



DISCOVERY EDUCATION: PATHWAY - TERMS OF SERVICE AND LICENCE.

These Terms of Service and Licence (these “**Standard Terms**”) are applicable to any Order Form (each, an “**Order Form**”) issued by Discovery Education Europe Limited (“**Discovery Education**”) to the individual or entity listed in the Order Form (“**Subscriber**”) to provide access to the Discovery Education: Pathway CPD products and services identified therein (the “**Services**”) and to Subscriber’s use of the Services. Each Order Form shall be deemed to be part of these Standard Terms and subject to the terms and conditions set forth herein. These Standard Terms supersede all other prior and contemporaneous agreements, negotiations, communications or understandings, oral or written, with respect to the subject matter hereof. In no event shall the terms and conditions of any other purchase agreement amend or modify the terms and conditions of these Standard Terms.

1. RIGHTS OF ACCESS AND USE

- 1.1. **Grant of Licence.** Subject to the terms and conditions set forth herein, Discovery Education grants to Subscriber, and, if Subscriber is a school rather than an individual, to those of its authorized educators employed by Subscriber whose names and email addresses are listed in the Order Form (the “**Users**”), for the Term, a limited, non-exclusive, non-sublicensable, non-transferable and revocable licence to access the Service(s) and any and all content included therein (the “**Content**”), and to download, stream, and edit the Content pursuant to the terms and conditions set forth in these Standard Terms. Discovery Education may, in its sole discretion, make changes to the Services and/or the Content. All rights not expressly granted to Subscriber and its Users pursuant to these Standard Terms are reserved to Discovery Education, and all uses of the Content by Subscriber and its Users not expressly permitted herein are prohibited.
- 1.2. **Access.** Discovery Education shall provide Subscriber access to the Service(s) by the date identified in the Order Form. Access rights granted to Subscriber shall be limited to those access rights necessary to use of the intended functionality of the Service(s). Discovery Education reserves the right to restrict or prevent access to activities or suspected activities that involve security breaches, hacking, distributed denial of service attacks, or uploading a virus, Trojan horse, time bomb, unauthorized application, or any other harmful form of programming or vandalism.
- 1.3. **Permitted and Prohibited Uses.**
 - a. **Use for Educational, Non-Commercial Purposes Only.** Subscriber and its Users may use the Service(s) and the Content for bona fide educational and research purposes only and may not use them in any commercial or for-profit manner. Discovery Education reserves the right, in its sole and absolute discretion, to limit Subscriber’s and/or any Users’ use of the Service(s) in the event that Discovery Education, in its sole and absolute discretion, deems Subscriber’s and/or such Users’ use thereof to be inconsistent with educational and research purposes, and/or inconsistent with these Standard Terms.
 - b. **Downloading of Content.** Users may download, for non-commercial instructional use, including for lesson plans, copies of (i) images; (ii) videos and video clips; and (iii) worksheets or other documents; in each case if designated on the Service(s) as downloadable. Copies must be deleted or erased after use or expiration of the Term, whichever occurs first. Such downloading shall be for individual User convenience only, and Users may not (1) systematically download any of the Content, (2) create distribution “libraries”, or (3) transfer, sell, rent, display, or exhibit any of the Content to any third party other than Users.
 - c. **Editing Content.** Users may edit reading materials and such other content as is designated on the Service(s) as editable (together the “**Editable Content**”). The Editable Content, as edited by User, as well as any work containing User-edited content, may not contain any libelous or unlawful materials or content or any commercial advertising materials, will not infringe upon any party’s proprietary rights, including but not limited to statutory or common-law copyright, trademark and right of privacy, and may not violate any law, regulation or right of any kind whatsoever or give rise to any actionable claim or liability. Under no circumstances may a User convert the Content from digital to analogue format, such as by recording a video clip onto a DVD. Violation of this Section 1.3(c) may constitute copyright infringement. User must maintain all copyright, trademark and proprietary notices included with, attached to or embedded all editable videos and video clips without modification, obstruction or deletion. The Content may include certain ancillary educational materials, such as teacher reading materials, diagrams, exercises and other graphic devices that support the Services (“**Ancillary Materials**”). User may modify, alter and revise the Ancillary Materials to meet specific instructional needs, provided that the following statement is prominently displayed on all such revised Ancillary Materials, in addition to any other proprietary notices, and

with the understanding that Discovery Education or its content provider shall continue to own the Ancillary Materials: “*Revised with the permission of Discovery Education. Discovery Education and its content providers are not responsible for the content or accuracy of the revision*”.

