



# Access Agreement for the use of Math-Whizz<sup>®</sup> Tutoring Plus for Schools

**IMPORTANT:** Please read carefully these terms and conditions regarding your use of the Math-Whizz<sup>®</sup> Tutoring Plus 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 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, and the names, dates of birth and genders of students within Your institution who will be using the Service. 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.



## Agreement

**This Access Agreement (the "Agreement") for the use of the Service is between:-**

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

**Customer:** You, as the institution having purchased access to use the Service ("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 the Service they must purchase their own access.

**Ownership Rights:** As between the parties, Whizz Education retains all right, title, and interest in and to any and all intellectual property and 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 software contained within 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") and by individual user names and passwords for Your students and their parents/guardians ("Student User Details"). You can and You can permit Your employees and the maximum number (as set out in Our invoice to You for the Service) of Your students or other persons working or studying within Your institution under Your authority, and their parents/guardians (collectively, the "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 or other web-enabled devices under Your control within the premises of Your institution for internal use within Your institution;
2. access, retrieve and display the Service and all material available through the Service on their own computer or web-enabled device both inside and outside of your premises for use in connection with (a) Your students' school work only, (b) in the case of parents/guardians, for progress review purposes for their child, and (c) Your employees' use of the Service as reasonably necessary to accomplish their duties assigned by You;
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; and



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).

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, modify, 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;
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, trademark, service mark, trade name, 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. create a database in electronic or structured manual form by systematically and/or regularly downloading/printing and storing all or any of the Service;
9. deep link to, frame, spider, harvest or scrape the Service or otherwise access the Service for similar purposes;
10. 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);
11. 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;
12. divulge individual Student User Details to any other persons except the particular Student's parents and/or guardians;
13. operate the lightbulb activation and de-activation facility to permit concurrent use of individual student logins by more than one student; or
14. upload viruses, worms, trojan horses, or other malicious code to the Service.

The activities described in items 1 to 14 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 liable for any breaches 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 or Student User Details or the lightbulb student activation and de-activation facility, we reserve the right to terminate the Service.



These terms apply to You and to all Permitted Users both irrespective of the delivery platform You and the Permitted Users 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:** During the Term (as defined below), and 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 or any of the Permitted Users do not engage in any "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. 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" mean 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 mathematics tutoring service 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, unless earlier terminated pursuant to this Agreement, for the period recorded in such invoice (the "Term").

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 or have specifically agreed to the possibility of a refund, 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 or any Permitted Users breach this Agreement or any associated end user agreement, this Agreement will terminate upon the provision of notice from Whizz Education to You and We shall have the right to disable Your and all Permitted Users' access to the Service and to



take action to recover from You any damages suffered by Whizz Education as a result of Your breach. For purposes of this Agreement, a breach includes, but is not limited to, Your failure to pay amounts when due, You or a Permitted User engaging in Prohibited Activities, and You or a Permitted User exceeding the rights granted to it or them in the Permitted Activities.

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).

In lieu of terminating this Agreement, We may suspend Your access and/or the access of all or some of Your Permitted Users' to the Service.

**Limited Warranty:** The Service primarily consists of mathematics lessons and exercises covering the majority of the Common Core standards and which use animation and other help features to demonstrate mathematical concepts and techniques. Following an initial assessment of an individual student's capabilities, the Service's Virtual Tutor creates a sequencing of lessons and exercises aimed at taking the student to a higher level of achievement in mathematics provided that the student commits sufficient time to absorbing the lessons and undertaking the exercises. The student's progress is continuously assessed with the sequencing of lessons and exercises being dynamically updated as required. Whizz Education makes no representation concerning the suitability of the Service for students not following the Common Core standards nor for its use other than as a supplementary teaching tool. Whizz Education is not responsible for any use of the Service by You and/or Your Permitted Users outside its scope as stated in these terms and conditions.

The Service records data concerning each student's usage of the Service and the performance of each student in every exercise completed. This data is collated into reports concerning each student, the class to which they belong, and on a school-wide basis, and draws conclusions as to the ability in mathematics and improvement in such ability achieved by each student, class and school-wide. Whizz Education makes no representation concerning the suitability of the Service in its reporting mode, and cautions You and Your Permitted Users to recognize the necessary limitations of the data in the reports.

