribute.

You agree not to request or allow another person to create an Account on your behalf, for your use, or for your benefit, except that an authorised employee or agent may create an Account on behalf of your business. You also agree not to disclose your Account security credentials to another person or permit them to access your Account. You are responsible for the activities undertaken using your Account which occur via EngageME Mathematics, whether such activities are authorised by you or not.

7.3 Conduct which is expressly prohibited

You may only acquire and make use of EngageME Mathematics for the sole purpose of meeting your internal teaching needs. You must not use or include any part of EngageME Mathematics in any service bureau or fee generating service offered to third parties.

You must not:

- (a) in any way tamper with, hinder or modify EngageME Mathematics;
- (b) use EngageME Mathematics directly or indirectly for any activity or transmit any information or material unlawfully, or which is obscene, indecent, uses offensive language, defames, abuses, harasses, stalks, threatens, menaces or offends any person;
- (c) knowingly transmit any viruses or other disabling features to or via EngageME Mathematics;
- (d) use any screen capture, data mining, robot, crawler or similar data gathering, reproduction or data extraction tools to collect information from EngageME Mathematics or our Website for any purpose including duplicating the content of EngageME Mathematics;
- (e) intentionally disable or circumvent any protection or disabling mechanism of EngageME Mathematics;
- (f) use EngageME Mathematics in any way which could be reasonably expected to interfere with or damage our systems, any other operator's systems, or another user's enjoyment of EngageME Mathematics;
- (g) use EngageME Mathematics in connection with a breach of any law in Australia or the jurisdiction in which you operate; or
- (h) attempt, facilitate or assist another person to do any of the above acts.

8. Privacy

You agree and consent to us handling your Personal Information in accordance with our Privacy Policy. We may amend our Privacy Policy in our sole discretion. If we amend our Privacy Policy, we will post the new version on our Website.

9. Intellectual Property

9.1 Use of EngageME Mathematics

We warrant we own or have a licence to use the Intellectual Property in EngageME Mathematics and our Animations. Nothing in this agreement is intended to transfer ownership of any part of EngageME Mathematics or any of our Animations.

You must not do any of the following, assist anyone to do any of the following or permit any person over whom you have effective control to:

- (a) create an adaptation or translation of, all or part of EngageME Mathematics or the Animations in any way; or
- (b) (except to the extent that reproduction occurs automatically through its ordinary use) directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, or algorithms contained in EngageME Mathematics.

9.2 Subscription Packages

You must not use our Animations other than in accordance with the rights granted within these terms of use. Where you have a Starter Subscription Package:

- (a) we grant you a licence to access the Animations via your browser and present those Animations, for educational purposes, directly to your students;
- (b) you must not directly or indirectly download and store a copy of any Animations; and
- (c) you must not incorporate all or part of EngageME Mathematics or the Animations in any other webpage, site, application or other digital or non-digital format.

Where you have a Premium Subscription Package (including School Licences):

- (a) we grant you a licence to access the Animations via your browser and present those Animations, for educational purposes, directly to your students;
- (b) we grant you the right to download the Animations and, while you maintain an active Subscription, incorporate those Animations into your own educational presentations and teaching material solely for the purpose of providing and presenting that content to your students for their individual educational needs; and
- (c) you must not incorporate all or part of EngageME Mathematics or the Animations in any other webpage, site, application or other digital or non-digital format.

9.3 Free samples and promotional products

From time to time, and in our sole discretion, we may make available free samples or promotional animations in GIF format (**Sample GIFs**) to our existing and prospective users. For the avoidance of doubt, nothing in this Agreement applies to the the provision of these Sample GIFs.

10. Warranties

We aim to provide the best possible user experience, however, subject to the Non-excludable Conditions, we make no warranties or guarantees that EngageME Mathematics is fault free, regarding EngageME Mathematics' fitness for any particular purpose which we have not expressed, or regarding your access to, or the results of your access to, EngageME Mathematics including its correctness, accuracy, timeliness, completeness, reliability or otherwise.

11. Limitation of Liability

11.1 Implied Conditions

We expressly exclude all conditions, warranties and other terms which might otherwise be implied by any law, regulation, statute, common law or law of equity except any Non-excludable Condition.

11.2 Limitation of Liability

Subject to the Non-excludable Conditions, we exclude all other liability for any costs, including consequential losses, suffered or incurred directly or indirectly by you in connection with this Agreement, including:

- (a) EngageME Mathematics being inaccessible for any reason;
- (b) computer virus, trojan and other malware in connection with EngageME Mathematics;
- (c) security vulnerabilities in EngageME Mathematics or any breach of security;

- (d) negligence arising from our activities or that of our service providers;
- (e) the occurrence of an Event of Force Majeure;
- (f) your breach of this Agreement; or
- (g) any act or omission by you, your personnel, your associates or any related body corporate under or in relation to this Agreement.

11.3 Limits to liability associated with goods and services

Where a Non-excludable Condition is deemed to apply, to the fullest extent possible under the law, we limit our liability for any breach to: in the case of goods: the re-supply of the goods or payment of the cost of the re-supply of the goods, or the replacement or repair of the goods or payment of the cost of replacement or repair of the goods; and in the case of services: the resupply of the services or the payment of the cost of having the services resupplied.

11.4 Indemnity

You indemnify us against all costs suffered or incurred by us, however caused, arising wholly or partially, directly or indirectly, in connection with this Agreement or your use of EngageME Mathematics, including any costs arising from your breach of this Agreement, your infringement of any third party Intellectual Property rights associated with this Agreement, any harm to, claim or action by a third party (including to that third party's personal property) which arise directly or indirectly from your use of EngageME Mathematics and your breach of any law including, Privacy Law.

