

1 Interpretation

1.1 In this Agreement:

Application means the online registration form available on the Website completed by the Customer in order to access the Products.

Customer means the customer recorded in the online Application.

Customer Licence Threshold means the maximum number of students receiving teaching services by the Customer's organisation permitted to use a single licence under this Agreement and means 35 students.

Educational Purposes means for internal organisation requirements of the Customer in teaching a student or students. For the avoidance of doubt Educational Purposes does not include commercial or other for-profit purposes.

Effective Date means the date that the Customer is granted access to the Product.

End User means the person or persons who use the Product as part of the Customer's Educational Purposes and includes a student or students who obtain the benefit of the Product.

Fees means the fees as specified in the online Application Form.

GST means the tax imposed by the Goods and Services Act 1985.

Infinity Learn means Infinity Learn Limited

Initial Term means:

- (a) 12 months in respect of the subscription based product; and
- (b) A perpetual term in respect of any hard copy of the Product.

Intellectual Property Rights means all rights in inventions, patents, copyrights, design rights, trademarks and trade names, trade secrets, know-how and Confidential Information and all other intellectual property rights (whether registered or unregistered) and similar forms of protection and all applications and rights to apply for any of them, anywhere in the world.

Law means common law, principles of equity, and laws made by parliament (laws made by parliament include laws (in New Zealand) and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them.)

Password means the individual password allocated to the Customer which may be changed from time to time.

Payment Date means the 20th day of the month following the date of an invoice from Infinity Learn.

Permitted Purpose means for the Customer's Educational Purposes.

Product means products and Services of Infinity Learn and including, without limitation, Infinity Maps product.

Services means any services provided by Infinity Learn Limited including, without limitation, any seminars, presentations and support services provided to the Customer by Infinity Learn.

Subsequent Term(s) means further rolling terms of 12 months commencing on the anniversary of the expiry of the Initial Term.

Upgrade means a new Product update available from time to time.

Website means www.infinitylearn.org or other substitute website.

- 1.2 The headings in this Agreement are for convenience of reference only and will not affect the interpretation. The words 'include' and 'including' when introducing an example, do not limit the meaning of the words to which the example relates or examples of a similar kind. A reference to a clause is a reference to a clause in this Agreement. Words importing the singular number will include the plural and vice versa, and words importing the masculine gender include all other genders.
- 1.3 The following order of precedence shall apply if there is any conflict between the documents forming part of this Agreement:
 - 1.3.1 these terms; and
 - 1.3.2 the body of Application;

2 Terms of the Agreement

- 2.1 These terms and conditions become a legally binding agreement between the Customer and Infinity Learn when the Customer completes and submits an online Application acknowledging that the Customer has read and accepted these terms and conditions.
- 2.2 The Customer's use of the Product is subject to the terms and conditions set out in the Agreement

3 Duration of the User Agreement

- 3.1 This Agreement will commence on the Effective Date and will continue during the Initial Term (and any Subsequent Term) unless otherwise terminated in accordance with the terms of this Agreement.

4 Licensing

- 4.1 Subject to the terms of this Agreement and the Customer's performance of its obligations, Infinity Learn grants to the Customer a non-exclusive, non-transferable, non-sub licensable limited licence during the Term to access and use the Product solely for the Permitted Purpose. It is agreed by the Parties that on-supply of Products for commercial gain is not an action in support of the Permitted Purpose.
- 4.2 The Customer acknowledges and agrees that the licence set out in clause 4.1 is subject to the Customer Licence Threshold. Where the total number of students serviced by the Customer or the Customer's organisation exceeds 35 students, the Customer must purchase one additional licence per additional 35 students serviced by the Customer's organisation.
- 4.3 Where the Customer on-supplies a Product to an End User pursuant to its Educational Purposes in accordance with this clause 4, the Customer is required to advise the End User that they are specifically prohibited from:
 - 4.3.1 Using the Product other than for the End User's personal non-commercial use for the benefit of the named individual;
 - 4.3.2 Providing the Product to any other party; and