**What we can guarantee:** WHIZZ EDUCATION SHALL DEVELOP AND OPERATE THE SERVICE WITH REASONABLE SKILL AND CARE, SEEKING TO ENSURE THAT IT IS SUITABLE FOR TEACHERS, CHILDREN AND THEIR PARENTS/GUARDIANS AND THAT WHIZZ EDUCATION'S WEBSITE HAS REASONABLE SECURITY PROCEDURES IN PLACE AT ALL TIMES. WHIZZ EDUCATION SHALL USE REASONABLE ENDEAVOURS TO MAKE THE SERVICE AVAILABLE TO YOU AND TO YOUR PERMITTED USERS 24 HOURS A DAY 7 DAYS A WEEK, SUBJECT TO ROUTINE MAINTENANCE AND SITE UPDATES AND TO THE SECTION ENTITLED "FORCE MAJEURE" BELOW.

**What we cannot guarantee:** EXCEPT AS SET OUT IN THE PARAGRAPH ABOVE, WHIZZ EDUCATION DOES NOT GIVE ANY WARRANTIES IN RESPECT OF THE SERVICE. AS WITH ANY EDUCATIONAL PROGRAM, THE BENEFIT DERIVED FROM THE USE OF THE SERVICE DEPENDS ON THE DILIGENCE OF THE STUDENT.



WHILST THE SERVICE HAS BEEN DESIGNED TO GENERATE INDIVIDUAL LEARNING PROGRAMS TAILORED TO THE INDIVIDUAL NEEDS OF EACH STUDENT, A LIMITATION OF ANY INTERNET-BASED LEARNING SYSTEM IS THE FACT THAT IT DEPENDS ON THE ANSWERS SUBMITTED BY THE STUDENT AS THE MAIN FORM OF ASSESSMENT AND CANNOT TAKE INTO ACCOUNT THE FULL RANGE AND COMBINATION OF FACTORS WHICH COULD BE IMPORTANT IN THE CASE OF ANY PARTICULAR STUDENT'S DEVELOPMENT. NOR, IMPORTANTLY, CAN ANY INTERNET- BASED LEARNING SYSTEM ADDRESS THE SITUATION WHERE A STUDENT HAS HAD ASSISTANCE IN COMPLETING THE QUESTIONS WITHOUT ACTUALLY UNDERSTANDING THE PRINCIPLES INVOLVED.

HAVING REGARD TO THESE CONSIDERATIONS, WHIZZ EDUCATION CANNOT GIVE ANY WARRANTIES THAT EVERY STUDENT'S PERFORMANCE WILL IMPROVE THROUGH THE USE OF THE SERVICE NOR DOES WHIZZ EDUCATION WARRANT THAT THE USE OF THE SERVICE WILL REMEDY ANY SPECIAL LEARNING PROBLEMS NOR THAT THE REPORTS WILL ACCURATELY REFLECT THE ABLITY LEVELS OF ANY OR ALL STUDENTS USING THE SERVICE.

WHIZZ EDUCATION CANNOT BE RESPONSIBLE IF SOME STUDENTS FIND OFFENCE IN SOME OF THE SERVICE WHETHER FOR RELIGIOUS, ETHNIC OR OTHER REASONS. IF ANY OFFENCE IS CAUSED, IT WILL BE COMPLETELY UNINTENDED.

This warranty is limited to You and is not transferable.

This limited warranty is void if any failure of the Service to comply with the warranty has resulted from accident, abuse, misapplication, neglect, use of the Service other than in accordance with the FAQs, service or modification by someone other than Whizz Education. In no event shall Whizz Education be liable for any damages whatsoever arising out of You accessing the Service other than in accordance with the FAQs, even if advised of the possibility of such damages. Whizz Education will not be liable for any loss or damage of any kind suffered by any party as a result of reliance upon or reproduction of any errors in the content of the Service.

Whizz Education does not warrant that the functions of the Service meet Your requirements or that the media is compatible with any computer system or network on which it is used or that the operation of the Service will be unlimited or error free. You assume responsibility for selecting the Service to achieve Your intended results and for the installation of, the use of and the results obtained from the Service.

