



# Access Agreement for the use of Math-Whizz<sup>®</sup> Teachers' Resource for Schools

**IMPORTANT:** Please read carefully these terms and conditions regarding your use of the Math-Whizz<sup>®</sup> Teachers' Resource for Schools service (the "Service"). By purchasing access to the Service and using or letting others use the Service, You are agreeing to be bound by the terms and conditions of this Agreement which will form a legal agreement between You and Us. If You do not agree to these terms and conditions, You may not access or let others access the Service.

You agree that Your use of any Updates and/or Upgrades of the Service will be subject to the terms of this Agreement, together with any additional terms which may accompany such Updates or Upgrades.

You understand that the quality of Your experience of the Service, even your ability to use the Service, is dependent on the combination of hardware device(s), browser(s) and Internet connection bandwidth you will be using and that you should bear in mind "What are the Minimum System Requirements to run Math-Whizz" explained at <https://www.whizz.com/en-us/help/schools-help/> and which are updated from time to time.

You further understand that Your right to use the Service is dependent upon Your payment of all applicable fees when due, and that if you do not pay such fees when they are due, We may terminate your access to the Service with or without notice and You will be unable to keep using the Service.

You agree that as part of the installation and registration process for the Service, You will provide to Us certain personal data from which individuals may be identified, including, by way of example, the names and email addresses of contact persons within Your institution, so that we can contact You regarding Your use of the Service, and in particular, in relation to renewing Your access to the Service each year. We are committed to protecting all such personal data in accordance with all relevant legislation, our Privacy Policy and our Data Protection Supplementary Statement for North American Schools (available under Privacy at [www.whizz.com](http://www.whizz.com)) which together set out our policy and Your and Our respective obligations with respect to all the shared personal data disclosed by You to Us and by Us to You as a result of this Access Agreement.



**This Access Agreement (the "Agreement") for the use of Math-Whizz® Teachers' Resource for Schools is between:-**

**Service Provider:** Whizz Education Inc, a Washington corporation, of P.O.Box 3060, Roanoke VA 24015-1060 ("Whizz Education", "We" or "Us"); and

**Customer:** You, as the institution having purchased access to use Math-Whizz® Teachers' Resource for Schools ("You").

You should note that 'You' means You as the single institution or entity (for example, a single school, college or other institution) which has purchased access to the Service, and does not include any affiliates or other entities or institutions which may be connected or affiliated to You. If these other entities or institutions wish to use Math-Whizz® Teachers' Resource for Schools they must purchase their own access.

**Ownership Rights:** As between the parties, Whizz Education retains title to and ownership of any and all proprietary rights with respect to the Service and all Updates and Upgrades (including all portions, derivatives or improvements thereof), whether or not incorporated into or used with other software or hardware, except to the extent of the license expressly granted herein. As between the parties, Whizz Education owns any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by You or any other party relating to the Service. The license granted hereunder does not constitute a sale of the Service or any portion or copy of it. The Whizz Education name, logo, and the product names associated with the Service are trademarks of Whizz Education or third parties, and no right or license is granted to use them.

**Permitted Use and Restrictions:** Access to the Service is by a single user name and password for You and Your employees ("School User Details"). You can and You can permit Your employees, students or other persons working or studying within Your institution under Your authority ("Permitted Users") to:

1. access, retrieve and display the Service and all material available through the Service on a network, server or on one or more personal computers under Your control within the premises of Your institution for internal use within Your institution;
2. in the case only of a Permitted User who is a teacher, access, retrieve and display the Service and all material available through the Service on their own single personal computer both inside and outside of your premises for use in connection with their school work only;
3. print out individual screen extracts from the Service to be photocopied for classroom use only within Your institution, for internal use by Permitted Users and for use outside of the classroom by Permitted Users for homework or preparation for such classroom work;
4. store such printable items in electronic form on disk or on a mobile device (but not on any server or other storage device connected to a network other than a network under Your control within the premises of Your institution).



For the avoidance of doubt, access to the Service by Permitted Users who are students is permitted only within Your premises. Teachers who cease to be Your employees cease at the same time to be Permitted Users.