- 4.3.3 That the End User is otherwise bound by the restrictions and obligations set out in these terms relating to or in connection with the Product.
- 4.4 Except as set forth in clause 4.1 and 4.2, the Customer is not licensed to use the Product and undertakes not to do so.
- 4.5 Except as expressly permitted under this Agreement or to the extent permitted by applicable Law, the Customer, the Enabled User and any other employees or representatives of the Customer will not, nor will they encourage any person or entity to:
 - 4.5.1 licence, sublicense, distribute, resell commercially exploit or otherwise transfer any Product to any third party, or Use the Products on behalf or for the benefit of any third party;
 - 4.5.2 remove or alter any copyright, trademark, logo or other proprietary notice or label appearing in the Products; and
 - 4.5.3 incorporate any portion of the Product in any other materials, products or services that are not intended for the Permitted Purpose.

5 Intellectual Property Rights

- 5.1 The Customer acknowledges and agrees that, as between the Customer and Infinity Learn, Infinity Learn is and will remain the sole and exclusive owner or all rights, titles and interest in and to the Products, including all material published on its Website (including, but not limited to the textual material, artwork, photographs, audio and visual elements and any and all other creations, inventions and intellectual property rights (including any enhancement, suggestion, modification or derivative works of any intellectual property) contained or embodied within the Products.
- 5.2 The Customer agrees that it acquires no rights in or to the Products provided pursuant to this Agreement, except for the limited licence set out in clause 4, and that it will not, and will not permit any other person or entity to, infringe upon, harm or contest the validity of Infinity Map's ownership of the Products, or the creations, inventions and intellectual property rights contained or embodied within the Products.
- 5.3 The Customer agrees to maintain adequate internal procedures including appropriate agreements with its employees, consultants, and for the Customer, all Enabled Users to protect the intellectual property rights of Infinity Learn.
- 5.4 The Customer agrees not to remove, cover, overlay, obscure or change any copyright notices, legends, or terms of use which Infinity Map may post on the Website, the Products.
Where the Customer on-supplies the Product to End Users in any manner whatsoever, including but not limited to printing or emailing the Product, the Customer must display the following:
[Infinity Learn Limited © 2016]
- 5.5 The Product is provided on an as is, as available basis without any representations or warranties of any kind, either express or implied, including, but not limited to, any implied warranties, fitness for a particular purpose, title, non-infringement, availability, accuracy or otherwise.

6 Access

- 6.1 The Customer may access the relevant Products through the Website. On receipt and processing of the Application, Infinity Learn will, in consultation with the Customer, provide the Customer with the user names and Passwords for the Customer.
- 6.2 The Customer will be responsible for obtaining access to the Products and Website, and for any and all costs and expenses in connection with accessing and using the Products and Website, including Internet service provider fees, telecommunications fees, and the cost of any and all equipment (including hardware and software) used by the Customer in connection with its access and use of the Products and Services as permitted by this Agreement.
- 6.3 The Customer must not allow any other person to access the Product or Website using their user name and Password. If the Customer knows or has reason to believe that there has been or is about to be fraudulent or other unlawful use of a user name and Password the Customer must immediately notify Infinity Learn by email to info@infinitylearn.org and immediately change the Password.

7 Liability

- 7.1 Infinity Learn shall not be liable (whether in contract, tort (including negligence), equity or on any other basis) for any indirect consequential, special or other similar loss, damage, liability, or expense sustained by the customer or any other person, directly or indirectly, from any use whatsoever of the material on the Website or in the Product or otherwise in connection with this Agreement. Such loss / damage includes damage to property or any other loss, damage or expense that arises either as a result of the material in the Product being shown to be wholly or partially incorrect or unsuitable, or as a result of any derivative work created from or using the Product either by the Customer or any other person.
- 7.2 Without detracting from clause 7.1, Infinity Learn's total aggregate liability under or in connection with this Agreement or arising from any use, reproduction, modification in the Product or creation of compilations or derivative works of or from the material in the Product (by you or any other person), whether that liability arises in tort, (including negligence), contract, equity or on any other basis, shall be limited to \$1

