



# TERMS OF SERVICE

The Prickly2sweet website at [www.Prickly2sweet.com.au](http://www.Prickly2sweet.com.au) ("Site") and its related services, content, products, information, tools and functions (collectively "Services") are owned and operated by EDCV Pty Ltd ACN 605 502 154 trading as Prickly2sweet ABN 66 605 502 154 ("We", "Us", "Our").

Your access to and use of the Services is subject to these Terms of Service and any other policies published on the Site from time to time. By using the Services, You are deemed to agree to these Terms of Service and all Policies. PLEASE READ THESE TERMS OF SERVICE CAREFULLY BEFORE VIEWING THE SITE OR USING THE SERVICES.

We may amend these Terms of Service at any time at Our discretion. Please review the Terms of Service and Our Policies periodically as Your continued use of the Services indicates Your agreement to any changes made. All amended Terms of Service and Policies shall automatically be effective from 24 hours after the time and date of appearance on Our Site (unless otherwise stated). If You do not agree with such changes, You must cease to use the Services.

## 1. DEFINITIONS & INTERPRETATION

### 1.1 Definitions

In these Terms of Service unless inconsistent with the context or subject matter:

- (a) "Content" includes any material, text, information, pictures, tools, sound, graphics, video and other data forming part of or contained in the Site from time to time whether in written form or otherwise;
- (b) "Fee" means the fee or fees payable for a Product or for access to the Subscription Services as described on the Site;
- (c) "Intellectual Property" means all intellectual property rights, including without limitation inventions, patents, copyright, rights in circuit layouts, registered designs, trade marks, know-how, processes, concepts, intellectual property in the Services including the Site, the App, the Content and the Products, the name "Prickly2sweet" and any right to have information kept confidential and any application or right to apply for registration of any of these rights throughout the world whether registered or unregistered and whether developed before or after the date of these Terms of Service;
- (d) "Loss" means any loss, liability, cost, charge, expense, tax or damage of any nature whatsoever, including lost profits, loss of goodwill, loss of business, loss of production and any other special, incidental, exemplary, compensatory or consequential damages, losses, expenses, or lost or stolen programs or other data production stoppage, or consequential or indirect loss or damage howsoever arising or caused, including, without limitation, negligence, tort, contract or statute;
- (e) "Policy" means any policy of Ours in place from time to time including without limitation any policy relating to privacy, fees, refunds, feedback and services;
- (f) "Product" means any product available as part of the Services including assessment reports, assessment tools, validation matrix, rectification table, overall compliance analysis, matched criteria and matched performance criteria;
- (g) "Related Entity" has the meaning given to it in section 9 of the *Corporations Act 2001* (Cth);
- (h) "Services" means the Content, Products and functions available through the Site which may include preparation and publication of blog articles, resources, templates, tool checklists, surveys, quizzes, flowcharts, ebooks, schedules and guides and if and when subscribed for, the Subscription Services;
- (i) "Subscription Services" means the services, products, information, tools and functions available through the Site to the extent included in the Subscription Level a User subscribes and pays the Fees for, being the program upload facility, automated assessment software and as otherwise described on the Site;
- (j) "Subscription Level" means the different levels of access or use a User can subscribe and pay the Fees for as described on the Site or as otherwise agreed by Prickly2sweet writing;
- (k) "User" means any person who uses the Site or Services, or any part of them, for any purpose whatsoever;
- (l) "User Information" means any information (including Your legal name, address, telephone number, email address and applicable billing information), documents, comments, links or attachments, or videos made on or uploaded to the Site by a User;
- (m) "You" and "Your" means a User.

### 1.2 Interpretation



In these Terms of Service, unless inconsistent with the context or subject matter:

- (a) a reference to a person includes any other legal entity;
- (b) a reference to a legal entity includes a person;
- (c) words importing the singular number include the plural number;
- (d) words importing the plural number include the singular number;
- (e) the masculine gender must be read as also importing the feminine or neuter gender; a reference to a party includes the party's heirs, executors, successors and permitted assigns;
- (g) headings are for reference purposes only and must not be used in interpretation, with the exception of where a subheading of User is used, in which case clauses under that subheading relate to the party referred to in the subheading;
- (h) where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;
- (i) a reference to a statute includes all regulations and subordinate legislation and amendments;
- (j) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes e-mail and fax;
- (k) a reference to a monetary amount is a reference to an Australian dollar amount (unless otherwise specified);
- (l) an obligation of two or more parties binds them jointly and each of them severally; an obligation incurred in favour of two or more parties is enforceable by them severally;
- (n) references to time are to local time in Queensland;
- (o) where time is to be reckoned from a day or event, the day or the day of the event must be excluded;
- (p) a reference to a business day means any day on which trading banks are open for business in Queensland;
- (q) if any time period specified in this agreement expires on a day which is not a business day, the period shall expire at the end of the next business day;
- (r) a reference to a month means a calendar month; and
- (s) a reference to data includes metadata.

## **2 ACCESS TO SITE**

21 We grant to You a non-exclusive, non-assignable licence to use the Site and to use the Services to the extent of the Subscription Level subscribed for, in accordance with its normal and intended functionality and for internal business or personal use only and strictly in accordance with these Terms of Service and any Policy.

22 You acknowledge and agree with Us that You will not, as a result of being granted a nonexclusive licence, acquire any rights (including without limitation intellectual property or other intangible rights) in the Site, Content or any part of it, other than the non-exclusive rights granted in accordance with these Terms of Service.

23 The non-exclusive licence does not include the right to use any data mining robots or other extraction tools and does not permit You to metatag or mirror the Site without our prior written permission.

24 In order to use the Site, You require the equipment and connections necessary to access the World Wide Web. You are responsible for:

- (a) the provision of any such connection or access to the World Wide Web; the payment
- (b) of any fees associated with such connection or access (such as those charged by an internet service provider or other online service); and
- (c) the provision of all equipment necessary for You to make any such connection to the World Wide Web, including a computer and a modem.

25 If You access or use the Services on behalf of a company or other entity, You represent that You have authority to bind such entity to these Terms of Service and that it is fully binding on it. In such case, the term "You" will refer to You personally and such entity jointly and severally. If You do not have authority, You may not access or use the Services.

26 Access to the Services is only available to, and may only be used by, persons who can form legally binding contracts under applicable law. Without limiting the foregoing, the Services are not available to persons under 18 years of age. If You do not qualify, do not use the Services.

27 We operate the Site from offices based in Australia and server hosts based in Australia. Content contained on the App may not be appropriate or available for use in other locations. If You access the App from other locations, You do so at Your own initiative and risk, and You are solely responsible for compliance with local laws.

## **3 SITE FUNCTION**

31 The Services are designed to allow Users to use Content and/or upload User Information to review and map content including for educational program assessment tools and to create tools against against units of competency. ANY USE OF THE SITE OR SERVICES NOT SPECIFICALLY PERMITTED, DESIGNED OR INTENDED IS STRICTLY PROHIBITED.

