

1 Definitions

- 1.1 **ACARA** means the Australian Curriculum, Assessment and Reporting Authority.
- 1.2 **Applicable Laws** means any applicable laws (including orders, by-laws and regulations) which in any way govern or affect the Subscriber and Authorised User's use of the website.
- 1.3 **Authorised Users** means employed teachers or other staff and enrolled students of the Subscriber during the Subscription Period.
- 1.4 **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- 1.5 **Commencement Date** means the date in which the Subscriber purchased the Product.
- 1.6 **Conditions** means these Terms and Conditions of Use.
- 1.7 **Copyright Act** means the *Copyright Act 1968* (Cth).
- 1.8 **Copyright Statement** means the copyright statement accessible on the Website.
- 1.9 **Default Event** means any:
- material breach of these Conditions;
 - misuse of the Product or Product Material;
 - breach of the Copyright Statement; and
 - breach of any warranty as described in clause 16 of these Conditions.
- 1.10 **Expiry Date** means twelve (12) months from the date on which Subscriber purchases the Product or if extended pursuant to clause 5.3, the last date of such extended Subscription Period.
- 1.11 **FAQs** means the Frequently Asked Questions contained on the Website.
- 1.12 **GST** means the Goods and Services Tax as created by the GST Act.
- 1.13 **GST Act** means *A New Tax System (Goods and Service Tax) Act 1999* (Cth).
- 1.14 **Order Form** means the order form contained on the Website which the Subscriber must complete prior to making payment of the Subscription Fee.
- 1.15 **Intellectual Property** means all Intellectual Property Rights in the Website, Product and Product Material.
- 1.16 **Intellectual Property Rights** means all intellectual industrial property rights and interests throughout the world, whether registered or unregistered, including trade marks, designs, patents, inventions, circuit layouts, copyright and analogous rights confidential information, know-how and all other intellectual property rights as defined in Article 2 of the convention establishing the World Intellectual Property Organisation of 14 July 1967 as amended from time to time.
- 1.17 **NESA** means NSW Education Standards Authority.
- 1.18 **Privacy Policy** means the privacy policy accessible on the Website.
- 1.19 **Product** means the numeracy assessments, numeracy curriculum and/or literacy assessments provided by the Product Provider which is accessible by Subscribers through the Website.
- 1.20 **Product Material** means all workbooks, modules, activities, learning guides, assessments, results analysis, games and related materials which make up the Product.
- 1.21 **Product Selection Box** means the digital boxes which appear under the "purchase" section of the Website which the Subscriber selects to purchase the relevant Product.
- 1.22 **Product Provider** means Essential Assessment Pty Ltd (ACN 662 767 866) trading as Essential Assessment, herein referred to as "us", "we" and "party".
- 1.23 **Subscriber** means a learning institution which has purchased a Subscription for the Subscription Period on the terms and conditions contained in these Conditions.
- 1.24 **Subscriber's Account** means the account created by the Product Provider to allow the Subscriber to access the Product and the Product Material, including the Subscriber's log in information and password.
- 1.25 **Subscription** means the non-exclusive licence granted by the Product Provider to the Subscriber for use of the Product and the Product Material.
- 1.26 **Subscription Period** means the period between Commencement Date and the Expiry Date.
- 1.27 **Subscription Fee** means the fee paid by the Subscriber to utilise the Product.
- 1.28 **System Downtime** means any scheduled maintenance, service requirements or system error which results in the Website, Product or Product Material being unavailable for use, whether or not such downtime is in the control of the Product Provider.
- 1.29 **User** means any individual or entity who uses or accesses the Website, including without limitation a Subscriber, herein referred to as "you", "your" and "party".
- 1.30 **VCAA** means the Victorian Curriculum and Assessment Authority.
- 1.31 **Website** means the online platform provided by the Product Provider accessible at <http://www.essentialassessment.com.au> (including any related subdomains, mobile applications, other media, and content managed by the Product Provider).

