

Terms and Conditions

Concord Software Systems – Application Hosting Agreement

IMPORTANT - READ CAREFULLY: This Terms and Conditions ("Agreement") is a legal Agreement between you, the organization or entity, ("Customer") and Concord Australia Pty Ltd ("Concord") which covers the hosting by Concord of Concord Software Systems which are subscribed to by the Customer ("Service").

Concord agrees to provide Service to Customer and Customer agrees to pay Concord for Service subject to the following terms and conditions:

1. Term, Renewal and Termination:

- a. The effective date of this Agreement shall be the date on which Customer is first notified by a Concord representative of Service availability.
- b. This Agreement shall be for an initial trial period of ninety (90) days unless terminated by either party by giving five (5) days written notice to the other party prior to expiration of the initial trial period.
- c. Should the Customer continue to use the Service after the ninety (90) day initial trial period has concluded, this Agreement shall be automatically renewed for twelve (12) months and shall be automatically renewed every twelve (12) months for twelve (12) months, unless terminated by either party by giving forty-five (45) days written notice to the other party prior to expiration of any successive term.
- d. No later than thirty (30) days prior to termination of Service, Customer shall advise Concord as to the disposition of any Customer data that is stored as part of Service. Subject to payment of a service charge not to exceed twenty-five percent (25%) of the annual fee for Service, Concord shall arrange for transfer in electronic format of such data to Customer no later than ten (10) days after termination of service after which Customer data shall be deleted by Concord. In the event no disposition instructions are provided or payment of the service charge is not made, any Customer data shall be deleted by Concord on termination.
- e. In the event of early termination by Customer, Customer agrees that no refunds will be paid by Concord for any unused months remaining in the period.

2. Fees and Payments

- a. Fees for the Service period and any associated services shall be invoiced in advance and shall be payable on receipt or in accordance with any payment terms that are included on the invoice.
- b. If payment is not made within thirty (30) days of the invoice date, a one and one half percent (1.5%) per month interest charge shall be assessed until date of payment. If payment is not made within sixty (60) days of the invoice date, Concord reserves the right to terminate service and delete all stored Customer data.

3. Services Provided:

- a. Concord shall host a Customer licensed copy of the Concord Software System ("Software").
- b. Concord shall provide Customer with application level access to Software via an internet Uniform Resource Locator (URL) together with a User ID and password. No direct access to server hardware, operating system, database management system or other system resources shall be provided.
- c. Concord shall store all Customer data created and managed by Software, including files, text and parameters; data shall be backed-up on a separate storage system at regular intervals.
- d. For each student of Customer, the amount of storage space shall not exceed two gigabytes (2GB) and the volume of monthly network data transfer shall not exceed one gigabyte (1GB), unless otherwise agreed in writing by Concord.
- e. For Customer, the total amount of storage space shall not exceed two gigabytes (2GB) multiplied by the number of active student accounts, and the volume of monthly network data transfer shall not exceed one gigabyte (1GB) multiplied by the number of active student accounts, unless otherwise agreed in writing by Concord.
- f. Services are provided subject to the terms of the following Concord documents:
 - i. [Application Hosting Service Level Policy](#)
 - ii. [Application Hosting Service Usage Policy](#)

4. Nature of Service: This Service provides users with online access to school information such as academic records, deadlines, and files. In addition it acts as a communications medium to facilitate interaction between teachers, students, coordinators, administrators, and parents. Schools subscribe to the Service; the Service then allows individual teachers to determine the scope and nature of the information to make available to their students and those students' parents through the Service.

5. Authorized Usage:

- a. Customer agrees that access to Service shall be restricted to Customer school community members including teachers, employees, students, parents and authorized agents.
- b. Customer shall use commercially reasonable efforts to protect User IDs and passwords.
- c. Customer agrees that authorized Concord support personnel may access system as required to diagnose and resolve technical issues.

6. Limited Warranty: Concord warrants that the Service will conform substantially in accordance with the Application Hosting Service Level Policy for the term of the Service. Customer acknowledges that Concord does not warrant that the Service shall be uninterrupted or error-free.

7. Customer Remedies: Concord's entire liability and Customer's exclusive remedy shall be as defined in this Agreement. No other remedies are provided to Customer under this Agreement.

8. NO OTHER WARRANTIES: EXCEPT FOR THE EXPRESS WARRANTIES STATED ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, CONCORD DISCLAIMS ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED. BY WAY OF EXAMPLE BUT NOT LIMITATION, WITH RESPECT TO THE SOFTWARE AND ANY ACCOMPANYING USER DOCUMENTATION AND MEDIA, CONCORD MAKES NO REPRESENTATIONS OR

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WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS.

- 9. NO LIABILITY FOR CONSEQUENTIAL DAMAGES:** IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL CONCORD OR ITS LICENSORS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR OTHER CONSEQUENTIAL, EXEMPLARY, SPECIAL OR INDIRECT LOSSES) ARISING FROM YOUR USE, OR INABILITY TO USE, THE SERVICE, REGARDLESS OF WHETHER CONCORD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CONCORD'S ENTIRE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE SERVICE.
- 10. Prior Agreements:** This Agreement overrides all prior written and oral communications regarding the Service and sets out the entire agreement between Concord and you, the Customer. You irrevocably waive any right you may have to claim damages or to rescind (in the case of misrepresentation) the Agreement for any misrepresentation or warranty not set out in this Agreement unless such misrepresentation or warranty was made fraudulently.
- 11. No Waiver:** Any failure by either party to exercise an option or right conferred by this Agreement shall not of itself constitute or be deemed a waiver of such option or right.
- 12. Severability:** If any provision in this Agreement is declared void or unenforceable by any judicial or administrative authority this shall not nullify the remaining provisions of this Agreement which shall remain in full force and effect.
- 13. Law:** This Agreement shall be governed by the laws of the State of Queensland, Australia and the parties agree to submit to the exclusive jurisdiction and venue of the Courts of Queensland, Australia in connection with any legal actions hereunder.
- 14. General:** This Agreement may only be modified by a license addendum which accompanies this license or by a written document which has been signed by both you and Concord. Should you have any questions concerning this Agreement, or if you desire to contact Concord for any reason, please write: Concord Australia Pty Ltd. Customer Service, P.O. Box 454, Toowong, QLD 4066, Australia.