8 Customer Indemnity

- 8.1 The Customer shall indemnify and hold harmless Infinity Learn, its directors, officers and employees (each an Indemnified Party) from and against all or any losses, claims, liabilities, damages, costs and expenses (including any direct or indirect consequential losses, loss of profit, loss or reputation and all interest, penalties and legal and other professional costs and expenses) that any Indemnified Party may suffer or incur by reason of or in connection with the provision of the Products to the Customer and / or by any breach of this Agreement by the Customer or any wilful, unlawful or negligent act or omission or any of its employees, agents or contractors.

9 Usage

- 9.1 Without limiting any other term of this Agreement:
 - 9.1.1 the Customer will follow all reasonable instructions Infinity Learn gives from time to time with regard to the use of the Product; and

9.1.2 the Customer will permit Infinity Learn at all reasonable times to check that the Product is being used in accordance with the terms of this Agreement, and for such purposes the Customer shall maintain complete and accurate records of the Customer's use of the Product.

9.2 If any use is made of the Product by any person or entity other than the Customer and such use is attributed to the act or default of the customer, then without prejudice to Infinity Learn other rights and remedies the Customer will be immediately liable to pay to Infinity Learn an amount equal to the charges which such person or entity would have been obliged to pay had Infinity Learn granted a licence to the unauthorised user at the beginning of the period of unauthorised use.

9.3 The Customer is fully responsible for any act or omission of any of its employees or agents (including Enabled Users).

9.4 Infinity Learn reserves the right to suspend or terminate the Customer's access to the Product in the event that Infinity Learn reasonably believes that the Customer has used or disclosed the Product in a manner not permitted under this Agreement or otherwise has materially breached this Agreement

10 Customer Details

10.1 The Customer is required to provide Infinity Learn with complete and accurate registration information and to update the Customer's information with Infinity Learn's email address if it changes, including an change in the Customer's company or organisation name.

11 Fees

11.1 The Customer will pay the Fees as set out in the Application. Infinity Maps may invoice the Customer for the Fees in the manner contemplated in the Application Form and in all other instances as and when the Products has been made available to the Customer. All Fees are payable by the due date specified in the corresponding invoice for those Fees. If specifically provided for in the Application the Customer will be liable for payment of the Fees for the part period from the Effective Date until the date of the first Payment Cycle. Otherwise, the Customer will be liable for the Fees from the date of the first invoice. All Fees are payable monthly in advance on or before the relevant Payment Date. All Fees once paid are non-refundable.

12 Privacy

12.1 The Customer must ensure that its use of the Product complies with all applicable Law, including the Privacy Act 1993.

12.2 Infinity Learn is an Agency for the purposes of the Privacy Act 1993, as may be amended from time to time. All personal information the Customer supplies to Infinity Learn will be dealt with by Infinity Learn in accordance with that Act. Infinity Learn may from time to time send the Customer information on selected products and services and invite others to do so. Should the Customer not wish to receive, or for any of its staff to receive, this material, the Customer must email this request to Info@infinitylearn.org

13 Termination

13.1 Either party may terminate the Agreement upon expiry of the Term or any Subsequent Term(s) by way of written notice given to Infinity Learn 30 days prior to the end of the Initial Term or Subsequent Term(s).

- 13.2 If the Agreement is terminated during the Initial Term or any Subsequent Term the Customer will remain liable for any further Fees that would have been payable under the Initial Term or Subsequent Term, had it not be terminated.
- 13.3 Subsequent Terms may be terminated by the Customer or Infinity Learn at any time on 90 days' notice to the other. This notice period will take effect from the first day of the month following the date on which the termination notice was received by the non-terminating party.
- 13.4 Infinity Learn may terminate this Agreement or temporarily suspend the operation of this Agreement by notice in writing if:
 - 13.4.1 the Customer does not pay the Fees when due;
 - 13.4.2 the Customer commits a breach of this Agreement, and the breach is not remedied within 30 (thirty) days of the receipt by the Customer of notice from Infinity Learn, calling upon Customer to remedy the breach; and
 - 13.4.3 the Customer breaches its obligations to Infinity Learn.
- 13.5 Upon termination or expiry of this Agreement:
 - 13.5.1 the licence granted under clause 4.1, if still in force, terminates;
 - 13.5.2 the Customer must:
 - 13.5.2.1 immediately cease using the Product; and
 - 13.5.2.2 within 30 days after the termination or expiry of this Agreement, certify that it has complied with the obligation specified at clause 13.5.2 and 13.5.2.1 above.
- 13.6 Termination will not affect the rights or obligations of the Parties accruing prior to or on termination.

14 Notices

- 14.1 All notices hereunder will be in writing addressed to the Parties at the respective addresses shown in the Application or as updated by notice in writing to the other party.
- 14.2 Notice will be deemed given:
 - 14.2.1 in the case of hand-delivered mail upon delivery or alternatively in the case of ordinary mail on the fourth day after the date of posting; and
 - 14.2.2 in the case of email transmission upon notification of a delivery receipt.
- 14.3 A Party may change its address for service of notices under this clause by giving written notification of the new address to the other Party.

15 Miscellaneous

- 15.1 The Customer warrants that it has not relied on any representation made by Infinity Learn which has not been expressly stated in this Agreement or upon the descriptions or allusions or specifications contained in any document including any catalogue or other material produced or made available by Infinity Learn.
- 15.2 Infinity Learn will not be liable for any failure to perform or delay in performing its obligations if the failure or delay results from circumstances beyond the control of Infinity Learn (whether happening in

the New Zealand or elsewhere, including acts of God, refusal of licence, government act, fire, explosion, accident, strike, industrial dispute, civil commotion).

- 15.3 If the whole or any part of a provision of this Agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Agreement or is contrary to public policy.
- 15.4 Nothing contained or implied in this Agreement constitutes one Party the partner, agent, or legal representative of the other Party for any purpose or creates any partnership, agency or trust, and neither Party has any authority to bind the other Party in any way.
- 15.5 The rights and remedies provided in this Agreement are in addition to other rights and remedies given by applicable Law independently of this Agreement.
- 15.6 This Agreement (together with the Application and any relevant amendments) shall constitute the entire agreement of the Parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.
- 15.7 The Customer agrees that Infinity Learn may send the Customer commercial electronic messages marketing Infinity Learn's goods and services and new products. The Customer also agrees that Infinity Learn may send electronic messages containing updated information in relation to the services, news and various other information of related interest.

16 Variation to this Agreement

- 16.1 Infinity Learn may vary the provisions of this Agreement at any time on 30 days' notice. If the Customer does not agree to the variation they have the right to terminate the Agreement within 30 days of receipt of the notice of variation. If the Customer does not exercise its termination right the continued use of the Service will constitute binding acceptance of the variation.
- 16.2 No right under this Agreement will be deemed to be waived except by notice in writing signed by the Party to be bound.

17 Assignment

- 17.1 The Customer may not assign, transfer, novate, subcontract or otherwise dispose of any benefits, rights, liabilities or obligations under this Agreement or any part of this Agreement without the prior written consent of Infinity Learn.
- 17.2 Infinity Learn is permitted to assign its interests and novate its obligations (without recourse by the Customer) under this Agreement by notice in writing to the Customer.

18 Governing Law

- 18.1 This Agreement is deemed to have been made in New Zealand and is governed by New Zealand Law. Any dispute relating to this Agreement shall be referred to the New Zealand courts and the New Zealand courts shall have jurisdiction to hear and determine such dispute.

19 General

- 19.1 All provisions of this Agreement intended to survive termination or expiry of this Agreement shall so survive and this includes clauses
- 19.2 If one or more of the provisions of this Agreement will be invalid, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions will not in any way be affected, prejudiced or impaired.