

Terms of use: Subscription services

These Standard Terms of Service and Licence (these “**Standard Terms**”) are applicable to any Order Form (each, an “**Order Form**”) issued by Discovery Education Europe Limited or Discovery Education, Inc. (together being “**Discovery Education**”) to the entity listed in the Order Form (“**Subscriber**”) to provide access to the 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 and shall together comprise the agreement between Subscriber and Discovery Education in respect of the relevant Services. 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 its authorized educators, administrators and students employed by Subscriber or enrolled in Subscriber's program as 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 videos and video clips and such other content that is designated on the Service(s) as editable (the "**Editable Content**"), solely in connection with classroom or other school-related projects. 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 student activity sheets, blackline masters and teacher's guides 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.

- g. **Home Access Users.** Subscriber shall be entitled to permit Users who are registered as current students of Subscriber (or, if relevant, an educational establishment whose address is listed on the Order Form) to access and use the Service(s) remotely from any location ("**Student Home Access Users**") provided that (i) Subscriber has received Discovery Education's prior written consent to permitting such access and, in the case of the Discovery Education Espresso Service, has subscribed to the "home access" facility where available as part of that Discovery Education Espresso Service; and (ii) Subscriber complies and ensures that such Student Home Access Users comply with these Standard Terms. For the avoidance of doubt, where Subscriber represents multiple education establishments, Discovery Education's consent, or otherwise, will be in relation to each individual educational establishment, rather than all educational establishments, at the addresses indicated on the Order Form (or otherwise agreed with Discovery Education) unless expressly stated otherwise.

1.4 **Subscriber Changes to Users.** Subscriber may request that Discovery Education change its authorized educators and schools by emailing such changes to Discovery Education at schoolsupport@discoveryed.com. 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 States, United Kingdom 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

2.3 Discovery Education Coding Service. If the Discovery Education Coding Service is one of the Services subscribed to by Subscriber, it may include the facility to save applications or programs ("**Apps**") developed using the Service. Subscriber acknowledges that a maximum of five hundred (500) Apps per Subscriber may be saved to or published within the Service at any one time. All intellectual property rights in the Apps shall vest in and remain vested in Discovery Education. Subscriber acknowledges that Discovery Education may share the Apps with third parties, including within the Service and for promotional purposes. Subscriber shall not, and shall ensure that none of its Users shall not, seek to commercially exploit any Apps without the prior written agreement of Discovery Education. Subscriber will be responsible for the naming of any Apps by its Users, when saving both to local devices and any online environment.

3. PROTECTION OF PERSONAL INFORMATION AND DATA SECURITY.

3.1 Student Data. Subscriber acknowledges that student personal information ("**Student Data**") may be required for the use of the Services in order for Subscriber or its Users to be able to use the functionality within the Services which provide personalized pages, individual accounts, other user-specific customization, or otherwise submit or upload information (all such data is generally limited to the following: school name, school email address, first name, last name, year group, class IDs), Subscriber represents and warrants that Subscriber has all necessary authorization to provide to Discovery Education any Student Data it or any User provides through the Services in order to use such functions. Subscriber agrees that Discovery Education shall use Student Data in the course of

providing the Services and as provided in Discovery Education's Privacy Policy. The parties agree to uphold their responsibilities under laws governing personal information, including: (i) the Children's Online Privacy Protection Act of 1988 ("**COPPA**"), the Family Educational Rights & Privacy Act of 1974 ("**FERPA**"), Children's Internet Protection Act ("**CIPA**") and any other laws, regulations and statutes, all solely to the extent applicable.

3.2 **Data Security.** Discovery Education shall protect your personal Information in accordance with the provisions of the Data Processing Agreement or equivalent ("**DPA**") located at www.discoveryeducation.co.uk/data-processing-addendum and incorporated herein. The DPA provides for administrative, physical and technical safeguards to protect the personal information and Student Data from unauthorized access, disclosure or use.

4. 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 and its Users, how and why it is collected, stored, used and shared, Subscriber and its Users' rights in relation to its personal information and how to contact Discovery Education and supervisory authorities in the event Subscriber or its Users has a query or complaint about the use of its personal information.

5. FEES AND TAXES

5.1 **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. In the event that Discovery Education so permits and Subscriber elects to pay such Fees with a credit card, Discovery Education shall have the right to charge Subscriber a convenience fee. 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 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 section 6.1 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 section 6.1 below and such termination to take effect only on the date immediately preceding the applicable Renewal Term.

5.2 **FTE Numbers.** Subscriber acknowledges that to calculate the appropriate amount of the Fees, Discovery Education may need to know the number of students in full time education at the relevant school(s) (or such other entities as may be appropriate in the circumstances) (the "**FTE Number**"). Subscriber warrants that the FTE Numbers it provides to Discovery Education are accurate. Where requested by Discovery Education, Subscriber shall provide to Discovery Education the FTE Number that is accurate at that time. However, Discovery Education will be entitled to use the most recent (from time to time) FTE Numbers published by the Department for Education (or such other Government departments as may be applicable from time to time) as the basis on which the applicable Fees are calculated.

5.3 **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.

6. TERM AND TERMINATION

6.1 **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 5.1 herein.

6.2 **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).

6.3 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.

6.4 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.

7. GENERAL WARRANTIES

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

7.2 Subscriber Warranties. Subscriber represents and warrants that (i) it has full power and authority to enter into these Standard Terms and has received all parental and other 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) in the event that Subscriber requests that Discovery Education customize the Service(s) interface with Subscriber's trade name, trademarks or logos, and/or digitize and/or encode and/or host any of Subscriber's content on the Content and/or the Service(s), Discovery Education has the right to so use and exploit any and all such trade names, trademarks, logos and content, including without limitation any and all underlying elements (the "**Subscriber IP**"),

and (v) the Subscriber IP, 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.

7.3 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, FITNESS FOR A PARTICULAR PURPOSE, 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.

8. 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.

9. 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.

10. LIMITATIONS OF LIABILITY

10.1 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.

10.2 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 lesser of 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 or \$100,000. 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.

10.3 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).

10.4 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 or its Users' use of them.

11. CONFIDENTIALITY

11.1 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.

11.2 **Discovery Education Marketing.** Subscriber agrees that Discovery Education may reference its business relationship with Subscriber in its marketing, press releases or sales materials.

12. MISCELLANEOUS

12. **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.

12.2 **Force Majeure.** Failure to perform by reason of any law, natural disaster, labor controversy, encumbered intellectual property right, war or any similar event beyond a party's reasonable control shall not be a breach hereof.

12. **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.

12.4 No waiver. No waiver of any breach hereof shall be deemed a waiver of any other breach hereof.

12.5 Survival. All representations, warranties, and indemnities shall survive the expiration or prior termination of these Standard Terms.

12.6 Headings. Section headings are provided for convenience only and shall not be used to construe the meaning of any section hereof.

12.7 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.

12.8 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.

12.9 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.

12.10 **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.

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

Last updated: 16 March 2021.

Previous version: [November 2020](#) | [June 2015](#).



[TERMS OF USE](#)

[PRIVACY POLICY](#)

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