2 Interpretation

In these Conditions, unless inconsistent with the context or subject matter:

- a reference to a person includes any other legal entity and vice versa;
- words importing the singular number include the plural number and vice versa;
- a reference to a party includes the party's heirs, executors, successors and permitted assigns;
- headings are for reference purposes only;
- 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;
- references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes email;
- general words shall not be given a restrictive meaning by reason of their being preceded or

- followed by words indicating a particular class of acts, matters or things or by examples falling within the general words;
- 2.8 "other", "including", "include" and "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
 - 2.9 times of the day is to the time in Victoria;
 - 2.10 if an act prescribed under these Conditions to be done by a party on or by a given day is done after 17.00 on that day, it is taken to be done on the next day;
 - 2.11 unless otherwise stated, a reference to a monetary amount is a reference to an Australian dollar currency amount; and
 - 2.12 an obligation of two or more parties binds them jointly and each of them severally.

3 Scope of Agreement

- 3.1 These Conditions together with our Privacy Policy form the basis on which:
 - (a) a User may access and use the Website; and
 - (b) a Subscriber may access and use the Product and Product Material.
- 3.2 Access to the Website, Product and Product Material is granted subject to these Conditions to the exclusion of anything to the contrary.
- 3.3 A User is deemed to have agreed to be bound by these Conditions by accessing the Website. These Conditions are not binding on the Product Provider until the Order Form is accepted by it.
- 3.4 Should a User object to any Conditions, that User should immediately cease use of, and access to, the Website and should not request a Subscription.
- 3.5 The User's objection to or failure to object to any of these Conditions stated by the Product Provider herein does not alter any Conditions.
- 3.6 The Product Provider retains the right to amend, vary or alter these Conditions from time to time. Such amendments, variations or alterations come into effect immediately on publication to the Website. Any material changes to these Conditions (**Changes**) will be notified to you, where reasonably practicable, at least fourteen (14) days before such Changes apply to you and apply to all access to, and use of, the Website.
- 3.7 The Product Provider will notify you of the Changes by email (if you have provided your email address) and ensure that the updated Conditions are posted to the Website and your continued use of the Website, Product or Product Material following notification regarding the Changes constitutes your acceptance and agreement to the Changes which are binding on you. If you wish to cancel as a result of us revising these Conditions in a way that has a materially detrimental effect on you, you must notify us within fourteen (14) days of our notice to you about that Change. Your cancellation will be effective as of the date of the Change.
- 3.8 The Product Provider retains the right to amend, vary or alter the Subscription Fee from time to time. In such circumstances, the Product Provider will provide notice on the Website or will issue a notice to the Subscriber's email address (if you have provided your email address).
- 3.9 The Website may allow Users to enter personal information (such as name and contact details). The Product Provider will use this information in accordance with the Privacy Policy.

4 Previous Dealings

- 4.1 Previous dealings shall not have any effect on these Conditions and are hereby expressly excluded.

5 Term

- 5.1 Use of the Product and the Product Material is limited to Subscribers and Authorised Users within the Subscription Period.
- 5.2 Upon the Expiry Date, the parties acknowledge that the Subscriber's Account will automatically be disabled by the Product Provider. These Conditions shall continue to govern the use of the Product and Product Material and shall not merge on the Expiry Date.
- 5.3 The parties agree and acknowledge that the Subscription Period automatically extends for a further period of 12 months following the Expiry Date of the Subscription Period unless either party provides the other party with not less than 60 days written notice before the Expiry Date of their intention to not enter into the automatically renewed period.

6 Payment of Subscription Fee

- 6.1 The parties agree and acknowledge that the Subscriber will be provided with a Subscriber's Account and will be granted access to the Product upon payment of the Subscription Fee.
- 6.2 By clicking the Product Selection Box, the Subscriber agrees and acknowledges that the Subscriber will be bound to pay the Subscription Fee.
- 6.3 The Subscription Fee will be payable in the manner as specified on the Website at the time the order for the Product is placed.
- 6.4 Where any part of the Subscription Fee or other monies payable by the Subscriber under or in connection with these Conditions are not paid by its due date, the Product Provider reserves the right to suspend or terminate the Subscriber's access to the Product until all overdue amounts have been received by the Product Provider in cleared funds.
- 6.5 The Subscriber must pay all fees and other amounts under these Conditions without set-off or claim under any circumstances including if a dispute exists.
- 6.6 Depending on the method of payment the Subscriber uses to pay the Subscription Fee, additional charges may be incurred (such as card processing charges).

- 6.7 The Subscriber must promptly notify the Product Provider by email at accounts@essentialassessment.com.au of any changes to its contact information or billing details or other relevant information that may impact payment of the Subscription Fee.
- 6.8 To the extent permitted by law, all amounts paid are non-refundable.