The activities described in items 1 to 4 above are referred to in this Agreement as the "Permitted Activities".

You cannot, and You will not allow Permitted Users to:

1. copy the Service or any part thereof for any purposes not specified above in the Permitted Activities;
2. alter the Service, or in any way reverse engineer, disassemble, decompile or create a derivative product from the contents of the Service save to the extent permitted by applicable mandatory laws ;
3. include the Service or any part of it in any other product or Service materials;
4. lease, rent, hire, lend, distribute or sell the Service or any part of it;
5. use the Service in any way not specified in the Permitted Activities set out above without the prior written permission of Whizz Education;
6. remove or obscure any copyright, trade mark or other proprietary notice of Whizz Education or its licensors from any portion of the Service or from any print outs made from the Service;
7. redistribute any of the Service (including by using it as part of any syndication, content aggregation, library, archive or similar service);
8. cache any part of the Service in a proxy server;
9. create a database in electronic or structured manual form by systematically and/or regularly downloading/printing and storing all or any of the Service;
10. deep link to, frame, spider, harvest or scrape the Service or otherwise access the Service for similar purposes;
11. use any machine, electronic, web based or similar device to read or extract the Service by automated or machine based means (as opposed to using your own eyes); or
12. divulge School User Details to, and/or permit the use of School User Details by, persons who are not, or have ceased to be, Your employees.

The activities described in items 1 to 12 above are referred to in this Agreement as the "Prohibited Activities".

You agree that You will draw the terms of this Agreement to the attention of all Permitted Users, that You will ensure that all such Permitted Users comply with these terms and that You will remain exclusively liable for any breaches of these terms by such Permitted Users. For the purposes of this Agreement, all acts and omissions of Permitted Users shall be deemed to be Your acts and omissions. If We reasonably believe that You and/or Your Permitted Users are, for example, misusing School User Details, we reserve the right to terminate the Service – see Term and Termination below.

These terms apply to You and to all Permitted Users both irrespective of the delivery platform You and the Permitted User(s) use - e.g. desktop PC, laptop, mobile device, PDA or otherwise - and irrespective of how the Service is delivered to You and the Permitted User(s) - e.g. via web browser, WAP browser, email, SMS or otherwise. By accessing the Service and



by facilitating access to the Service by your Permitted User(s) you are agreeing that these terms and conditions are binding on You and Your Permitted User(s).

**Grant of License/Provision of Service:** Provided that You have paid in full any sums owing to Whizz Education or its resellers, distributors or agents in respect of the Service, and that You do nothing which is forbidden as a "Prohibited Activity", Whizz Education grants You a non-exclusive, non-transferable, non-sublicensable license to carry out the Permitted Activities in respect of the Service and any and all Updates and Upgrades thereof for the period recorded in Our invoice to You for the Service or as otherwise agreed in writing by Whizz Education (the "Term"). All rights not specifically granted under this Agreement are reserved by Whizz Education. You shall be solely responsible for hardware and interconnections and telecommunications to access the Service.

**Updates and Upgrades:** The terms and conditions of this Agreement apply to the Service and to any and all Updates and Upgrades provided from time to time by Whizz Education. When an Update or an Upgrade is incorporated in the Service, it will be deemed to form part of the Service for the purposes of this Agreement, and You must comply with all the terms and conditions of this Agreement in relation to all Updates and Upgrades which we may provide. "Updates" means any bug-fixes, workarounds or minor corrections, enhancements or modifications to the Service made available by Whizz Education at its absolute discretion from time to time to You under the terms of this Agreement. "Upgrades" means releases of the Service containing additional content, features and curriculum changes, which may include related additional functionality, made available by Whizz Education at its absolute discretion from time to time to You under the terms of this Agreement. Provided that the essence of the Service as an online resource of mathematics content for use by teachers and their students is maintained, Whizz Education may change, alter or withdraw any part of the Service at any time (with or without notice to You). Whizz Education may at any time release products and services similar to the Service, but, for example, incorporating additional functionality, content and features. Nothing in this Agreement grants to You or entitles You to any rights in relation to such similar products and services. If You are interested in purchasing any such similar products and services, You should contact Whizz Education or its resellers, distributors or agents for further information.