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- 33 We do not warrant or guarantee:
- (a) that the Services will provide any function for which it is not specifically designed;
  - (b) that the Services will provide any minimum level of performance;
  - (c) that the Services will be virus free or free of performance anomalies or be operational without interruption;
  - (d) any specific outcomes, content, accuracy or quality of any review undertaken on the basis of the Services.
- 4 FEES FOR SUBSCRIPTION SERVICES**
- 4.1 You acknowledge that access to the Subscription Services is subject to payment of the required Fees as notified by Us from time to time. Payment of all Fees must be made in the time and manner directed by Us. All Fees are quoted in Australian dollars and are exclusive of any applicable taxes, except where otherwise stated.
- 4.2 If You subscribe for access to and use of the Subscription Services, You agree as follows:
- (a) You acknowledge that the extent of Subscription Services is limited by the Subscription Level you choose and pay for;
  - (b) You agree to pay, using a valid credit card (or other form of payment which we may accept from time to time), all applicable Fees as set out on the Site;
  - (c) We reserve the right to increase the Fees, or to institute new charges or fees at any time, upon advance notice communicated to You through a posting on the Site or such other means as we may deem appropriate from time to time (including electronic mail or conventional mail);
  - (d) After payment of any one off or initial Fee, any Fee payable on an ongoing monthly basis will be automatically charged to Your credit card or other account up to 15 days prior to the start of each renewal period, unless You cancel Your subscription before You are charged for the relevant renewal period;
  - (e) In the event we cannot charge Your account, we reserve the right to discontinue or terminate Your use of or access to the Subscription Services;
  - (f) You allow us to share Your User Information with third parties for the purpose of verifying the information You provide and billing Your credit card or otherwise charging You;
  - (g) If You provide any User Information that is untrue, inaccurate, or incomplete, or We have reasonable grounds to suspect that such is the case, We reserve the right to lock, suspend or terminate Your Account or subscription and refuse any and all current or future use and/or access by You of any of the Subscription Services;
  - (h) Except for any statutory rights which are unaffected, You agree that all Fees are non-refundable.
- 4.3 If any Fee is not paid by the nominated due date:
- (a) access by the User will be automatically suspended;
  - (b) the User must pay interest on any unpaid outstanding amount calculated at the daily rate of 15% per annum from the due date for payment until the date payment is received by Us; and
  - (c) the unpaid Fee and interest may be recovered by Us as liquidated damages.
- 5 PRODUCT AND SERVICE DESCRIPTIONS**
- 5.1 We strive to ensure that our Products and Services are described as accurately as possible, however We do not warrant that the description is accurate. Where We become aware of any misdescription, error or omission, We reserve the right to correct it. Images have been provided for illustrative purposes only.
- 5.2 Products forming part of the Subscription Services will be delivered to Your Account or Your email address in an electronic format. Hard copies of Products are not provided. You are responsible for obtaining and holding any program necessary to open and view electronic material (such as Adobe) at your own cost.
- 6 USER ACCOUNTS**
- 6.1 You can access and use parts of the Services without having to register on the Site.
- 6.2 You may register and subscribe to access and use Subscription Services. In order to register you must provide Your legal name, address, email address and applicable billing information (e.g., credit card number and expiration date). When You register and subscribe, We will create an account with a username and password ("Your Account").
- 6.3 You warrant that all information provided in relation to Your Account;
- (a) Is up to date, accurate and complete;
  - (b) Is not false or misleading; and
  - (c) Will be kept up to date at all times.
- 6.4 You must choose an individual username and password when registering Your Account. You are responsible for keeping Your username and password secure and confidential and We and any other User of the Services will assume that anyone using Your Account is authorised by You. Under no circumstances will unauthorised access and use of Your Account reduce Your



liability in connection with the Services. This includes Your obligation to pay a Fee or purchase a Product which may result from use of Your Account.

65 You must notify Us immediately if You become aware of any unauthorised use of Your Account or other security breach which We may consider relevant.

66 We undertake to take due care with information related to Your Account; however, in providing us with such information, You accept that we are not liable for its misuse due to error in transmission or virus or malware.

## 7. YOUR OBLIGATIONS

7.1 You must comply with all clauses of these Terms of Service and all Policies and all other terms and policies incorporated by reference.

7.2 You must also comply with all applicable domestic (including common law) and international laws, statutes, ordinances and regulations regarding Your use of the Services.

7.3 Your access to and use of the Services, and any User Information, must not:

- (a) be false, inaccurate or misleading;
- (b) be fraudulent or deceptive;
- (c) impersonate or otherwise misrepresent Your identity or affiliation with any other person or entity;
- (d) infringe any third party's copyright, patent, trade mark, design, trade secret, intellectual property or other proprietary rights or rights of publicity or privacy;
- (e) violate any applicable law, statute, ordinance or regulation (including those governing consumer protection, unfair competition, criminal law, antidiscrimination or trade practices law such as the *Competition and Consumer Act 2010* (Cth));
- (f) be defamatory, trade libelous, unlawfully discriminatory, threatening or harassing; be
- (g) obscene, pornographic or indecent or contain adult material or vulgar, profane, discriminatory, offensive or racist language;
- (h) upload or post comments of a religious, political or social nature;
- (i) upload or post any viruses, trojan horses, worms, time bombs, trap doors, back doors, spiders, robots, screen scrapers, data aggregation tools or other devices or other computer programming routines that may or are intended to damage, modify, delete, interfere with, surreptitious intercept, access without authority or expropriate any system, data or personal information or otherwise affect the integrity, operation or security of the Site;
- (j) interfere with or disrupt the Services or servers or networks connected to the Site, or disobey any requirements, procedures, policies, or regulations of networks connected to the Site;
- (k) create liability for Us or cause Us to lose (in whole or in part) the services of Our internet service provider, other Users or other suppliers;
- (l) damage the credibility or integrity of the Services or Us;
- (m) breach or violate any Policy;
- (n) link directly or indirectly to or include anything that:
  - (i) You do not have a right to link to or include;
  - (ii) could cause Us to violate any applicable law, statute, ordinance or regulation.