To the maximum extent permitted by applicable law, the entire liability of Whizz Education and Your only remedy in connection with this Agreement and the Service shall be refund of the fee paid by You for the Service which failed to meet the warranty.

No information or advice (oral, written or otherwise) given by Whizz Education or Whizz Education's agents or distributors shall create a warranty or in any way increase the scope of this warranty.

TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, WHIZZ EDUCATION HEREBY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS OR DUTIES OF EVERY NATURE WHATSOEVER (EXCEPT ANY DUTIES OF GOOD FAITH), INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, ANY EXPRESS OR STATUTORY WARRANTIES, AND ANY WARRANTIES OR DUTIES REGARDING



ACCURACY, TIMELINESS, COMPLETENESS, PERFORMANCE, AVAILABILITY, LACK OF NEGLIGENCE OR OF WORKMANLIKE EFFORT. WHIZZ EDUCATION OFFERS NO ASSURANCE OF UNINTERRUPTED OR ERROR-FREE SERVICE NOR THAT THE SPEED OF THE SERVICE WILL NOT BE ADVERSELY AFFECTED BY FACTORS AFFECTING THE INTERNET GENERALLY. NEITHER DOES WHIZZ EDUCATION PROVIDE ANY WARRANTY THAT THE SERVICE IS FREE FROM INFECTION BY VIRUSES OR ANYTHING ELSE THAT HAS CONTAMINATING OR DESTRUCTIVE PROPERTIES.

**Limitation of Liability.**

TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, YOU AGREE THAT WHIZZ EDUCATION WILL NOT BE LIABLE TO YOU FOR ANY FAILURE BY YOUR PERMITTED USERS TO IMPROVE IN MATHEMATICS, TO PASS ANY TESTS OR EXAMS, AT SCHOOL OR EXTERNAL, NOR FOR ANY LOSSES OR DAMAGE WHICH ARE NOT A DIRECT CONSEQUENCE OF YOUR OR YOUR PERMITTED USER(S)' USE OF THE SERVICE (INCLUDING LOSS OF PRIVACY OR LOSS OF OR DAMAGE TO DATA) OR WHICH ARISE AS A RESULT OF YOU OR YOUR PERMITTED USER(S) USING THE SERVICE OUTSIDE THE SCOPE OF THESE TERMS AND CONDITIONS.

IN ADDITION TO BUT SEPARATE FROM THE ABOVE SPECIFIC EXCLUSION AND TO THE FULL EXTENT ALLOWED BY APPLICABLE LAW, YOU ALSO AGREE THAT WHIZZ EDUCATION WILL NOT BE LIABLE TO YOU FOR ANY OTHER INDIRECT, SPECIAL, CONSEQUENTIAL INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES WHATSOEVER THAT ARISE OUT OF OR ARE RELATED TO YOUR OR YOUR PERMITTED USER(S)' USE OF OR INABILITY TO USE THE SERVICE.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WHIZZ EDUCATION SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE OF ANY KIND (EXCEPT FOR PERSONAL INJURY OR DEATH RESULTING FROM WHIZZ EDUCATION'S NEGLIGENCE OR FOR LOSSES RESULTING FROM FRAUD, WHIZZ EDUCATION'S LIABILITY FOR WHICH SHALL NOT BE LIMITED) ARISING FROM THE USE OF OR INABILITY TO USE THE SERVICE OR FROM ERRORS, DEFICIENCIES OR FAULTS THEREIN, WHETHER SUCH LOSS OR DAMAGE IS CAUSED BY NEGLIGENCE OR OTHERWISE.

WITHOUT LIMITING THE FOREGOING, Whizz Education AND ITS LICENSORS SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR OTHER INDIRECT DAMAGES, EVEN IF Whizz Education OR ITS LICENSORS ARE ADVISED OF OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL Whizz Education'S AND ITS LICENSORS' AGGREGATE LIABILITY EXCEED THE PURCHASE PRICE OF THE SERVICE FOR A ONE YEAR PERIOD.

**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 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, and all agreements referenced or linked herein, 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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