**Term and Termination:** This Agreement shall commence on the Start Date in Our invoice to You for the Service and shall continue for the Term as described above in the paragraph headed "Provision of Service".

You may terminate this Agreement before the end of the Term by giving us notice in writing at any time. Unless We are in breach of Our obligations to You, You will not be entitled to any refund of the fees paid by You.

At the end of the Term, this Agreement will automatically terminate and Your access to the Service and that of all Your Permitted Users will be automatically disabled unless You have agreed to extend your Agreement for a new period and have paid the applicable renewal fees by that date.

If You and Your Permitted Users do not continue to do only what You and they are allowed to do as a Permitted Activity under this Agreement or if You and Your Permitted Users do anything which You and they are not allowed to do which is forbidden as a Prohibited Activity, You will be in breach of the Agreement. If You are in breach of this Agreement this Agreement will terminate automatically and Whizz Education shall have the right to disable



Your access to the Service and to take action to recover from You any damages suffered by Whizz Education as a result of Your breach.

We also reserve the right to terminate this Agreement at any time and for any reason on giving notice to You. If we terminate your access to the Service pursuant to the immediately preceding sentence, we will refund a proportion of the fee relating to the remainder of the Term for which You have paid (if any).

**Disclaimer of Warranties.** Please review the Terms of Website Access and Use for important disclaimers of warranties by clicking here: <http://www.whizz.com/en-us/terms-of-use/>.

**Limitation of Liability.** Please review the Terms of Website Access and Use for important limitations of Whizz Education's liability by clicking here: <http://www.whizz.com/en-us/terms-of-use/>.

**Force majeure:** Notwithstanding anything contained in this Agreement Whizz Education shall not be liable for failure or delay in performing any of our obligations because of any cause beyond Our reasonable control (including but not limited to (a) decision of any court or other judicial body of competent jurisdiction, (b) unavailability of equipment, power or other commodity, (c) failure or non-availability of Internet or telecommunications facilities, computer hardware or Service, (d) act of God, war, riot, terrorist attack, civil commotion, malicious damage, fires, flood or storm (e) strikes or other industrial disputes (whether involving Our workforce or that of any other party) or (f) acts of government or other prevailing authorities or default of suppliers, sub-contractors or other third parties).

**Notices.** Unless otherwise provided herein, notices given by Whizz Education to you will be given by email or by conventional mail. Notices will be sent to the email address or mailing address you provide to Whizz Education as part of the registration process, or to updated addresses which you provide to Whizz Education via notice consistent with this paragraph. Notices given by you to Whizz Education must be given by email to [support@whizz.com](mailto:support@whizz.com) or such updated address and number as Whizz Education may provide you consistently with this notice provision, or by mail to P.O.Box 3060, Roanoke VA 24015-1060. Notwithstanding anything herein to the contrary, it is your sole responsibility to update your address for notices hereunder, and notice sent to the email or physical mailing address last provided by you to Whizz Education shall be valid and binding on you regardless of whether such address has been changed, canceled, has expired, has been terminated, or otherwise becomes inoperative.

**Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to the conflict of laws provisions thereof. You irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the state and federal courts located in King County, Washington for any litigation, claim, controversy or dispute arising out of or relating to this Agreement and agree not to commence any litigation arising out of or relating to this Agreement except in such courts.



**General:** This Agreement represents the entire agreement between You and Us as to the matters dealt with in it and shall prevail over any inconsistent terms or conditions referred to in any purchase order or other correspondence You may submit to Us or our resellers, distributors or agents (which terms shall not be binding on Us). We reserve the right to vary or amend these terms and conditions at any time. We will give you notice of any material variation. If any provision(s) of this Agreement is held by a court of competent jurisdiction to be contrary to law, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect. Whizz Education's failure to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Whizz Education in writing. The section titles in this Agreement are solely used for convenience and have no legal or contractual significance. This Agreement may be assigned in whole or in part by Whizz Education, except to any extent prohibited by law. Neither this Agreement nor any rights or obligations under this Agreement may be assigned in any manner by you without the express, prior written permission of Whizz Education, and any purported assignment in violation of this restriction will be void.

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