

# SchoolTalk Terms of Use

These Terms of Use were last updated on 15 March 2018

Welcome to SchoolTalk, a cloud platform that creates efficiency for teachers, learners and parents. These Terms of Use form a legal agreement (**Terms**) between you and Ilyana Limited that sets out our, and your, rights and obligations in relation to the SchoolTalk website and SchoolTalk web application (together, the **Site**).

Please read these Terms (which include the Privacy Policy) carefully before accessing and using the Site. By using the Site you agree to follow and be bound by these Terms. If you do not agree to all of these Terms, you must not use the Site.

**If you are under 18 years of age, you must have permission from your parent, legal guardian, caregiver or teacher to use the Site. If you do not have permission, you must not use the Site.**

**If you are a parent, legal guardian caregiver, or teacher and you provide consent to a child using the Site, you agree to be bound by these Terms in respect of that child's use of the Site.**

These Terms may be varied by us at any time. Unless otherwise stated, amendments to these terms will be effective upon us notifying you of the changes by email, or by posting the changes on the Site. You must ensure that you have read, understood and agree to the terms in these Terms. You agree that your continued use of the Site represents your agreement to be bound by the most recent terms.

## 1. Definitions and Interpretation

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1.1 In these Terms, unless the context otherwise requires or is specified otherwise:

**Access Details** has the meaning given in clause 3.4(b);

**Account** means the online profile you have with us that is accessible via the Site;

**Administrator** means the person(s) designated by your School to administer its Users' use of the Site;

**Code of Conduct** means the rules and guidelines for safe and proper ICT use, as prescribed by us and/or your School;

**Device** means a computer or other device that you own and/or control;

**Intellectual Property Rights** means all intellectual property rights and includes any patents, registered designs, utility models, trade marks (including logos and trade names), domain names, copyright, circuit layouts, rights in computer software and databases, rights in inventions, ideas, know-how and trade secrets, image and personality rights (including all things recording that intellectual property), in each case whether registered or unregistered (including applications for the grant of any of the foregoing) and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world and all rights to apply for any such rights;

**Learner** means a student who has been given access to the Site by their School;

**Parent** means a parent, legal guardian or caregiver of a Learner who has been given access to the Site by their child's School;

**Privacy Policy** means our privacy policy located at <https://schooltalkapp.com/PrivacyPolicy>;

**School** means your School that has registered with us and includes that School's staff members;

**School Agreement** means the agreement (if any) entered into between the School and us in relation to your use of the Site;

**Site** means the SchoolTalk software-as-a-service accessible via the website or application located at [www.schooltalk.co.nz](http://www.schooltalk.co.nz), [www.schooltalk.io](http://www.schooltalk.io), [schooltalkapp.com](http://schooltalkapp.com), or any other URL address notified to you by us from time to time;

**Subscription Term** means the term of the School's subscription to give you access to the Site under the School Agreement;

**Updates** has the meaning given in clause 4.1;

**User Generated Content** means any content posted on or via the Site that is generated by you or any other User and includes (without limit) learning information;

**Users** means users of the Site, and includes Learners, Parents, Administrators and Schools;

**Virus** means any thing or device (including any software, code, file or program) which may: (a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; (b) prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or (c) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;

**we, us** and **our** are a reference to Ilyana Limited;

**you** and **your** are a reference to the individual that accesses and/or uses the Site; and

**Your Data** means any data that you have inputted on the Site, including User Generated Content that you generate.

## 2. **Nature of the Site**

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- 2.1 The Site provides a cloud learning platform that creates efficiency for Teachers, Learners and Parents.
- 2.2 Your access and use of the Site is provided to you in accordance with the School Agreement.

### 3. Licence and Access

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- 3.1 We grant you a non-exclusive, non-transferable, revocable right to access and use the Site during the Subscription Term solely for your own personal, non-commercial use, all on the terms and conditions set out in these Terms.
- 3.2 If you are a Parent you will ensure that you comply with the Code of Conduct in respect of your child's use of the Site.
- 3.3 We will use reasonable endeavours to make the Site available to you on and subject to the terms of these Terms.
- 3.4 You:
- (a) will be solely responsible for:
    - (i) procuring and maintaining your network connections and telecommunications links from the Device you use to access the Site; and
    - (ii) all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet;
  - (b) will keep any logins, passwords and registration codes (together, **Access Details**) that are required for your access to your Account and/or use of any part of the Site confidential and ensure you are the only person to access and use the Site through use of the Access Details;
  - (c) will only access those parts of the Site that you have been authorised by an Administrator to access. If you have access to parts of the Site that you do not think you should have access to please immediately contact the Administrator and/or us;
  - (d) will use all reasonable endeavours to prevent any unauthorised access to, or use of, the Site and, in the event of any such unauthorised access or use, promptly notify us;
  - (e) are fully responsible for all activities that occur under your Account and agree to immediately change your password in the event of any breach of security;
  - (f) acknowledge and agree that we may disable your login Account or access to the Site if we discover that the Access Details have been provided to any third party;
  - (g) will ensure that all information that you provide to us is true and correct and kept up to date for so long as you continue to use the Site;
  - (h) will abide by the safety information, maintenance instructions or other relevant notices contained in the information that is included with the Site; and
  - (i) comply with all applicable laws (including the Privacy Act 1993) and any third party terms you have agreed to (for example with your telecommunications service provider) with respect to your use of the Site.
- 3.5 You will not:

