



The EverLearner

# Terms and Conditions

Updated September 2022

## TERMS AND CONDITIONS

Welcome and thank you for your interest in The EverLearner, which operates the Website located at <http://theeverlearner.com> and related mobile applications and services (the “Website”).

The EverLearner Ltd provides an online learning platform for students and these Terms and Conditions apply to the Website [theeverlearner.com](http://theeverlearner.com) and the Services provided.

The Terms and Conditions set out below form the legal contract between You – an individual Account Admin, Teacher, Student or User (“You”, “Your”)– and The EverLearner Ltd (“The EverLearner”), a registered business operating in the UK. For the purposes of these Terms and Conditions, visitors and users of the Website are referred to individually as “User” and collectively as “Users”.

Please ensure that You read the following Terms and Conditions carefully. By registering for, accessing, browsing, or using the Website, you acknowledge that You have read, understood, and agree to be bound by the Terms and Conditions set out here, including any additional guidelines (as defined below) (collectively, the “Terms”).

### What our descriptions mean

Throughout these Terms and Conditions we use certain wording, to help You understand what they mean we set out below definitions of them:

User or Users – this is anyone who is visiting or using the Website. A User is an individual, whereas collectively we’ll call you Users.

Website – [theeverlearner.com](http://theeverlearner.com) is the Website and all content contained within it.

The EverLearner – This is The EverLearner Ltd, the company that owns the Website and operates the services provided.

Student – The Student user who has been set up on the Website by the Account Admin or Teacher.

Account Admin – The person who is creating the account on behalf of the school and/or manages the account.

Student Account – the Account set up for a Student by the Account Admin or Teacher on behalf of the school.

Teacher – The teacher whose Students are set up on the Account.

Teacher Account – The Account set up by the Admin for a Teacher on behalf of the school.

User Postings – Notes, questions and comments posted by teachers and students as part of using The EverLearner platform

User Content – Content made available to Users via The EverLearner platform on [theeverlearner.com](http://theeverlearner.com)

Fees – The amount schools or departments will pay to access the services and content.

Services – The provision of The EverLearner online learning platform through The EverLearner website [www.theeverlearner.com](http://www.theeverlearner.com)

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## 1. Your Account

### 1.1. Opening an Account with The EverLearner

The EverLearner provides different account types to students, teachers and account admins.

The categories of accounts may not overlap. Only a student can hold a student account, a teacher can only hold a teacher account and so on.

Users are not permitted to:

- access Users' accounts without the User's knowledge,
- broadcast, share or transmit the content of courses with whole groups, or
- share accounts between several users.

Any of these actions will result in the immediate suspension or deletion of Your account with no option for a refund.

To be able to access The EverLearner Content, a school or school department needs to register for an Admin account. The Admin account should be opened with a school email address and You will be asked to provide a password in connection with keeping Your account secure.

You are responsible for:

- Ensuring the confidentiality of Your account and password.
- Restricting access to Your account.
- All activities that occur under Your account.
- The use of a password of suitable complexity to secure your account..

When opening your account, you agree that:

- The information you provide to The EverLearner, whether on registration or at any other time, will be true, accurate, current, and complete.
- Payments will be made in accordance with each billing cycle.

- If You have reason to believe that your account is no longer secure (e.g., in the event of a loss, theft or unauthorised disclosure or use of your account ID or password), then you agree to immediately notify The EverLearner.

When committing to a paid subscription, you agree that:

- You have followed your school's processes to ensure prompt payment of the invoice when submitted.
- You will ensure that this information is kept accurate and up-to-date at all times.

You may be liable for the losses incurred by The EverLearner or others due to any unauthorised use of Your account on The EverLearner.

The Website is not available to any Account Admins previously suspended or removed from the Website by The EverLearner due to breach of these Terms and Conditions. By using or registering an account for the Website, you represent that:

- You have not been previously suspended or removed from the Website by The EverLearner.
- Your registration and your use of the Website is in compliance with any and all applicable laws and regulations.

## 1.2 Teacher Accounts

Account Admins can create Teacher, HoD or other Admin Accounts to use the Website. Each HoD or Admin Account can then create Student Accounts. All Accounts must use the school email address for login purposes.

When You register or approve the creation of a Student , Admin, HoD or Teacher Account. All Users are bound by these Terms and Conditions when using the Website.

## 1.3 Student Accounts

Each Student account should be created using the Student's School Email Address as part of the registration process. Once registered, the Student will have access to the courses and modules allocated by the Teacher or Account Admin.

## 2. Privacy Notice

Your privacy is important to The EverLearner and you should ensure that you have read and understood any privacy notices provided as part of account creation. The Privacy Policy provides information relating to The EverLearner's collection, use, and disclosure of personal information.

## 3. Modification of these Terms and Conditions

The Everlearner reserves the right, at our discretion, to change, modify, add or remove portions of the Terms and Conditions at any time. We will make reasonable efforts to notify all Account Admins of any changes as they occur to these Terms or Conditions. This may be through emails to the email address associated with the Account Admin or a notice posted on the Website. Your continued use of the Website after the notification of any changes constitutes your binding acceptance of such changes. Such amended terms will be effective on

either (i) Your actual notice of such changes or (ii) thirty days after The EverLearner makes a reasonable attempt to provide you such notice, whichever is earlier.

## 4. Educational Content

### 4.1 Ownership

Unless otherwise stated, all Educational Content is the property of The EverLearner and subject to copyright.

### 4.2 Restrictions

The broadcasting of Educational Content within a classroom or screen sharing via an intranet or the Internet is not permitted, as the Educational Content is intended for personal, non-commercial use only. Any other use must be agreed, in advance, in writing by The EverLearner.

## 5. Your Use of the Website and Services

5.1 The EverLearner platform allows teachers and students to post notes, questions and comments (collectively, "User Postings"). However, The EverLearner does not guarantee confidentiality with respect to User Postings and you should avoid posting personal information.

5.2 Users may not post, upload, or distribute any User Content or other content that is unlawful or that a reasonable person could deem to be objectionable, offensive, or otherwise inappropriate.

5.3 Users may not remove, circumvent, disable, damage or otherwise interfere with security-related features of the Website, Educational Content, or User Content, features that prevent or restrict use or copying of any content accessible through the Website, or features that enforce limitations on the use of the Website, Educational Content, or User Content.

5.4 Users may not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Website or any part thereof, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

5.5 Users may not modify, adapt, translate or create derivative works based upon the Website or any part thereof, except and only to the extent expressly permitted by The EverLearner herein or to the extent the foregoing restriction is expressly prohibited by applicable law; or

5.6 Users may not intentionally interfere with or damage operation of the Website or any user's enjoyment of it, by any means, including uploading or otherwise disseminating viruses, adware, spyware, worms, or other malicious code.

5.7 Users must not use the content provided as part of the Services to provide third-party CPD.

## 6. The Everlearner's Promise to You

6.1 The Website will be accessible at all times wherever possible. We aim to keep maintenance work on the website to time outside of school hours, although this is not always possible. There are occasions when the accessibility of the website is outside of our control. If access to the website is not available, no compensation or refunds will be payable.

6.2 The EverLearner makes every effort to ensure that the learning content on the website is up-to-date and suitable for the curriculum indicated.

6.3 The EverLearner only access student or teacher accounts when this is necessary in order to provide a solution to an issue raised by a teacher or a student.

6.4 The data tracking and Student analytics are active at all times. Every effort is made to ensure the accuracy of the data provided and any discrepancies are investigated and resolved as soon as they are raised.

## 7. Fees, Payments and Billing

### Free trials

The Everlearner may from time to time and at its discretion offer a free trial of some or all of its services. We will explain the period of trial and how to continue accessing the service as the trial commences. We may refuse or restrict access to free trials if you have already had a free trial within the last 12 months. We will usually provide only one trial per department, per school, in the academic year.

### Fees

The EverLearner may now, or in the future, charge fees for access to and use of the Website, or the learning content ("Fees"). You agree to pay all Fees and charges specified for such features. All Fees are exclusive of any applicable taxes (e.g. value-added tax), unless otherwise stated, and You are solely responsible for the payment of any such taxes that may be imposed on Your use of the Website.

### Payment Methods

The EverLearner will issue each Account Admin with an invoice for use of the Website. Payment is due within 21 days of the invoice being issued. You can choose whether Your subscription is Annual, Monthly or for a Fixed Term. Invoices can be paid by card through the invoice, by BACS or by cheque.

### Failure to Pay

The Account Admin remains responsible for any uncollected amounts. If payment is not successfully received within the payment period, The EverLearner reserves the right to suspend access to the service until full payment has been made.

For some Payment Methods, the issuer may charge You certain fees, such as foreign transaction fees or other fees relating to the processing of Your Payment Method. Local tax charges may vary depending on the Payment Method used. Check with Your Payment Method service provider for details.

### Changes in Price and Subscription Plans

We may change our subscription plans and the price of our services from time to time; however, any price changes or changes to our subscription plans will apply to You no earlier than 30 days following notice to You or at renewal time.

### Cancellation

You can cancel Your subscription to theeverlearner.com at any time.

You can choose to cancel immediately (in which case Your subscription will be deactivated with immediate effect and no money will be refunded) or to cancel at the end of the current billing period, in which case You will continue to have access to the service through to the end of Your current billing period.

To the extent permitted by law, all payments are non-refundable and we do not provide refunds or credits for any partial-month membership periods or non-completed courses. To cancel your subscription, please send an email to [sales@theeverlearner.com](mailto:sales@theeverlearner.com) letting us know of your intentions to cancel your subscription.

### Billing Cycle

**Monthly subscription:** The subscription fee for access to the Website and any other charges such as taxes will be charged on a monthly basis on the calendar day corresponding to the commencement of the paying portion of Your subscription. In some cases Your payment date may change, for example if Your Payment Method has not successfully settled or if Your paid subscription began on a day not contained in a given month. To cancel your subscription, please send an email to [sales@theeverlearner.com](mailto:sales@theeverlearner.com) letting us know of your intentions to cancel your subscription.

**Annual subscription:** The subscription fee for access to the Website and any other charges such as taxes will be invoiced on a yearly basis. If payment is made in advance of the renewal date, the subscription will continue for 12 months from the end date of the last subscription. For new subscriptions, access is provided from the date of issue of the invoice (unless otherwise agreed).

### Links to Third-Party Sites, Products and Services

The EverLearner Website may include links or references to other web sites or services solely as a convenience to Users. The EverLearner does not endorse any such sites or the information, materials, products, or services contained on or accessible through them.

You should review the privacy policy on their Website and confirm that you are happy with how they comply with data protection legislation before providing any personal information. Your correspondence or business dealings with, or participation in promotions of, advertisers found on or through the Website are solely between You and such advertiser. Access and use of Reference Sites, including the information, materials, products, and services on or available through Reference Sites is solely at Your own risk.

## 8. Ownership and Proprietary Rights.

The Website is owned and operated by The EverLearner Ltd. The Website content, visual interfaces, graphics, design, compilation, information, products, software, services, and all other elements of the Website provided by [theeverlearner.com](http://theeverlearner.com) (the "Materials") are, except for any User Content that are provided and owned by Users, the property of The Everlearner or its subsidiaries or affiliated companies and/or third-party licensors.

All trademarks, service marks, and trade names are proprietary to The Everlearner or its affiliates and/or third-party licensors.

Except as expressly authorised in advance by The EverLearner, you agree not to sell, license, distribute, copy, modify, publicly perform or display, transmit, publish, edit, adapt, create derivative works from, or otherwise make unauthorised use of the Materials. The EverLearner reserves all rights to the Materials not expressly granted in the Terms.

## 9. Termination

### Termination by The Everlearner

You agree that The EverLearner, in its sole discretion, for any or no reason, and without penalty, may terminate any account (or any part thereof) you may have with The EverLearner.



The Everlearner may remove or discard all or any part of Your account, User profile, and any User Content, at any time.

The Everlearner may also in its sole discretion and at any time discontinue providing access to the Website, or any part thereof, with or without notice.

You agree that any termination of your access to the Website or any account you may have, or portion thereof, may be affected without prior notice, and you agree that The Everlearner will not be liable to you or any third party for any such termination.

Any suspected fraudulent, abusive or illegal activity may be referred to appropriate law enforcement authorities.

These remedies are in addition to any other remedies The EverLearner may have at law or in equity.

The EverLearner does not permit copyright, trademarks, or other intellectual-property-infringing activities on the Website, and will terminate access to the Website, and remove all User Content or other content submitted, by any Users who are found to be repeat infringers.

### Termination by You

Termination is your only remedy with respect to any dissatisfaction with:

- (i) the Website,
- (ii) any term of these Terms of Service,
- (iii) Guidelines,
- (iv) any policy or practice of The Everlearner in operating the Website, or
- (v) any content or information transmitted through the Website,

You may terminate your account at any time by contacting The EverLearner at [sales@theeverlearner.com](mailto:sales@theeverlearner.com).

## 10. The Legal Bits

### 10.1. Indemnification

You agree to indemnify, defend, and hold harmless The EverLearner, its affiliated companies, contractors, employees, agents and its third-party suppliers, licensors, and partners (“theeverlearner.com Indemnitees”) from any claims, losses, damages, liabilities, including legal fees and expenses, arising out of any use or misuse of the Website, any violation of the Terms, or any breach of the representations, warranties, and covenants made herein. Theeverlearner.com reserves the right, at Your expense, to assume the exclusive defence and control of any matter for which you are required to indemnify The EverLearner, and you agree to cooperate with theeverlearner.com’s defence of these claims. The EverLearner will use reasonable efforts to notify You of any such claim, action, or proceeding upon becoming aware of it. You also acknowledge that the exam performance of all students is the responsibility of the student not of The Everlearner. The EverLearner provides support for students but does not guarantee exam result success regardless of the quantity of use of the Website as preparation.

### 10.2. No Warranties

To the fullest extent permissible under the applicable law, The EverLearner and its affiliates, partners, licensors and suppliers disclaim all warranties, statutory, express or implied including but not limited to implied warranties of merchantability, fitness for a particular purpose and non-infringement of proprietary rights, all with regard to the Website. No advice or information, whether oral or written, obtained by You from The EverLearner.com or through the Website will create any warranty not expressly stated herein. You expressly acknowledge that, as used in this Section 11, the term The EverLearner includes The EverLearner's officers, directors, employees, shareholders, agents, licensors and subcontractors.

### 10.3. "As is" and "As available" and "With All Faults".

You expressly agree that use of the Website is at Your sole risk. The Website and any data, information, third-party software, User Content, reference sites, services, or applications made available in conjunction with or through the Website are provided on an "as is," "as available" and "with all faults" basis and without warranties or representations of any kind either express or implied.

## 11.4 Content

The EverLearner, its suppliers, licensors, affiliates, and partners do not warrant that the data, user content, functions, or any other information offered on or through the Website or any reference sites will be uninterrupted, or free of errors, viruses or other harmful components and do not warrant that any of the foregoing will be corrected. The EverLearner aims to ensure that the content of the Website is free of any such issues.

## 11.5 Accuracy

The EverLearner, its suppliers, licensors, affiliates, and partners do not warrant or make any representations regarding the use or the results of the use of the Website or any reference sites in terms of correctness, accuracy, reliability, or otherwise.

## 11.6 Harm to Your Computer

You understand and agree that You use, access, download, or otherwise obtain information, materials, or data through the Website (including rss feeds) or any reference sites at your own discretion and risk and that You will be solely responsible for any damage to Your property (including your computer system) or loss of data that results from the download or use of such material or data.

## 11.7 Commercial Use

The EverLearner expressly defines as falling outside of the definition of "non-commercial":

(a) the sale or rental of (i) any part of the Educational Content, (ii) any derivative works based at least in part on the Educational Content, or (iii) any collective work that includes any part of the Educational Content;

(b) the sale of access or a link to any part of the Educational Content without first obtaining informed consent from the buyer that the buyer is aware that the Educational Content, or such part thereof, is available at the Website free of charge;

## 12. Limitation of Liability and Damages.

### 12.1 Limitation of Liability

Under no circumstances, including, but not limited to, negligence, will The EverLearner or its affiliates, contractors, employees, agents, or third-party partners, licensors, or suppliers be liable for any special,

indirect, incidental, consequential, punitive, reliance, or exemplary damages (including without limitation damages arising from any unsuccessful court action or legal dispute, lost business, lost revenues, or loss of anticipated profits or any other pecuniary or non-pecuniary loss or damage of any nature whatsoever) arising out of or relating to the terms or that result from your use of or your inability to use the Website or any reference sites, or any other interactions with theeverlearner.com, even if theeverlearner.com or a theeverlearner.com authorised representative has been advised of the possibility of such damages.

Applicable law may not allow the limitation or exclusion of liability or incidental or consequential damages, so the above limitation or exclusion may not apply to you. In such cases, theeverlearner.com's liability will be limited to the fullest extent permitted by applicable law.

## 12.2 Limitation of Damages

Subject to the provisions of these Terms and Conditions, the maximum liability of theeverlearner.com, its affiliates, contractors, employees, agents, or third-party partners, licensors, or suppliers to you under or in connection with the Services and this Agreement, whether in contract, tort (including negligence) or otherwise shall be limited to the agreed fees paid to theeverlearner.com in the last rolling 12 calendar month period. This limitation of liability will continue and remain in full force and effect notwithstanding termination or expiry of this agreement.

## 12.3 Reference Sites

These limitations of liability also apply with respect to damages incurred by You by reason of any products or services sold or provided on any reference sites or otherwise by third parties other than theeverlearner.com and received through or advertised on the Website or received through any reference sites.

## 12.4 Basis for the Bargain

You acknowledge and agree that theeverlearner.com has offered its products and services, set its prices, and entered into the terms in reliance upon the warranty disclaimers and the limitations of liability set forth herein, that the warranty disclaimers and the limitations of liability set forth herein reflect a reasonable and fair allocation of risk between You and theeverlearner.com, and that the warranty disclaimers and the limitations of liability set forth herein form an essential basis of the bargain between You and theeverlearner.com. Theeverlearner.com would not be able to provide the Website to You on an economically reasonable basis without these limitations.

## 13. Miscellaneous

### 13.1 Notice

The EverLearner may provide you with notices, including those regarding changes to the Terms, by email, regular mail or postings on the Website. Notice will be deemed given twenty-four hours after email is sent, unless theeverlearner.com is notified that the email address is invalid. Alternatively, we may give you legal notice by mail to a postal address, if provided by you. In such case, notice will be deemed given three days after the date of mailing. Notice posted on the Website is deemed given 30 days following the initial posting.

### 13.2 Waiver

The failure of The Everlearner to exercise or enforce any right or provision of the Terms will not constitute a waiver of such right or provision. Any waiver of any provision of the Terms will be effective only if in writing and signed by The EverLearner.com.

### 13.3 Severability

If any provision of the Terms or any Guidelines is held to be unlawful, void, or for any reason unenforceable, then that provision will be limited or eliminated from the Terms to the minimum extent necessary and will not affect the validity and enforceability of any remaining provisions.

### 13.4 Assignment

The Terms and related Guidelines, and any rights and licences granted hereunder, may not be transferred or assigned by you, but may be assigned by The EverLearner without restriction. Any assignment attempted to be made in violation of the Terms shall be null and void.

### 13.5 Survival

Upon termination of the Terms, any provision which, by its nature or express terms should survive, will survive such termination or expiration, including, but not limited to, Sections 4 through 13.

### 13.6 Headings

The headings within this document are for convenience only and do not constitute a part of the Terms and Conditions, and will not be deemed to limit or affect any of the provisions within this document.

### 13.7 Entire Agreement

These Terms and Conditions, the Data Protection Policy and the Privacy Policy are the entire agreement between you and The EverLearner. These Terms and Conditions will not be changed except in writing, signed by both parties, or by a change to the Terms and Conditions or Privacy Policy made by The EverLearner as set forth in Section 3 above.

### 13.8 Claims

You and The EverLearner agree that any cause of action arising out of or related to the Website must commence within one (1) year after the cause of action accrues. Otherwise, such cause of action is permanently barred.

### 13.9 Website Hosting

The Website is hosted in the United Kingdom, and the services provided are offered by The EverLearner.com.

### 13.10 Jurisdiction

These terms and conditions and any disputes or claims arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales and the parties shall submit to the exclusive jurisdiction of the courts of England and Wales.