7 Goods and Services Tax

- 7.1 Unless otherwise stated, the parties agree and acknowledge that the Subscription Fee is exclusive of GST. Where the service provided is subject to GST, it will be added and charged to the Service Provider and will make up the Subscription Fee.

8 Use of Product

- 8.1 Subject to clause 9, the Product Provider provides the Subscriber with a non-exclusive, non-sublicensable, non-transferable and revocable licence to access and use the Product and Product Material during the Subscription Period (or until the earlier cancellation, suspension, termination, or expiration of a Subscriber's Account) subject to the following conditions:
- (a) you may only view, copy, and print such portions of the Website, Product or Product Material (collectively, **Platform Content**) for your own personal use and may not copy or distribute any Platform Content to any other person (other than to Authorised Users) or for commercial use;
 - (b) you may not modify or otherwise make derivative works of the Platform Content, or reproduce, distribute, or display the Platform Content except as expressly permitted in these Conditions;
 - (c) you may not remove or modify any copyright, trademark, or other proprietary notices that have been placed in the Platform Content;
 - (d) you may not use any data mining, robots, or similar data gathering or extraction methods; and
 - (e) you may not use the Platform Content other than for their intended purposes.
- 8.2 The licence to access and use the Product as granted under this clause is for Authorised Users and will be subject to these Conditions and such restrictions as set out on the Website at the time of access.
- 8.3 The Subscriber agrees and acknowledges that by paying the Subscription Fee:
- (a) the Subscriber will only use the Product for the Product's intended purpose in accordance with the terms of these Conditions;
 - (b) notwithstanding clause 8.1, the Subscriber must only sub-licence its right to access and use the Product to the Authorised Users and must not permit any unauthorised person to access or use the Product;
 - (c) the Subscriber must not use or allow an Authorised User to use the Product for any purpose that is unlawful or prohibited by these Conditions;
 - (d) the Subscriber will not use or allow an Authorised User to use the Product in a manner which could damage, disable, overburden or impair the Product or Website or interfere with any other Subscribers' use and enjoyment of the Product and Website;
 - (e) the Subscriber must not republish or redistribute any content or material from the Product;
 - (f) the Subscriber must not directly or indirectly reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Product or any software, documentation or data related to the Product;
 - (g) the Subscriber must not modify, translate, or create derivative works based on the Product (except to the extent expressly permitted by the Product Provider in writing or as authorised within the Product); and
 - (h) the Subscriber must not make any alteration to the Product;
 - (i) the Subscriber's use and entitlement to access and use the Product and Product Material will expire at the Expiry Date; and
 - (j) the Subscriber is responsible for monitoring all Authorised Users' use of the Product and Product Material.
- 8.4 You are solely responsible for your use of, actions on, and in relation to, the Website and use it at your own risk. In using the Website, Product or Product Material, you must behave in a civil and respectful manner at all times and must not:
- (a) use the Website or Product in a way that infringes the rights of other Users, or restricts or inhibits any other User or person from using or enjoying the Website or Product, including but not limited to actions which harass or cause distress to any other User or person;
 - (b) use the Website or Product in any way that violates Applicable Laws, rules or regulations or otherwise to exploit or harm (or attempt to exploit or harm) any other person;
 - (c) probe, scan or test the vulnerability of the Website or any network connected to it, nor breach the security or authentication measures on the Website or any network connected to it (including but not limited to distributed denial-of-service (**DDOS**) attacks or the introduction of viruses or other destructive code);
 - (d) interfere by any automatic or manual device, program, algorithm or methodology with the proper working of the Website or with any other User's use of the Website;
 - (e) provide information that is false, inaccurate or misleading;
 - (f) take any action that is fraudulent, deceptive or unlawful;
 - (g) be obscene, defamatory, trade libelous, unlawfully discriminatory, threatening or harassing;
 - (h) contain comments of religious, political or social nature;