d. **Dissemination of Content.** In the course of using any Content as permitted hereunder, Subscriber and its Users may not make the Content, or any part thereof, available to any party who is not a Subscriber or a User, except as permitted herein. Subscriber and its Users must ensure that the Content is at all times kept on a secure server, viewable only by Subscriber and/or its Users.

e. **Prohibited Uses.** Except as expressly set forth herein, neither Subscriber nor the Users may (i) copy, reproduce, alter, modify, transmit, perform, create derivative works of, publish, sub-license, distribute, or circulate the Service(s), the Content, or any portion thereof; (ii) disassemble, decompile, or reverse engineer the Service(s) or any portion thereof, or use a robot, spider, or any similar device to copy or catalog the Content or any portion thereof; (iii) take any actions, whether intentional or unintentional, that may circumvent, disable, damage or impair the Service(s)’s or the Content’s control or security systems, nor allow or assist a third party to do so; or (iv) use the Content in a manner that disparages the Service(s), the Content or Discovery Education or its content providers, or in any manner that Discovery Education may, in its sole discretion, deem inappropriate. Subscriber and the Users acknowledge and agree that the Service(s) and the Content possess a special, unique and extraordinary character that makes difficult the assessment of the monetary damages that would be sustained as a result of unauthorized use, and that unauthorized use may cause immediate and irreparable damage to Discovery Education for which Discovery Education would not have an adequate remedy at law. Therefore, Subscriber agrees that, in the event of such unauthorized use, in addition to such other legal and equitable rights and remedies as may be available to Discovery Education, Discovery Education shall be entitled to seek injunctive and other equitable relief without the necessity of proving damages or furnishing a bond or other security.

f. **Credentials.** Each User shall have a valid generic or individual username, password, passcode, and in certain circumstances, IP authentication, for the purpose of accessing the Service(s) and the Content (the “**Log-In Information**”). Subscriber and its Users must keep all Log-In Information strictly confidential, and all Log-In Information may be used only by the assigned User. Subscriber and its Users are responsible for maintaining the security and confidentiality of all Log-In Information, and for preventing access to the Service(s) and/or the Content by unauthorized persons using a User’s Log-In Information. Unauthorized access to or use of the Service(s) and/or the Content by someone using a User’s Log-In information may be attributed to such User. Subscriber acknowledges that Discovery Education may require access to Subscriber’s systems in order to perform single sign-on integration services to facilitate User access to the Service(s) and Content. Subscriber hereby grants to Discovery Education a limited licence to access such systems.

1.4. **Subscriber Changes to Users.** If Subscriber is:

- an individual educator licensing the Service(s) for him or herself, the Service(s) is personal to Subscriber and Subscriber shall be entitled to use the Service(s) at any school or educational establishment where Subscriber works during the Term, subject to notifying Discovery Education of any change in Log-In Information necessitated by any such move; or
- a school or educational establishment licensing the Service(s) for individual named educators in its employ, it acknowledges that the Service(s) is personal to the school or educational establishment and may not be reassigned to different educators should any of the original named educators leave its employ during the Term. If an educator leaves the relevant school or educational establishment, Subscriber shall notify Discovery Education in writing that such educator has moved if they no longer wish such educator to have continued access to the Service(s) and may request that Discovery

Education change its authorized educators by emailing such changes to Discovery Education at schoolsupport@discoveryed.com and such changes shall take effect on the anniversary of the Effective Date. In the event such requested changes result in changes to the delivery of Services or Fees, Discovery Education shall notify Subscriber in writing.

2. PROPRIETARY RIGHTS

2.1. **Discovery Education Property.** As between Subscriber, the Users, and Discovery Education, the Service(s) and the Content are the property of Discovery Education and are protected by United Kingdom, United States and international copyright and trademark law. By using the Service(s) and the Content, even as permitted hereunder, neither Subscriber nor any of its Users gain any ownership interest in the Service(s) or the Content. Any use by Subscriber of the Discovery Education trademarks or logos shall be subject to Discovery Education's prior written consent in each instance.

2.2. **DMCA Notice and Takedown Policy.** It is our policy to respond to alleged infringement notices that comply with the US Digital Millennium Copyright Act of 1998 (the "DMCA"), or similar regulations. If you believe that your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible via the Products and Services, please notify our copyright agent as set forth in the DMCA, or applicable regulation. For your complaint to be valid under the DMCA, it must contain all the elements provided in 17 USC §512(c)(3) and be submitted to the following DMCA Agent:

- DMCA Notice, Legal Department
- Discovery Education, Inc.
- 8403 Colesville Road, Suite 1200, Silver Spring, MD 20910
- Name of Agent Designated to Receive Notification of Claimed Infringement: Sam Kronthal
- Telephone Number of Designated Agent: 001 240-839-4239
- Email: DiscoveryEducationDMCA@discoveryed.com

3. PROTECTION OF PERSONAL INFORMATION AND DATA SECURITY.

3.1. **Privacy Policy.** Discovery Education respects the privacy of its users and its privacy policy is available at www.discoveryeducation.co.uk/privacy-policy, which explains what personal information is collected from Subscribers, how and why it is collected, stored, used and shared, Subscriber's rights in relation to its personal information and how to contact Discovery Education and supervisory authorities in the event Subscriber has a query or complaint about the use of its personal information.

3.2. **Data Security.** Discovery Education shall implement commercially reasonable administrative, physical and technical safeguards designed to secure Personal Information from unauthorized access, disclosure, or use in accordance with Discovery Education's Privacy Policy.

4. FEES AND TAXES

4.1. **Fees.** Subscriber shall pay Discovery Education the fees in the amounts specified in the Order Form (the "Fees"). Upon Subscriber's acceptance of the Order Form, Subscriber shall submit to Discovery Education the executed Order Form and Discovery Education shall issue Subscriber an invoice for the applicable Fees. Subscriber shall pay the Fees within thirty (30) days of Discovery Education's invoice. Failure to pay the Fees in accordance with the Standard Terms and the invoice shall constitute a material breach by Subscriber. Discovery Education shall be entitled to increase the Fees, in respect of any or all of the Services, in relation to each Renewal Term (as defined in clause 5.1 below) provided that it notifies Subscriber at least sixty (60) days in advance ("**Fee Increase Notice**"). Subscriber shall be entitled to terminate its Subscription by giving no less than thirty (30) days' written notice of termination to Discovery Education within such sixty (60) day period, in accordance with clause 5.1 below and such termination to take effect only on the date immediately preceding the applicable Renewal Term.

4.2. **Taxes.** All amounts payable under this Agreement are expressed exclusive of VAT and other taxes which shall be payable by the Subscriber at the applicable rate from time to time.

5. TERM AND TERMINATION

5.1. **Term.** The term ("**Initial Term**") is defined in the applicable Order Form referencing the Standard Terms. Thereafter and in accordance with applicable law, the Term shall automatically renew for additional periods in increments of the Initial Term ("**Renewal Term(s)**", collectively with the Initial Term, the "**Term**") unless terminated by either party upon no less than thirty (30) days' prior written notice prior to the expiration of the Initial Term or Renewal Term, in which event the Term shall expire at the end of the Initial Term or then current Renewal Term. The Fees for the Renewal Term shall be as set forth in Section 4.1 herein.

5.2. **Termination for Breach.** In the event that Subscriber or any of its Users breaches any term of these Standard Terms, and such breach is not cured within ten (10) days after receipt of notice thereof from Discovery Education, Discovery Education may terminate these Standard Terms in

whole or in part immediately upon written notice to Subscriber and Subscriber and its Users will no longer be entitled to access the relevant Service(s).

5.3. **Termination for Bankruptcy.** Either party may terminate these Standard Terms immediately if any of the following events occur affecting the other party: (a) voluntary bankruptcy or application for bankruptcy; (b) involuntary bankruptcy or application for bankruptcy not discharged within sixty (60) days; (c) appointment of receiver, administrator or trustee in bankruptcy for all or a portion of the other party's assets or an encumbrancer takes possession of any portion of the other party's assets; (d) an assignment for the benefit of creditors; (e) any voluntary arrangement with its creditors or such party becomes subject to an administration order; or (f) anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the affected party.