7.4 You acknowledge and agree that You must not:

- (a) commit or permit any act which may interfere with the access to or use of the Services by any other User;
- (b) use the Site to send junk, obscene, indecent, offensive or threatening electronic mail or electronic mail in contravention of the *Spam Act 2003* or any similar legislation to any person or company;
- (c) attempt to gain unauthorised access to the Services or computer systems or networks connected to the Site through any means;
- (d) tamper with, hinder the operation of or make unauthorised modifications to the Services or any part thereof;
- (e) damage or modify the Services or any part thereof;
- (f) reverse engineer, decompile or disassemble the Services or any part thereof;
- (g) copy, republish, frame, download, transmit, rent, lease, loan, sell, distribute, licence or sublicense the Services or any part thereof; or
- (h) modify, alter, adapt, disassemble, reverse engineer, decompile or amend any Content or any part thereof in any way.

## 8. USER INFORMATION

8.1 You are solely responsible for any User Information which You supply or upload, and You acknowledge that We act as a passive conduit for any distribution and publication of User Information.

8.2 You grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, publicly perform and display any of Your User Information and any name, username or likeness that You post on or in connection with the Services in all media formats



and channels now known or later developed without compensation to You. This license ends 3 years after the date You delete Your User Information or Your Account.

- 83 You acknowledge and agree that:
- (a) We only act as a portal for the distribution and publication of User Information;
  - (b) We do not proactively and routinely screen or monitor User Information uploaded to the Services by others;
  - (c) We do not guarantee the accuracy, legality, integrity, completeness or quality of any User Information;
  - (d) We make no warranty that User Information is actually made available on the Site;
  - (e) We are not responsible for, and do not endorse, User Information uploaded to the Services;
  - (f) We have the right (but not the obligation) to take any action deemed appropriate by Us with respect to User Information;
  - (g) We have no responsibility or liability for the deletion or failure to store any User Information, whether or not it was actually made available on the Site;
  - (h) We are not liable or responsible for any Loss that You may experience in submitting or viewing User Information or for use of User Information including without limitation User Information which is contains errors or omissions or it offensive, indecent or objectionable.
- 84 Without limiting any other clause of these Terms of Service, You represent and warrant that Your User Information:
- (a) will not infringe upon or misappropriate any intellectual property or other rights of any person;
  - (b) will not violate any law or regulation;
  - (c) will not be defamatory or libelous;
  - (d) will not be obscene;
  - (e) will not include incomplete, false or inaccurate information; and
  - (f) will not contain any viruses or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.

## **9 PRIVACY**

9.1 All personal information that We process on the Site or through the Services or through email or any other means will be managed and used in accordance with good practices.

- 9.2 You acknowledge that:
- (a) You authorise Us to use, store or otherwise process any information including personal information which relates to and/or identifies You, including, but not limited to, Your name, company or business name, email address and postal address ("Personal Information"), to the extent reasonably necessary for the provision of any Services or Products to You.
  - (b) You must ensure that the Personal Information You provide to Us and that all registration details (where applicable) contain Your correct name, address, e-mail address and other requested details.
  - (c) By accepting these Terms of Service, You agree to the processing and disclosure of the Personal Information for the purpose of Us providing the Services.

9.3 We also receive data from or about the computer, mobile phone, or other devices You use to access the Services. This may include network and communication information, such as Your IP address or mobile phone number, and other information about things like Your internet service, operating system, location, the type (including identifiers) of the device or browser You use, or the pages You visit.

## **10. NATURE OF SERVICES AND CONTENT**

10.1 The Services contain Content prepared by Us or by third parties at Our request which is of a general nature on matters of interest only, including information relating to requirements of registered training organisations. The Services review and map content to assist only with compliance requirements of registered training organisations, however it does not serve as a certificate of compliance or any other form of approval or certification, including a full validation.