- (i) create liability for us or cause us to lose (in whole or part) the services or custom of our internet service provider, other Subscribers or Authorised Users;
 - (j) damage the credibility or integrity of the Product, Website or us, or dilute, tarnish, or otherwise impact our brand in any way;
 - (k) breach or violate any of our policies;
 - (l) copy, store or otherwise access or use any information contained within the Product or Website for purposes not expressly permitted by these Conditions;
 - (m) use the Product or Website for any purposes that are not permitted by these Conditions or in any way that is inconsistent with the purpose of the Product or Website, or in a manner that falsely implies that we are providing endorsement, partnership or otherwise misleads others as to the Subscriber or Authorised User's affiliation with us;
 - (o) attempt to circumvent payment of any Subscription Fees in any way;
 - (p) circumvent, disable or otherwise attempt to interfere with any security related features; or
 - (q) "stalk" or harass any other Subscriber or Authorised User or collect or store any personally identifiable information about any other Subscriber or Authorised User.
- 8.6 The Product Provider reserves the right to judge, in its sole discretion, whether any actions of a User infringe these Conditions. The Product Provider has the right, but not the obligation, to monitor all conduct of a User and may, in its sole discretion, remove or disable access to the Website, Product or Product Materials of a User that breaches these Conditions with or without further notice to you. If you believe that any third party's actions violates any Applicable Laws, rules or regulations, including, without limitation, any copyright laws, you should report by emailing the Product Provider at info@essentialassessment.com.au.
- 8.7 The Subscriber agrees and acknowledges that use of the Product is limited to educational purposes and the Subscriber shall not use, distribute or reproduce the Product Material for any other purpose, whether it be for a personal, commercial or financial purpose.
- 8.8 The Subscriber is solely responsible for all actions of its Authorised Users.
- 8.9 The Subscriber agrees and acknowledges that the Subscriber's Account is non-transferrable and may only be utilised by Authorised Users.
- 8.10 The Subscriber agrees to make all reasonable efforts to keep confidential all Subscriber's Account information, and in the event that such information is lost or disclosed to a third party, the Subscriber agrees to immediately notify the Product Provider at info@essentialassessment.com.au.
- 8.11 The Product Provider makes no guarantees and gives no warranty that the Website, Product or Product Material will be available at all times or for the purpose the User may intend.
- 8.12 Access to the Website may be disrupted from time to time due to necessary maintenance, technical issues or events outside of the Product Provider's control. The Product Provider will use commercially reasonable efforts to avoid System Downtime during peak hours, but assumes no liability if the Website or any part thereof is unavailable at any time or for any period.
- 8.13 In the event of System Downtime, the User holds harmless and releases the Product Provider from any liability, loss or claim related to the System Downtime.
- 8.14 The User holds harmless and releases the Product Provider from any liability for loss of data, including but not limited to online results and any other Product Material, whether caused as a result of System Downtime or otherwise.

9 Account

- 9.1 The Product Provider, in its sole discretion, may accept or reject an application for a Subscriber's Account, without any obligation to provide reasons.
- 9.2 To access and use your Subscriber Account, you may be required to use a unique identifier (such as a username or email address) and password. You are solely responsible for maintaining the security and confidentiality of your Subscriber's Account (including your username and password) and you are liable for all activities that happen under your Subscriber Account, even if you do not authorise such activities or actions (this includes the activities or actions of your Authorised Users). You must keep secret and secure all usernames and passwords in relation to the Product or Website and not allow any other person (other than Authorised Users who are employed teachers of the Subscriber) to have access to your Subscriber Account.
- 9.3 A Subscriber's Account may not be assigned or sub-licensed without the prior written approval of the Product Provider which may be given, withheld or conditioned at the Product Provider's discretion.
- 9.4 You must immediately notify the Product Provider at info@essentialassessment.com.au of any unauthorised use of your Subscriber's Account or any other breaches of security. The Product Provider will not be liable for any acts or omissions by you, including any damages of any kind incurred as a result of such acts or omissions.
- 9.5 The Product Provider will have the right to suspend access to your Subscriber's Account, or to cancel or terminate your Subscriber's Account, at any time if you are in violation of any of the provisions in these Conditions.

10 Cancellation of Subscriber's Account by Subscriber

- 10.1 While the Subscriber may suspend, cancel or terminate the Subscriber's Account, the Subscriber agrees and acknowledges that the Subscription Fee is non-refundable and use of the Product and Product Material is limited to the Subscriber and the Authorised Users.
- 10.2 Any cancellation, suspension or termination of the Subscriber's Account shall not affect any accrued rights of the Product Provider, nor shall it affect any provision of these Conditions which is expressly or by implication intended to continue in force after such cancellation, suspension or termination.

- 10.3 The parties agree and acknowledge that the Subscriber's Account may be terminated upon each billing period at the Product Provider's discretion and once the Subscriber's Account has been suspended for a period of 6 months, the Product Provider will remove all of the Subscriber's information and data from its system.

11 Cancellation of Subscriber's Account by Product Provider

- 11.1 The Product Provider may suspend, cancel or terminate the Subscriber's Account if a Default Event occurs with or without further notice to you. Upon the Product provider suspending, cancelling, or terminating the Subscriber's Account, the Subscriber's access to the Product will be terminated.
- 11.2 In the event that the Product Provider enforces the Product Provider's right under clause 11.1, the Product Provider reserves the right to retain the Subscription Fee.
- 11.3 Any cancellation, suspension or termination of the Subscriber's Account shall not affect any accrued rights of the Product Provider, nor shall it affect any provision of these Conditions which is expressly or by implication intended to continue in force after such cancellation, suspension or termination.

12 Obligations of Subscriber at conclusion of these Conditions

- 12.1 In the event the Subscriber's Account is suspended, cancelled or terminated pursuant to clause 10 or clause 11 of these Conditions, the Subscriber agrees and acknowledges that it shall promptly return to the Product Provider or destroy all Product Material as specified and directed by the Product Provider.
- 12.2 From the Expiry Date, the Subscriber agrees and acknowledges that it shall promptly return to the Product Provider all Product Material or destroy all Product Material.
- 12.3 In the event that the Subscriber breaches the Subscriber's obligations under these Conditions and/or distributes, copies or in any other way uses the Product Material in breach of these Conditions, the Subscriber will indemnify the Product Provider for any loss, claim or damage incurred by the Product Provider as a result of such breach.
- 12.4 The parties agree that this clause 12 shall survive the termination or expiration of the Subscription Period.

13 Intellectual Property

- 13.1 All Intellectual Property is owned by the Product Provider, its licensors and other providers of relevant materials and is protected by applicable Intellectual Property Rights. Users may not engage in any activity on, or through the Website that infringes or otherwise makes unauthorised use of another party's Intellectual Property Rights. Use of any Intellectual Property by the Subscriber beyond the Subscription Period or which falls outside the scope of these Conditions is expressly prohibited.
- 13.2 Pursuant to the Copyright Statement, the parties agree that all Product Material is protected by the Copyright Act and that all Product Material must not be copied, reproduced, republished, downloaded, posted, broadcasted or transmitted in any way which is outside the scope of these Conditions.
- 13.3 The Subscriber agrees and acknowledges that the Subscriber shall not use the Product, Product Material or the Website or any related content in a manner which infringes the copyright, moral rights or any other intellectual property of any third party.
- 13.4 The parties agree that this clause 13 shall survive the termination or expiration of the Subscription Period.

14 Confidentiality

- 14.1 The Subscriber agrees and acknowledges all information, content and data that the Subscriber accesses from the Website, Product and Product Material during the Subscription Period is considered confidential information (**Confidential Information**).
- 14.2 In the event the Subscriber copies, reproduces, republishes, broadcasts or transmits any Confidential Information to any third party, the Subscriber agrees to indemnify the Product Provider for any loss or damage resulting from such disclosure.
- 14.3 The parties agree that this clause 14 shall survive the suspension, cancellation or termination of the Subscription or expiration of the Subscription Period.

15 Relationship of Parties

- 15.1 Nothing in these Conditions or the User's use of the Website, Product or Product Material establishes or creates a joint venture, partnership, consortium, franchise, employment or agency relationship between Product Provider and Users or Subscribers.

16 Warranties

- 16.1 The Subscriber warrants to the Product Provider that the Subscriber:
- (a) has the authority and legal capacity to enter into and perform its obligations under these Conditions;
 - (b) is responsible for the Authorised Users' use of the Product, Product Material and Website;
 - (c) has read the FAQs prior to paying the Subscription Fee;
 - (d) will monitor and regularly attend to reviewing these Conditions and the FAQs during the

- Subscription Period;
 - (e) is not bankrupt or insolvent;
 - (f) has completed all corporate and other necessary action required to be taken to enter into these Conditions;
 - (g) will comply with its obligations under these Conditions and all Applicable Laws;
 - (h) has provided accurate and complete information during the subscription process; and
 - (i) shall not engage in any activities or have any conflicts of interest that could impair the performance if its obligations under these Conditions.
- 16.2 The parties agree and acknowledge that any breach by the Subscriber of the warranties contained in clause 16.1 is considered a material breach of these Conditions.