12. Dispute Resolution

A party claiming a dispute has arisen under this Agreement (**Dispute**) must give written notice to the other party specifying the nature of the Dispute. The parties must submit themselves to the dispute resolution procedure set out in this clause 12 before commencing any legal proceedings.

If the parties cannot resolve the Dispute between themselves within 30 days then either party may require the Dispute to be referred for mediation. The mediation must be undertaken in accordance with the Resolution Institute Mediation Rules, within the jurisdiction of the Agreement and, unless otherwise agreed between the parties, using a mediator nominated by the Resolution Institute. If the Dispute is not resolved within 30 days of the mediation commencing either party may commence proceedings in respect of the Dispute.

Each party must pay its own internal and legal costs in relation to complying with this clause 12. The mediator's costs are to be shared equally.

The parties acknowledge and agree this clause 12 does not apply to the recovery of any debt or prevent a party from instituting proceedings for the purposes of seeking urgent injunctive or similar interim relief from a court.

13. Termination

13.1 Termination for convenience

You may terminate this Agreement by sending us a Cancellation Notice or cancelling your subscription via the facility in your Account. We may terminate this Agreement at any time by notifying you via the email address contained within your Account. Either option satisfies the requirements for termination to be provided in writing.

Termination will take effect, at the end of the then current Subscription Period, if the notice is provided prior to the Renewal Date.

13.2 Termination for cause

Either party may terminate this Agreement immediately if the other party commits a material breach of this Agreement and the breach is incapable of being remedied or if the breach is capable of being remedied, the party in breach has failed to remedy the breach within 14 days after the receipt of notice to remedy.

13.3 Actions upon termination

Upon termination:

- (a) you must cease using the Animations;
- (b) you must immediately stop using EngageME Mathematics;
- (c) we reserve the right to permanently erase any data associated with your Account; and
- (d) you will no longer have access to your Account.

14. General

Assignment - We may assign, encumber, declare a trust over or otherwise create an interest in our rights in this Agreement without your consent. You may not assign, encumber, declare a trust over or otherwise create an interest in our rights in this Agreement.

Entire Agreement - This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.

Governing law - The laws of Victoria and the Commonwealth of Australia govern this Agreement. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

Notices - The parties agree all notices, disclosures and other communications that are provided in accordance with this clause, satisfy any legal requirement that such communications be in writing. Any communication under or in connection with this Agreement:

- (a) which we send to you, will be sent to the email address provided to us in your Account and by accepting these terms you give your consent to receive communications from us by email; and
- (b) which you send, must be either delivered or posted by prepaid post to the address set out at clause 1 or sent by email to our email address set out at clause 2.2.

Severability - Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change its intended effect.

Variations to this Agreement - We may vary this agreement (including by changing the Subscription Fee) by giving one month written notice to you. If you do not accept the terms of the variation you may terminate your subscription in accordance with clause 13.1.

15. Definitions

15.1 Definitions

Unless the terms and conditions of the Agreement state otherwise, the following expressions used in this Agreement have the following meanings:

Account or **EngageME Mathematics Account** means the username and access credentials used when you access EngageME Mathematics.

Agreement means these terms and conditions and any document incorporated into them by reference.

Animation Library means the members section of this Website where Animations are stored.

Animations means all content of the Animation Library which is available to users who have a valid Account, whether it be in a video, animated or static graphic format.

Cancellation Notice means a notice sent by either party, in accordance with clause 13, requesting the termination of this Agreement.

Confidential Information means information that is by its nature confidential, including but not limited to information relating to either party's personnel, policies, practices, clientele, business strategies, Intellectual Property rights, the system operations associated with EngageME Mathematics and security credentials. But does not include information already rightfully known to the receiving party at the time of disclosure by the other party or in the public domain other than as a result of a disclosure in breach of its obligations of confidentiality under this Agreement.

Event of Force Majeure means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, health epidemic, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a computer virus, trojan, malware, a ransomware attack or other malicious code.

Intellectual Property means all present and future rights conferred by statute, common law or equity (and all moral rights) in or in relation to business names, domain names, circuit layouts, computer code, confidential information, copyright, designs, formulas, inventions, knowhow, patents, plant varieties, recipes, trade marks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

Non-excludable Condition means any guarantee, condition or warranty (such as the consumer guarantees implied by the *Competition and Consumer Act 2010* (Cth)), which cannot by law be excluded.

Payment Terms mean the requirement to make payment immediately on commencement of this Agreement and each subsequent Renewal Date in accordance with the Subscription Package selected.

Personal Information means information or an opinion about an identifiable individual (not a company), whether or not that information or opinion is true or in a material form.

Premium Subscription Package means the subscription packages advertised on our Website labelled "Premium".

Privacy Law means both the privacy laws in the jurisdiction in which you operate and the *Privacy Act 1988* (Cth) incorporating the Australian Privacy Principles.

Privacy Policy means the privacy policy available on our Website as amended by us from time to time.

Renewal Date means the date prior to the end of the then Subscription Period.

Starter Subscription Package means the subscription packages advertised on our Website labelled "Starter".



Subscription Fee means the price for the EngageME Mathematics Subscription Package as set out on our Website.

Subscription Package means one of the subscription packages advertised on our Website from time to time.

Subscription Period means the period of time defined in your chosen Subscription Package.

You or your means the person or entity using EngageME Mathematics.

Us, we or our means EngageME Mathematics Pty Ltd ACN 623 649 141.

Website means the website located at www.engagemathematics.com and any of its subdomains.