10.2 We are not responsible under any circumstances, including negligence, for any errors or omissions, or for the results obtained from the use of the Services or any User Information. In no event will We or any Related Entity, officers, directors, agents, employees, consultants or contractors be liable to a User or any third party for any decision made or action taken or omission in reliance on the information in the Services or User Information or for any Loss, even if advised of the possibility of such damages.

10.3 WITHOUT LIMITING ANY OTHER CLAUSE, TO THE EXTENT PERMITTED BY LAW, THE SERVICES AND USER INFORMATION ARE PROVIDED WITH NO GUARANTEE OF COMPLETENESS, ACCURACY, TIMELINESS OR OF THE RESULTS OBTAINED FROM THE USE OF IT, AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING,



BUT NOT LIMITED TO WARRANTIES OF PERFORMANCE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**11. ACKNOWLEDGEMENTS**

- 11.1 Without limiting any other clause, You acknowledge that:
- (a) the World Wide Web exists across open public networks that are neither secure nor private. Accordingly, You acknowledge and accept the risk that any communication to or from the Site may be intercepted, used or modified by third parties;
  - (b) You are responsible for assessing the reliability, accuracy, completeness, timeliness, suitability, quality, physical state or for a particular purpose of the material on or accessible through the Site including Content and User Information;
  - (c) You accept all risks and responsibility for all Loss resulting from Your use of the Services or the material on or accessible through the Site;
  - (d) We may change any of the Content at any time without notice but have no obligation to do so; and
  - (e) No data transmission over the internet can be guaranteed as totally secure. Whilst We strive to protect Your User Information, We do not warrant and cannot guarantee the security of Your User Information which You transmit through the Site. Accordingly, any User Information which You transmit through the Site is transmitted at Your own risk. Nevertheless, once transmitted We will take reasonable steps to preserve the security of such User Information. You must inform Us immediately of any breaches of security or unauthorised use of Your User Information.

**12. INTELLECTUAL PROPERTY AND DATA**

- 12.1 The Services and all parts thereof, including the Content, excluding content of users, are protected by copyright and other proprietary rights and remain the property of Us.
- 12.2 You acknowledge and agree that We own the Intellectual Property of the system and that no right, title or interest in any of the Intellectual Property is transferred or granted to You other than granted expressly by these Terms of Service.
- 12.3 You must not at any time assert any right to or over such Intellectual Property or take, appropriate, or represent any or all such Intellectual Property as Your own.
- 12.4 You undertake not to take or permit or omit any action which would or might:
- (a) invalidate or put in dispute Our title in the Intellectual Property or any part of it;
  - (b) oppose any application for registration or invalidate any registration of the Intellectual Property or any part of it;
  - (c) support any application to remove or undo Our title in the Intellectual Property or any part of it; or
  - (d) assist any other person directly or indirectly in any of the above.
- 12.5 The parties agree that any intellectual or industrial rights in any additional or further or new works, material or information created, formulated or discovered during or after Your use of or access to the Services, excluding Your User Information, will be the sole and exclusive property of Us and You will promptly sign all documents and do all things necessary to register, vest or transfer any interest or ownership in such additional or further intellectual property rights to Us.
- 12.6 Without limitation, the "Prickly2sweet" logo and name are owned by Us and may not be used as part of Your business or in connection with any goods or services without Our prior written consent which shall be given, given with conditions or withheld at Our absolute discretion.
- 12.7 You acknowledge and agree that You will not copy, reproduce, alter, modify, create derivative works, or publicly display the Services, Site or any part of it unless with the prior written permission from Us or the appropriate third party authorised to grant such permission and when doing so You must acknowledge Us and, for electronic uses, include a link to Our Site.
- 12.8 We may at Our sole and absolute discretion refuse or remove any Content or User Information from the Site.

**13. LINKS AND ADVERTISING**

- 13.1 The Site may contain links to third party websites. Those websites are not under Our control and We are not responsible for the content of the links contained in those websites or any webcasting or other transmission received from any such websites. Neither Us nor any Related Entity or Our officers, directors, employees or agents recommend or endorse the content of any third-party websites which may be linked to or from the Site, or goods or services of any third-party organisations mentioned or described on this Site or linked to or from the Site. You acknowledge that You enter any third-party websites at Your own risk.
- 13.2 The Site may contain advertisements for third parties' goods and/or services. The third-party advertisers are responsible for the accuracy of all representations made in those advertisements. Neither Use nor any Related Entity or Our officers, directors, employees or agents recommend or endorse the goods or services that may be advertised on the Site, nor do they offer the goods or services for sale or make any other representation whatsoever about them. If You choose to order a good or service advertised by a third party on the Site, You do so at Your own risk.