17 Indemnities

- 17.1 The Subscriber indemnifies and holds harmless the Product Provider for any loss, claim or damage incurred by the Product Provider for any misuse of the Product, Product Material, Website Confidential Information and Intellectual Property.

18 Disclaimers

- 18.1 In the event that the supply of the Product is deemed to be supply under the Australian Consumer Law, the parties agree that nothing in these Conditions excludes, restricts or modifies the exercise of any right or remedy or the imposition of any liability under the Australian Consumer Law.
- 18.2 To the maximum extent permitted by law, the Product Provider expressly and irrevocably disclaims and excludes all liability whatsoever for any losses (including direct, indirect or consequential loss) or damage sustained or incurred by you or any third party arising out of or in connection with the use of the Website, Product or Product Material, including but not limited to any representations made by the Product Provider in respect of the Product or Product Material supplied to the Subscriber by virtue of the Website.
- 18.3 The Product Provider will have no liability whatsoever for any loss, harm, damage cost or expense or any direct, special, indirect, punitive or consequential loss or damage in respect of the Subscriber's use of the Product or Product Material.
- 18.4 Subject to the Australian Consumer Law and to the fullest extent permissible by Applicable Laws, your sole and exclusive remedy for problems or dissatisfaction with the Website, Product or Product Material is to stop using the Website, Product or Product Material. In any event, the Product Provider's aggregate liability to you for claims related to the Website, Product or Product Material shall be limited, to the fullest extent such limit is permissible by Applicable Laws, to the lower of: (a) the annual subscription fee payable by you or on your behalf in connection with your access to the Website, Product or Product Material; and (b) \$100.00.
- 18.5 If the Product Provider is liable to the Subscriber in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the Australian Consumer Law that cannot be excluded, the Product Provider's total liability to the Subscriber for that failure is limited to, at the option of the Product Provider:
- (a) in the case of services, the resupply of the services or the payment of the cost of resupply; and
 - (b) in the case of goods, the replacement of the goods or the supply of equivalent goods, or the repair of the goods, or the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired.
- 18.6 The Product Provider makes no representation and gives no warranty or guarantee as to the suitability, accuracy, quality, performance or fitness for purpose of the Product or the Product Material or that the content of the Website, Product or Product Material will be error-free, compliant with all hardware and software, that any defects will be corrected or that your use of the Website, Product or Product Material will provide expected results. Although the Product Provider will endeavour to provide the best service it can, you understand and agree that the Website, Product or Product Material is delivered to you on an "as-is" and "as available" basis, and to the extent permissible under Applicable Laws, the Product Provider disclaims all warranties of any kind, express or implied, including without limitation, warranties of fitness for a particular purpose, accuracy or reliability of content and non-infringement of proprietary rights. Some aspects of this section may not apply in some jurisdictions if prohibited by local laws. Nothing in these Conditions affects your statutory rights as a consumer under relevant local laws.
- 18.7 You understand that we cannot and do not guarantee or warrant that files available for downloading from the Website will be free of viruses or other destructive code. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for antivirus protection and accuracy of data input and output, and for maintaining a means external to the Website for any reconstruction of any lost data.
- 18.8 The Product Provider will not be liable for any loss or damage caused by a DDOS attack, viruses, malware or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of the Website or your downloading of any material posted on the Website or on any sites linked to on the Website.
- 18.9 The User should use its own discretion in the selection of the Product and Product Materials and where required seek professional advice from suitably qualified professionals regarding their own