- (a) except as may be permitted by any applicable law which is incapable of exclusion by agreement between you and us:
  - (i) and except to the extent expressly permitted under these Terms, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, display, transmit, or distribute all or any portion of the Site in any form or media or by any means; or
  - (ii) attempt to decompile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Site;
- (b) access the Site in order to build a product or service which is the same as or similar to the Site or which otherwise competes with the Site;
- (c) remove, disable, circumvent or attempt to undermine the integrity of any security or technical measures, including any digital rights management system or other content protection or features used by us, that control access to:
  - (i) the Site; or
  - (ii) our, or any third party's, systems, networks or resources used in the provision of the Site; and
- (d) access, store, distribute or transmit any Viruses through the Site, and we may, without liability to you, disable your access to the Site if you are in breach of this clause.

#### 4. **Changes to the Site**

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- 4.1 You acknowledge that we may provide updates, upgrades, patches and other modifications to the Site (together **Updates**) that must be installed for you to continue to use the Site properly or at all. You may be required to install Updates to the Site or to update or upgrade the Device you use to access the Site or the operating system running on that Device in order to continue to use the Site. Unless we specify otherwise, Updates will be provided at no cost.
- 4.2 Although we use reasonable endeavours to ensure that any Updates to the Site do not cause any problems in your use of the Site, our liability to you to the extent that problems arise from such Updates is limited in accordance with these Terms.
- 4.3 We may at any time modify, discontinue or restrict access to the Site (or any part of it), temporarily or permanently with or without notice to you. To the extent permitted by law, you agree that we will not be liable to you or to any third party for any modification, discontinuance or restriction of the Site.

#### 5. **User Generated Content and Communications**

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- 5.1 As a User, you may have the ability to post your own information, content and communications to the Site (**User Generated Content**). It is important that all User Generated Content is posted with integrity and honesty.
- 5.2 You will not post on the Site, or transmit to other Users, any User Generated Content (including links to other content), or otherwise engage in any activity through the Site, that:

- (a) contains photographs or images of another person if you do not have that person's consent;
- (b) breaches the Intellectual Property Rights of any third party;
- (c) uses another person's personal information other than for the specific purposes for which that person's personal information was provided to you;
- (d) is intended to bully, harass, annoy, threaten or intimidate any other User;
- (e) is objectionable (including being false, misleading, defamatory, inaccurate, abusive, sexually-related, racially or ethnically objectionable in nature, or otherwise objectionable); or
- (f) contains any Viruses.

5.3 You acknowledge and agree that:

- (a) we do not control, and therefore are not responsible for, any communication between you and any other User that may have been initiated as a result of use of the Site; and
- (b) the views expressed in User Generated Content may not be our views. While we will endeavour to monitor User Generated Content and exercise editorial control where possible, you acknowledge that you use and rely on the User Generated Content obtained through the Site at your own risk.

5.4 We may at any time:

- (a) refuse to post any User Generated Content; or
- (b) edit or remove User Generated Content;

that we in our absolute discretion (acting reasonably) consider breaches the terms of these Terms or is otherwise inappropriate for the Site.

5.5 Where you publish or upload User Generated Content on the Site, you are deemed to have granted us a non-exclusive, perpetual and worldwide licence to use such content on the Site. You also warrant that any such User Generated Content does not infringe the Intellectual Property Rights of any person. You agree to indemnify us for all direct and indirect damages, losses and costs of any kind incurred or suffered by us as a result of or in connection with a breach of the warranty given by you in this clause 5.5.

## 6. **Intellectual Property Rights**

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6.1 You acknowledge and agree that we own all Intellectual Property Rights in and to the Site. Except as expressly stated in these Terms, these Terms do not grant you any Intellectual Property Rights in or to, or any other rights or licences in respect of, the Site.

6.2 We acknowledge and agree that, except for the rights you grant us to use Your Data under these Terms, you will own all rights, title and interest in and to all of Your Data and you will have sole responsibility for the legality, reliability, integrity, accuracy and quality of Your Data.

## 7. **Your Data**

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- 7.1 If you are providing us with personal information, then our [Privacy Policy](#) applies. Please read the Privacy Policy carefully as it forms a part of these Terms.
- 7.2 You acknowledge and agree that we may use Your Data for:
- (a) any of the purposes set out in the Privacy Policy;
  - (b) performing our obligations under these Terms;
  - (c) ensuring that you are complying with these Terms;
  - (d) improving or enhancing the Site;
  - (e) assessing what other services we may provide and promote to the School;  
and
  - (f) performing data analysis on an aggregated and anonymous basis.

## 8. **Warranties and Liability**

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- 8.1 You acknowledge that, except for those warranties or representations that cannot be excluded by law (including under the Consumer Guarantees Act 1993 and Fair Trading Act 1986), the Site is provided on an “as is” basis and all representations, conditions or warranties in respect of the Site (whether express or implied, statutory or otherwise, and including warranties of merchantability and fitness for a particular purpose) are expressly excluded.
- 8.2 In particular and without limiting clause 8.1, we do not warrant:
- (a) that your use of, or access to, the Site will be uninterrupted or error-free;
  - (b) that the Site will meet your requirements;
  - (c) that the Site will operate on all types of devices; or
  - (d) that the Site will be secure or free from Viruses.
- 8.3 You agree that, to the maximum extent permitted by law, we will not be liable to you for any form of loss or damage or injury or death, regardless of cause or origin, on any basis whatsoever, (including, but not limited to, breach of contract, warranty, negligence, strict liability in tort or otherwise), arising out of or in connection with your use of the Site or these Terms. If, notwithstanding the foregoing, we have any liability to you for any form of loss or damage, then to the maximum extent permitted by law, our maximum aggregate liability to you will not exceed NZ\$50.
- 8.4 You acknowledge that:
- (a) you assume all risk when using the Site, including (without limitation) all of the risks associated with any online or offline interaction with others;
  - (b) we have no control over the accuracy, reliability, or completeness of User Generated Content and we make no representations or warranties as to such User Generated Content;

- (c) the Site may contain links to mobile applications, websites and resources provided by third parties, and that these links are provided for your information only. We have no control over the content on those applications, websites or resources, and accept no responsibility for any loss or damage that may arise from your use of them; and
- (d) we are not responsible for any and all problems, conditions, delays, delivery failures and all other loss or damage arising from, or relating to, your network connections or telecommunications links or caused by the internet.

8.5 You will indemnify us against all costs, losses, expenses and damages incurred through any claims against us resulting from your use of the Site.

8.6 The exclusions and limitations of our liability to you set out in this clause 8 are subject to any rights you have under the Consumer Guarantees Act 1993 and Fair Trading Act 1986 that cannot be excluded by agreement between you and us.

## 9. **Suspension and Termination**

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9.1 We may, at our discretion, suspend your access to the Site if you fail to comply with these Terms.

9.2 These Terms will automatically terminate when the School Agreement terminates for any reason.

9.3 On termination of these Terms:

- (a) all licences granted to you under these Terms will immediately terminate and you must cease using the Site; and
- (b) we may delete Your Data if we choose not to hold Your Data for a period after termination of these Terms.

## 10. **General**

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10.1 These Terms constitutes the entire agreement between you and us in relation to the Site and supersedes any previous understanding or agreements on that subject matter.

10.2 If any part or a provision of these Terms is judged invalid or unenforceable in a jurisdiction it is severed for that jurisdiction and the remainder of these Terms will continue to operate.

10.3 A provision or a right under these Terms may not be waived except in writing signed by the party granting the waiver.

10.4 A party to these Terms may exercise a right, power or remedy under these Terms at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party under these Terms does not prevent a further exercise of that or of any other right, power or remedy.

10.5 These Terms may be varied by us at any time. Unless otherwise stated, amendments to these terms will be effective upon notifying you of the changes via email, or by posting the changes on the Site. You must ensure that you have read, understood and agree to the terms in these Terms. You agree that your continued use of the Site represents your agreement to be bound by the most recent terms.

- 10.6 You will not assign, transfer or otherwise deal with these Terms or any of your rights or obligations under these Terms, whether in whole or in part, without our prior written consent.
- 10.7 These Terms will be governed by and construed in accordance with the laws of New Zealand.
- 10.8 Should you wish to take any action against us in respect of the Site and/or these Terms, you agree that any such action will be commenced only in the New Zealand courts.