- 133 You must not link the Site or use any API or integration from or to any other website not owned or operated by Us or use a white label version of the Site without Our prior written consent which may be refused, given or given on conditions at our absolute discretion.
- 14. UPGRADES**
- 14.1 You acknowledge and agree that these Terms of Service apply to updates, supplements, add on components, or internet-based services or components of the Site together with any other terms along with the update, supplement, add on component or internet-based services or components which We provide.
- 14.2 We reserve the right to discontinue any internet-based services provided to You or made available to You through the use of the App at any time.
- 15. GENERAL MAINTENANCE AND TECHNICAL SUPPORT**
- 15.1 Access to or use of the Services does not entitle You to any technical support, telephone assistance, or enhancements or updates, however this does not prevent Us from offering such services at Our sole discretion.
- 15.2 We will endeavour to carry out any non-urgent support services, upgrades, updates, supplements, add on components, or other internet-based services or components outside of usual business hours. We will provide reasonable notification of any anticipated downtime.
- 16. BREACH AND TERMINATION**
- 16.1 Without limiting other remedies available to Us at law, in equity or under these Terms of Service or any other Policy or otherwise, We may, in Our sole discretion, immediately issue a warning, temporarily suspend, indefinitely suspend or terminate Your use of the Services or any part of them and/or refuse to provide the Services, or any part of them, to You (including preventing You from accessing the Site) if:
- (a) You breach these Terms of Service or any Policy or the terms and policies those documents incorporate by reference, including as to payment, and fail to remedy the breach within 2 business days of Our notice to do so; or
  - (b) We are unable to verify or authenticate Your User Information; or
  - (c) We believe that Your actions may cause legal liability for You, other Users or Us; or
  - (d) In Our sole opinion, Your conduct, acts or omissions threaten, interfere or impact upon the integrity or credibility of the Services or any part of them (or the operation thereof) or Us; or
  - (e) We suspect that You (by conviction, settlement, insurance or escrow investigation, or otherwise in Our sole discretion) have engaged in fraudulent or deceptive activity in connection with Our Site.
- 16.2 We may immediately terminate Your Account and/or Your access to or use of the Services if:
- (a) discontinuance or material modification to the Services (or any portion thereof),
  - (b) unexpected technical or security issues or problems;
  - (c) prolonged force majeure; and/or
  - (d) extended periods of inactivity.
- 16.3 In addition to any other rights either party may, by one (1) months' written notice to the other, terminate a User's access to the App. Any amounts paid in advance will be refunded at Our discretion.
- 17. EFFECT OF EXPIRY OR TERMINATION**
- 17.1 On expiry or termination of a User's access to the Services, Site:
- (a) We will lock out, terminate or otherwise cease to provide access to and use of the Services;
  - (b) the User must destroy all evidence of any usernames, passwords, internet protocol addresses and other like matters;
  - (c) all payments previously made by, or on behalf of the User, remain the property of Us and no party may make any claim in respect of such payments;
  - (d) We may, but are not obliged to, delete all User Information which is held in the Site or otherwise in the records of Ours.
- 17.2 You agree that all terminations for cause shall be made in Our sole discretion and that We shall not be liable to You or any third party for any termination of Your account or access to the Services or loss of User Information.
- 17.3 Terms capable of doing so shall survive termination of Your Account and/or the Services.
- 17.4 Any rights which may have accrued to either party shall be unaffected.
- 17.5 All rights contained in these Terms of Service which are capable of doing so shall survive the expiration or termination of these Terms & Conditions.
- 18. WARRANTIES AND DISCLAIMERS**
- 18.1 We provide the Services, Site on an "as is" basis and without any warranties, representations, or conditions of any kind, whether express, implied or statutory, to the extent permitted by law. To the extent permitted by law:
- (a) We specifically disclaim any implied warranties including in relation to title, merchantability, fitness for a particular purpose and non-infringement;