- specific needs and the suitability of the Product and Product Materials for those needs.
- 18.10 The Product Provider does not take any steps to confirm the identity of any of the Subscribers or Authorised Users. As Subscriber and Authorised User authentication on the internet is difficult, particularly in cases of fraudulent or misleading conduct, the Product Provider cannot, and does not, confirm nor warrant or guarantee as to each of the Subscriber's or Authorised Users purported identity, licenses or location.
- 18.11 The Product Provider has no control over the actions of any partner featured on the Website and does not make any representations in respect of their ability to provide any goods or services and is not responsible for any loss suffered by the Subscriber or Authorised User in their dealings with such featured partners. The Product Provider has not reviewed all of the material made available through the other websites that the Website may link to. The Product Provider does not have any control over these other websites and is not responsible for their contents or their use. By linking to such other websites, the Product Provider does not represent nor warrant that it endorses such websites. When you leave the Website, our terms and policies (including these Conditions) no longer apply. You should review applicable terms and policies, including privacy and data gathering practices, of any other websites and perform your own investigations before entering into any transactions with any third parties.
- 18.12 The Subscriber agrees and acknowledges that any of the information contained in the Product, Product Material or Website is not to be considered professional advice or a formal recommendation and any such representations and warranties are hereby excluded.
- 18.13 The parties acknowledge and agree that:
- (i) Victorian Curriculum F-10 content elements produced in the Product or Product Materials are copyright to VCAA, reproduced with permission; and
 - (ii) the VCAA does not endorse or make any warranties regarding Victorian Curriculum F-10 content elements produced in the Product or Product Materials. The Victorian Curriculum F-10 and related content can be accessed directly at the VCAA website at <http://www.vcaa.edu.au>.
- 18.14 The parties agree and acknowledge that:
- (i) ACARA material produced in the Product or Product Materials is copyright to ACARA, reproduced with the permission of ACARA;
 - (ii) ACARA neither endorses nor verifies the accuracy of the information provided and accepts no responsibility for incomplete or inaccurate information. In particular, ACARA does not endorse or verify that:
 - (A) the content descriptions are solely for a particular year and subject;
 - (B) all the content description for that year and subject have been used; and
 - (C) the author's material aligns with the Australian Curriculum content description for the relevant year and subject. You can find the unaltered and most up to date version of this material at the ACARA website at <http://www.australiancurriculum.edu.au>.
- 18.15 The parties agree and acknowledge that any sample examination papers or model answers accompanying the NESA materials are not part of the BOSTES materials and are in no way endorsed or authorised by NESA. NESA takes no responsibility for any errors in the reproduction of the NESA materials.
- 18.16 The parties acknowledge and agree that:
- (i) School Curriculum and Standards Authority. (2016). Mathematics v8.1 ABLEWA Stage Cand D content descriptions: The School Curriculum and Standards Authority does not endorse this publication or product.
 - (ii) School Curriculum and Standards Authority. (2016). English v8.1 ABLEWA Stage Cand D content descriptions: The School Curriculum and Standards Authority does not endorse this publication or product.
- 18.17 This disclaimer applies to the fullest extent permitted by law and shall survive termination or expiration of these Conditions.

19 Third Party Rights

- 19.1 A person who is not a party to these Conditions has no right whether by applicable statute or otherwise to enforce any term of these Conditions.

20 Assignment

- 20.1 The Product Provider may assign or novate its interest under these Conditions without notice. The Subscriber must not assign or novate its interest under these Conditions without the prior written consent of the Product Provider.

21 Severability

- 21.1 Any provision of these Conditions which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of these Conditions, nor does it affect the validity or enforceability of that provision in any other jurisdiction.

22 No Adverse Construction

- 22.1 The Subscriber agrees that these Conditions may not be construed adversely against the Product Provider solely because the Product Provider prepared them.

23 No Waiver

23.1 The Product Provider's failure to enforce any provision of these Conditions at any time or for any period of time will not be construed to be a waiver of such provisions or the Product Provider's rights to enforce each and every provision of these Conditions. A waiver of a power or right shall be ineffective unless it is in writing and signed by the Product Provider.

24 Compliance with laws

24.1 Except as expressly provided to the contrary in these Conditions, all representations, warranties, terms and conditions in relation to the Products and Product Material, whether implied or expressed, are hereby excluded unless otherwise not permitted to be excluded by law.

25 Jurisdiction

25.1 These Conditions will take effect and be construed in all respects in accordance with the laws of the State of Victoria, Australia. The parties irrevocably submit to the jurisdiction of the State of Victoria for all proceedings arising in connection with these Conditions.

26 Survival of Conditions

26.1 Notwithstanding clause 4, the expiration or termination of these Conditions shall not affect the continued validity and enforceability of the clauses intended by the Product Provider to survive.

27 Contact details.

27.1 If you have questions or issues in relation to these Conditions or the Website, Product or Product Material, you may contact us at: info@essentialassessment.com.au.