5.4. **Effect of Termination.** Upon expiration or termination of these Standard Terms, all rights granted herein shall revert to Discovery Education; all access to and use of the Service(s) and the Content by Subscriber and its Users must cease; and all materials downloaded from the Service(s) by Subscriber or any Users must be erased, deleted, or destroyed.

6. GENERAL WARRANTIES

6.1. **Discovery Education Warranties.** Discovery Education represents and warrants that it has full power and authority to enter into these Standard Terms.

6.2. **Subscriber Warranties.** Subscriber represents and warrants that (i) it has full power and authority to enter into these Standard Terms and has received all permissions required to permit Discovery Education to obtain and retain information (including personal information) from Users; (ii) only Subscriber or its Users shall access the Service(s) and the Content; (iii) Subscriber and its Users will at all times use the Service(s) and the Content only as expressly permitted by these Standard Terms; (iv) any content, materials, and/or information contributed by Users, and any revisions to the Content by Users does not and will not contain any libelous, unlawful or infringing materials or content, will not infringe upon any party's proprietary rights, including without limitation statutory or common-law copyright, trademark and right of privacy, and will not violate any law, regulation or right of any kind whatsoever or give rise to any actionable claim or liability.

6.3. **Disclaimer of Warranty.** THE SERVICES AND CONTENT ARE PROVIDED AS IS, AND ALL WARRANTIES OF ANY KIND, PAST OR PRESENT, WHETHER STATUTORY, COMMON-LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, SECURITY AND, EXCEPT AS MAY BE OTHERWISE STATED IN THESE STANDARD TERMS, NON-INFRINGEMENT, ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW. DISCOVERY EDUCATION DOES NOT GUARANTEE OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR ACCURACY OF THE SERVICE(S) OR THE CONTENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY DISCOVERY EDUCATION OR ITS EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF DISCOVERY EDUCATION'S OBLIGATIONS HEREUNDER, AND SUBSCRIBER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.

7. **Release.** To the extent permitted by law, Subscriber and its Users release and waive all claims (whether known or unknown) against Discovery Education, its parent, subsidiaries, affiliated companies, agents or content providers, and the directors, trustees, officers, shareholders, employees, agents and representatives of each of the foregoing, from any and all claims, damages, liabilities, costs and expenses arising out of User's use of the Service(s) and the Content.

8. **Indemnity.** To the extent permitted by law, Subscriber and its Users shall defend, indemnify and hold Discovery Education, its parent, subsidiaries, affiliated companies, agents or content providers, and the directors, officers, shareholders, employees, agents and representatives of each of the foregoing, harmless against and from any and all claims, damages, liabilities, costs and expenses arising out of any violation by Subscriber and/or its Users of these Standard Terms, any downloading of the Content, any modification or edit made to any portion of the Content, and the use of any portion of the Service(s) and the Content with products or services not supplied by Discovery Education.

9. LIMITATIONS OF LIABILITY

9.1. **Consequential damages exclusion.** IN NO EVENT SHALL DISCOVERY EDUCATION BE LIABLE FOR ANY LOST DATA, LOST PROFITS, BUSINESS INTERRUPTION, REPLACEMENT SERVICE OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR INDIRECT DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY.

9.2. **Aggregate Liability.** To the maximum extent permitted by law, in no event shall Discovery Education's aggregate liability with respect to any matters whatsoever arising under or in connection with the Standard Terms exceed the total fees paid by Subscriber to Discovery Education under the Standard Terms within the twelve (12) month period prior to the date the cause of action giving rise to liability arose. The foregoing liability is cumulative with all payments for

claims or damages in connection with these Standard Terms being aggregated to determine satisfaction of the limit.

- 9.3. Discovery Education shall not be responsible for the provision or maintenance of any hardware, software or internet connection used by the Subscriber or its Users for the purposes of accessing the Service(s) online (or any element thereof).
- 9.4. Where a Service contains links to third party websites and/or resources, these links are provided for information purposes only. Discovery Education has no control over the contents of those websites or resources, and accepts no responsibility for them or for any loss or damage that may arise from Subscriber's use of them.

10. CONFIDENTIALITY

- 10.1. If Subscriber is a government entity, Discovery Education understands that government entities may be required to disclose information pursuant to applicable open records acts. Prior to any such disclosure, Subscriber shall make any claim of privilege that may be applicable to prevent such disclosure and will make reasonable efforts to give Discovery Education reasonable prior notice and a reasonable opportunity to resist such disclosure. In all other respects, all provisions of these Standard Terms and materials provided by Discovery Education which are designated as confidential or should reasonably be presumed to be treated as confidential ("**Confidential Information**") shall be kept strictly confidential by Subscriber and its Users and may not be disclosed without Discovery Education's prior written consent, except for any disclosure required by any order of a court or governmental authority with jurisdiction over Subscriber or the disclosure of any information by Subscriber, which is already in, or comes into, the public domain otherwise than through the Subscriber or its User's unauthorised disclosure.
- 10.2. **Discovery Education Marketing.** If Subscriber is a school or educational establishment, it agrees that Discovery Education may reference its business relationship with Subscriber in its marketing, press releases or sales materials.

11. MISCELLANEOUS

- 11.1. **Changes.** Discovery Education reserves the right to change these Standard Terms (excluding the Order Form) from time to time. Such changes will become effective when Discovery Education posts the revised Standard Terms on the Discovery Education website. Subscriber and Users should check the Standard Terms from time to time, as they are bound by the Standard Terms posted on Discovery Education's website at the time of access. Any revised Standard Terms shall supersede all previous versions.
- 11.2. **Force Majeure.** Failure to perform by reason of any law, natural disaster, labour controversy, encumbered intellectual property right, war or any similar event beyond a party's reasonable control shall not be a breach hereof.
- 11.3. **Governing Law.** These Standard Terms shall be construed and enforced under the laws of England and Wales without reference to the choice of law principles thereof. User hereby irrevocably consents that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims). User waives any defenses based upon lack of personal jurisdiction or venue, or inconvenient forum. If any provision herein is unenforceable, then such provision shall be of no effect on any other provision hereof. If any provision of these Standard Terms (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable.
- 11.4. **No waiver.** No waiver of any breach hereof shall be deemed a waiver of any other breach hereof.
- 11.5. **Survival.** All representations, warranties, and indemnities shall survive the expiration or prior termination of these Standard Terms.
- 11.6. **Headings.** Section headings are provided for convenience only and shall not be used to construe the meaning of any section hereof.
- 11.7. **Entire Agreement.** These Standard Terms and the Order contain the entire understanding and supersedes all prior understandings between the parties relating to the subject matter herein. They replace and extinguish all prior agreements, draft agreements, arrangements, collateral warranties, collateral contracts, statements, assurances, representations and undertakings of any nature made by or on behalf of the parties, whether oral or written, in relation to that subject matter.
- 11.8. **Assignment.** The rights and obligations of either party under the Standard Terms may not be transferred or assigned directly or indirectly without the prior written consent of the other party, except that Discovery Education may assign the Standard Terms without restriction to an entity that acquires substantially all of its stock, assets, or business. Except as otherwise expressly provided herein, the provisions hereof will inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties.
- 11.9. **Relationship of the Parties.** The parties are independent contractors and not joint venture partners or otherwise affiliated. Neither party has any right or authority to assume or create any obligations of any kind or to make any

representation or warranty on behalf of the other party, whether express or implied, or to bind the other party in any respect whatsoever. There are no third-party beneficiaries under these Standard Terms pursuant to the Contracts (Rights of Third Parties) Act 1999.

- 11.10. **Support Services.** Discovery Education support services can be contacted by telephone on 0800 6527527 or email at schoolsupport@discoveryed.com (or such other contact details as Discovery Education may provide from time to time). Discovery Education will use reasonable endeavours to respond as soon as reasonably practicable.

Discovery Education Europe Limited is a company registered in England and Wales under company number 03261277 and our registered office at: One Lyric Square, London W6 0NB, UK.

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