- (b) We do not guarantee continuous, uninterrupted or secure access to the Services, Site, Content or User Information, and You acknowledge that operation of Services may be interfered with by numerous factors outside Our control;
  - (c) We make no representations or warranties of any kind, express or implied that:
    - (i) the Services will be operational;
    - (ii) the Services will meet Your requirements;
    - (iii) the Services will have a particular impact on Your educational programs or your business or that any results will be accurate or reliable;
    - (iv) Your access to or use of the Services, (including any related or linked websites), will be uninterrupted, timely, secure or error-free;
    - (v) the Services, including the Products and Content and the User Information, will be correct, accurate, timely, or complete; and
    - (vi) Any errors in the Services will be corrected.
- 182 You warrant that You have not relied upon any representations, warranties or conditions offered or made by or on behalf of Us except to the extent expressly set out in these Terms of Service.
- 183 You warrant and acknowledge to Us that as at the date of these Terms & Conditions and for the duration of these Terms of Service:
- (a) You Were not relying on any representation made by Us;
  - (b) the particulars as provided in Your Account are true, accurate and complete in every respect and are not misleading in any way;
  - (c) all User Information You provide is true, accurate and complete and not misleading in any way;
  - (d) You will promptly advise us of any changes in Your personal details;
  - (e) You have the legal right and power to enter into these Terms of Service;
  - (f) Your acceptance and performance of these Terms of Service has been duly and validly authorised by any necessary corporate action;
  - (g) these Terms of Service are valid and binding on You, enforceable in accordance with their terms;
  - (h) You are not insolvent, and no controller has been appointed over any part of Your assets;
  - (i) You are not bankrupt or in liquidation or administration and no proceedings have been brought or threatened for the purpose of bankrupting or winding You up.
- 19. LIMITATION OF LIABILITY**
- 19.1 In no event shall We or any Related Entity, officers, directors, employees' agents, contractors or suppliers be liable for any Loss arising out of or in connection with:
- (a) The Services;
  - (b) Our Site;
  - (c) Any User's use of the Site or inability to use the Site;
  - (d) any failure or performance, error, omission, interruption, defect, delay in operation or transmission;
  - (e) line or system failure or the introduction of a computer virus or other technical sabotage;
- or  
even if We or Our employees or representatives are advised of the possibility or likelihood of such Loss.
- 192 WHERE THE LAWS OF ANY COUNTRY OR STATE IN WHICH THESE TERMS OF SERVICE ARE EFFECTIVE IMPLIES INTO THESE TERMS OF SERVICE ANY TERM, CONDITION OR WARRANTY, AND THOSE LAWS AVOID OR PROHIBIT PROVISIONS IN A CONTRACT EXCLUDING OR MODIFYING THEM, THEN THE TERM, CONDITION OR WARRANTY SHALL BE DEEMED TO BE INCLUDED IN THESE TERMS OF SERVICE PROVIDED THAT THE LIABILITY OF US, ANY RELATED ENTITY AND OUR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FOR A BREACH OF ANY SUCH TERM, CONDITION OR WARRANTY, INCLUDING ANY LOSS WHICH YOU MAY SUSTAIN SHALL BE LIMITED, AT OUR OPTION, TO:
- (a) IN THE CASE OF OUR SERVICES, THE SUPPLY OF THE SERVICES AGAIN, OR THE PAYMENT OF HAVING THE SERVICES RESUPPLIED;
  - (b) IN THE CASE OF OUR PRODUCTS, THE PROVISION OF REPLACEMENT PRODUCTS OR THE PAYMENT OF OBTAINING REPLACEMENT PRODUCTS;
  - (c) IN ANY OTHER CASE, THE LESSER OF THE TOTAL FEES YOU PAY TO US IN THE 12 MONTHS PRIOR TO THE ACTION GIVING RISE TO LIABILITY AND AU\$100.00.
- 193 The limitation and exclusion of liability in this clause applies whether the liability claim is based on breach of contract, under a warranty or an indemnity, tort (including negligence), under statute, in equity or otherwise.
- 20. RELEASE**
- 20.1 YOU RELEASE US AND ANY RELATED ENTITY AND OUR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR RELATED BODIES CORPORATE FROM ITS LIABILITY FOR ANY LOSS ARISING OUT OF THE USE OR INABILITY TO USE OR RELIANCE ON THE MATERIAL



OR INFORMATION AVAILABLE ON OR ACCESSIBLE THROUGH THE SITE, EVEN IF WE HAVE BEEN ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES AND WHETHER OR NOT CAUSED BY ANY NEGLIGENT ACT OR OMISSION.

20.2 Without limiting these Terms of Service, You release us from any Loss arising from the use of, or reliance on, the Services, whether or not caused by any negligent act or omission including but not limited to:-

- (a) Your reliance on the Services;
- (b) the conduct of any other User;
- (c) other Users' content, actions or inactions;
- (d) loss of use, data or profits on any theory of liability arising out of or in connection with the use of or the inability to use the Services or any part of them;
- (e) the statements or actions of any employee or agent of Ours;
- (f) information, data or other material provided to You by Us;
- (g) any unauthorised access to or alteration of Your transmissions or data including User Information;
- (h) any information that is sent or received or not sent or received;
- (i) any failure to store or loss of data or files or other content;
- (j) Your fraudulent, negligent or otherwise unlawful behaviour;
- (k) the posting of any unlawful, threatening, abusive, defamatory, obscene or indecent information, or material of any kind which violates or infringes upon the rights of any other person, including without limitation any transmissions that encourage or represent conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any applicable law

20.3 You expressly agree that We do not assume responsibility for the inspection, supervision, preparation, or conduct of any activities carried out based on the Services or provided as a Product or part of one.

## 21. INDEMNITY

21.1 You agree to indemnify and hold Us and any Related Entity, and Our officers, directors, agents, employees, contractors and suppliers harmless from and against any actions, claims, demands, proceedings, Loss of every kind and nature, known and unknown, including reasonable solicitors' fees and claims made by third parties, due to or arising out of or in connection with:

- (a) Your access to or use or misuse of the Services;
- (b) The Site;
- (c) Your use or misuse of any Products, including use of any review data arising from or based on the Services;
- (d) Your breach of these Terms of Service or any Policy;
- (e) Your violation of any law or the rights of a third party.

even if We had been advised of the possibility of Loss.

## 22. MISCELLANEOUS

22.1 Accessing or using the Services or any part of them and uploading User Information is done so at Your own risk and You will be responsible for compliance with the laws within Your jurisdiction.

22.2 Publication of electronic addresses in the App is for the purpose of professional communication only and must not be used to infer consent to the receipt of unsolicited commercial electronic messages.

22.3 These Terms of Service are governed by the laws of Queensland and the Commonwealth of Australia which are in force in Queensland. The parties submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them. However, for Our exclusive benefit, We also retain the right to bring proceedings for urgent or injunctive legal or equitable relief in the courts of Your country of residence or Your principal place of business.

22.4 These Terms of Service shall be for the benefit of and binding upon the parties and their heirs, executors, successors and permitted assigns.

22.5 If a clause of these Terms of Service is void or unenforceable it must be severed from these Terms of Service and the clauses that are not void or unenforceable are unaffected by the severance.

22.6 You agree that these Terms of Service and all incorporated agreements may be assigned by Us, in Our sole discretion, to a Related Entity or third parties. You may not assign these Terms of Service without Ours express prior written consent.

22.7 Our failure to act with respect to a breach by You or others does not constitute a waiver of that breach or waive Our right to act with respect to that breach or subsequent or similar breaches.

22.8 No waiver by a party of a provision of this Agreement is binding unless made in writing. You

22.9 agree that these Terms of Service may not be construed adversely against Us solely because We prepared them.

22.10 Unless otherwise specified, these Terms of Service and the Policies comprise the entire understanding and agreement between You and Us with respect to the subject matter hereof.



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- 22.11 Nothing in these Terms of Service or Your use of the Services establishes or creates a joint venture, partnership, consortium, franchise, employment or agency relationship between the parties.
- 22.12 The *contra proferentem* rule and other rules of construction will not apply to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.
- 22.13 Any notice or demand in writing required to be given by Us to You shall be sufficiently served if:
- (a) served personally or by pre-paid mail to Your last known
  - (b) address; sent by facsimile machine to Your facsimile machine;
  - (c) sent in electronic form by email to Your email address; or
  - (d) published by notice on the Site

Signature:/ including Click of agreement on the system as a signature of agreement

I the 'User' of the Prickly2sweet system agree to the above Terms of Service.

Username:

User Position:

User Company:

User Phone Number: