

# TERMS OF USE

Last updated: June 12, 2020 (See our previous version [here](#).)

This Terms of Use (the “**TOU**”) is entered into between you (“**you**” or “**your**”) and Pink Cat Studio Inc. (“**Pink Cat**”, “**we**” or “**our**”) and applies to Pink Cat services, including but not limited to the Pink Cat website at [www.pinkcatstudio.com](http://www.pinkcatstudio.com) and [www.pinkcatgames.com](http://www.pinkcatgames.com) (each, the “**Website**”), Pink Cat application tools and Pink Cat products (collectively, the “**Service**”).

**BY CLICKING “I AGREE” OR SIMILAR CONFIRMATION OR BY USING THE SERVICE OR BY SIGNATURE YOU ARE AGREEING TO BE BOUND BY THE TOU.**

## 1. DESCRIPTION OF THE SERVICE

Pink Cat is an educational platform that assists teachers (each, a “**Teacher**”) and their students (each, a “**Student**”) in achieving their educational goals with educational games and tools to help manage classroom activities.

## 2. UPDATES

Pink Cat reserves the right to modify the TOU at any time (each, an “**Update**”) and shall make each Update available on the Website. You are deemed to accept any Update by continuing to use the Service. Unless Pink Cat states otherwise, an Update is automatically effective 30 days after posting on the Website.

## 3. ACCESS TO THE SERVICE

### 3.1 Age of Access

If you are a Teacher, you must be at least the age of majority in your jurisdiction in order to use the Service. If you are a Teacher, have already accessed the Service and have yet to

reach the age of majority in your jurisdiction, you must immediately cease use of the Service. If you are a Student and are below the age of majority in your jurisdiction, consent of a parent or guardian is required prior to providing any personal data to Pink Cat through the Service.

### **3.2 Accounts and Login Information**

Access to the Service may require registering an account with Pink Cat (each, an **“Account”**). In order to access an Account, as a Teacher, you may be required to obtain a user ID, password or a log in access code, and if you are a Student, you may access the Service using a link provided by Pink Cat (**“Login Information”**). You shall manage and ensure the security, confidentiality and authorized use of Login Information. You are prohibited from sharing Login Information. Pink Cat strongly recommends that you keep your Login Information confidential and you shall notify Pink Cat promptly of unauthorized access or use of your Account.

### **3.3 Subscription Fee**

Pink Cat may charge a fee in connection with each Account (the **“Subscription Fee”**). If you are a Teacher, you shall provide Pink Cat with credit card and billing information and execute any necessary preauthorized debit form, preauthorized bill payment form, wire transfer, electronic funds transfer, or electronic payment system to pay the Subscription Fee as requested by Pink Cat (**“Authorized Payment”**). Pink Cat does not currently allow for auto-renewals and the Subscription Fee must be paid again every year. If we do offer such auto-renewals or similar features in the future Pink Cat, or any third party acting on Pink Cat’s behalf, shall be authorized and shall have the right to automatically charge the Subscription Fee to such Authorized Payment each payment term unless you terminate the Services as described in this TOU. The Subscription Fee excludes applicable taxes, which Pink Cat may charge as required by the laws of your jurisdiction. The current Subscription Fee is listed on the Website at <https://www.pinkcatstudio.com/store>, which may change at any time at Company’s sole discretion, but Company shall provide prior written notice of any Subscription Fee increase. The Subscription Fee is earned upon payment and is non-refundable.

### **3.4 Taxes**

The Subscription Fee excludes taxes, duties and charges, which you shall pay as well. If Pink Cat pays or collects taxes on your behalf, Pink Cat shall invoice you for the applicable amount, which you shall pay on the same terms as the Subscription Fee

### **3.5 TPT Subscriptions**

In some cases, Teachers may purchase subscriptions to the Service from third-parties such as via Teachers Pay Teachers (a **"TPT Subscription"**). By agreeing to this TOU you hereby also agree to comply with all third-party contractual and/or legal requirements of any TPT Subscription you purchase.

## **4. SUBSCRIPTION AND USE OF THE SERVICE**

### **4.1 Subscription**

Pink Cat grants you a limited, revocable, non-exclusive, non-sublicensable, non-transferrable, subscription to access the Service and to use features associated with an Account as restricted by this TOU, including any Subscription Fee and/or TPT Subscription terms. You acknowledge and agree that we may modify, suspend or remove sections or features of the Website, your Account or any part the Service at any time acting in our sole and absolute discretion.

### **4.2 Authorized Use**

When using the Service, you may not:

- a. decompile, disassemble or reverse engineer the Service or otherwise attempt to derive the Service source code or gain unauthorized access to the Service;
- b. share your Account with others (except as explicitly permitted in writing by Pink Cat);
- c. alter, change or circumvent security related aspects of the Service;
- d. use any automated system (bot, spider, etc.) to access the Service;
- e. reproduce, rearrange, modify, change, alter, translate, create derivative works from, display, perform, publish, or distribute the Service;
- f. break, disrupt or attempt to break or disrupt any device used to support the Service or other's experience of the Service or knowingly exploit a flaw or bug in the Service;

- g. store upload, or transmit material that is infringing, libellous, unlawful or in violation of any person's rights or a group of people's rights;
- h. use the Service to provide information or data to a competitor of Pink Cat;
- i. harass, abuse, stalk, threaten or impersonate any person or group of people;
- j. sell, rent, lease or sublicense the Service or access thereto, unless expressly permitted by Pink Cat;
- k. promote, encourage or undertake illegal activity; or
- l. infringe or violate third-party rights including but not limited to: (i) contractual rights; (ii) copyright, patent, trademark or trade secret rights; (iii) privacy rights; (iv) publicity rights; or (v) confidential information,

as determined by Pink Cat in our sole and absolute discretion.

### **4.3 Suspension and Termination.**

Pink Cat may suspend or terminate access to the Service and/or your Account, without notice or compensation to you, at any time for any reason (or for no reason) including but not limited to technical issues, your non-compliance with the TOU or your failure to adhere to the terms of an agreement with Pink Cat. Pink Cat has sole discretion to lift a suspension or reverse a termination. Your access to the Service and/or your Account, automatically terminates upon the earliest of the date: (a) you or Pink Cat terminates access to your Account; (b) of your non-compliance with the TOU; or (c) if we decide to add an auto-renewal payment system, when you click the cancel Subscription button within the Service or send an email with the subject line "Cancel Subscription" to [info@pinkcatstudio.com](mailto:info@pinkcatstudio.com).

### **4.4 Privacy Policy and Privacy Law Compliance**

Your use of the Service is governed by a Privacy Policy detailing how Pink Cat collects, uses and discloses personal and anonymous data about you and is available at <https://www.pinkcatstudio.com/privacy-policy>. If at any time you disagree with the Privacy Policy, you must immediately stop use of the Service and contact Pink Cat at the address provided below.

If you are a Teacher, by agreeing to this TOU and by using the Service, you represent and warrant that you are in full compliance with privacy laws, including the Family Educational Rights and Privacy Act - FERPA, as applicable, and all requirements to obtain the verifiable consent of each Student's parent or guardian as required by the applicable laws in your jurisdiction prior to providing any personal data regarding such Students to Pink Cat. Please contact your local school board or the administration at your school prior to use in order to find out your own local jurisdictions' privacy law requirements if you are thinking of using the Service for your classroom.

## 5. PROPRIETARY RIGHTS

### 5.1 Ownership and Rights

Pink Cat retains all right, title and interest in the Service, including but not limited to copyrights, copyrightable works, patents, patent rights, trademarks, trade names and trade secrets, and in Accounts or modifications to the Service and/or interactions and analytics data provided by Students or Teachers through the Service (collectively, "**PC Content**"). The TOU does not convey any right, title or interest in, or constitute the sale of any right to, PC Content, the Service, any related software or your Account.

### 5.2 User Content

Through the Service, you may provide Pink Cat with questions, responses, comments, recommendations, advice, ideas, submissions, forum posts, information about your school, educational data or other information ("**User Content**"). User Content excludes anything that is already PC Content. By providing User Content, you represent and warrant that all consents, licenses and rights necessary to license User Content to Pink Cat are obtained and hereby grant Pink Cat an irrevocable, fully-paid, royalty-free, non-exclusive, perpetual, worldwide license to User Content under all copyright, trademark, trade secret, patent, privacy and publicity rights and any other intellectual or industrial property rights you own or control to use, broadcast, disclose, display, distribute, modify, make derivative works of, publicly perform, publish, record, reproduce, sublicense (on multiple levels), translate, transmit or otherwise exploit for all purposes and in all formats and mediums without attribution, notice, permission, royalty or payment. Pink Cat is under no obligation to review or act upon any User Content that you may provide.

### **5.3 DMCA**

Pink Cat responds to notices alleging copyright infringement that comply with the United States Digital Millennium Copyright Act (the “**DMCA**”). If you wish to make a DMCA claim, you must provide the following information in writing in your DMCA notice:

- a. identify the copyrighted work that you claim has been infringed;
- b. identify the material claimed to be infringing and where it is located;
- c. provide reasonably sufficient information to allow us to contact you, such as your address, phone number and e-mail address;
- d. provide a statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or law;
- e. provide a statement, made under penalty of perjury, that the above information is accurate and that you are the copyright owner or are authorized to act on behalf of the owner; and
- f. provide an electronic or physical signature of a person authorized to act on behalf of the copyright owner.

Pink Cat may provide you notice if your communication, post, submission or upload was removed as a result of Pink Cat receiving a DMCA notice from a copyright owner. If you receive notice from Pink Cat, you may provide a counter-notification in writing to Pink Cat’s designated DMCA agent through the means provided below.

DMCA notices can be sent to Pink Cat by emailing [dmca@voyerlaw.com](mailto:dmca@voyerlaw.com) or by mail:

Pink Cat Studio Inc.  
38532 Sky Pilot Dr.,  
Squamish, BC.  
V8B 0T6

## **6. DISCLAIMER AND LIMITATION OF LIABILITY**

### **6.1 DISCLAIMER**

THE SERVICE IS PROVIDED TO YOU "AS IS" AND PINK CAT AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES AND ASSIGNS (COLLECTIVELY, ITS "**REPRESENTATIVES**") DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR COMPLIANCE WITH LAWS WITHIN YOUR JURISDICTION. WITHOUT LIMITING THE FOREGOING, PINK CAT MAKES NO REPRESENTATIONS THAT USE OF THE SERVICE WILL NOT INFRINGE ANY COPYRIGHT, PATENT, TRADEMARK LAW OR OTHER RIGHTS HELD BY A THIRD PARTY. FURTHER AND WITHOUT LIMITING THE FOREGOING, PINK CAT AND ITS REPRESENTATIVES MAKE NO REPRESENTATIONS OR WARRANTIES THAT THE SERVICE, SERVICES PERFORMED AND PRODUCTS PROVIDED BY PINK CAT OR OTHER THIRD PARTIES OR ANALYTICS PROVIDED THROUGH THE SERVICE, WILL COMPLY WITH APPLICABLE LAWS WITHIN YOUR JURISDICTION, MEET YOUR REQUIREMENTS, NOT CAUSE DAMAGE TO YOU, YOUR PROPERTY OR PROPERTY OF OTHERS, OR THAT OPERATION OF THE SERVICE WILL BE UNINTERRUPTED, CONTINUOUSLY AVAILABLE, ERROR FREE OR WILL NOT HARM YOUR COMPUTER OR MOBILE DEVICE OR RESULT IN LOST DATA. NO ORAL ADVICE OR WRITTEN INFORMATION PROVIDED BY PINK CAT AND ITS REPRESENTATIVES WILL CREATE ANY WARRANTY AND YOU SHALL NOT RELY EXCLUSIVELY UPON SUCH ADVICE OR INFORMATION. YOU BEAR THE ENTIRE RISK AS TO THE PERFORMANCE, OPERATION AND QUALITY OF THE SERVICE.

## **6.2 LIMITATION OF LIABILITY**

PINK CAT AND ITS REPRESENTATIVES SHALL NOT BE LIABLE TO YOU FOR ANY CLAIM, LOSS OR DAMAGE OF ANY KIND ARISING OUT OF OR RELATING TO THE SERVICE OR THIRD-PARTY SERVICES, INCLUDING WITHOUT LIMITATION DIRECT, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES. TO THE EXTENT THAT THE ABOVE LIMITATION OF LIABILITY IS NOT APPLICABLE IN YOUR JURISDICTION, ANY CLAIM THAT YOU MAY HAVE AGAINST PINK CAT AND ITS REPRESENTATIVES MUST BE COMMENCED NO LATER THAN 6 MONTHS AFTER THE DAY ON WHICH THE CLAIM IS DISCOVERED OR OUGHT TO HAVE BEEN DISCOVERED BY YOU.

## **6.3 MAXIMUM AGGREGATE LIABILITY**

NOTE THAT SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF CERTAIN TERMS OR WARRANTIES OR EXCLUSION OF LIABILITY FOR CERTAIN DAMAGES AND, IF ANY DISCLAIMER OR LIMITATION OF LIABILITY IS FOUND UNENFORCEABLE, VOID OR DOES NOT FULLY SHIELD PINK CAT AND ITS REPRESENTATIVES FROM LIABILITY, YOU AGREE THAT PINK CAT'S (AND ITS REPRESENTATIVES') MAXIMUM AGGREGATE LIABILITY IN ANY CASE WHATSOEVER WILL BE THE TOTAL AMOUNT PAID BY YOU TO PINK CAT IN THE 12 MONTHS IMMEDIATELY PRECEDING THE DATE OF THE HARM IN QUESTION.

#### **6.4 Indemnity**

You shall defend and indemnify Pink Cat and its Representatives against any claim, demand, suit or proceeding made or brought against Pink Cat and its Representatives in connection with your use of the Service (each, a "**Claim**") including, but not limited to, claims that Pink Cat, the Service, or you, (i) infringe or misappropriate a third party's intellectual property rights, (ii) violate any applicable law, including any failure to obtain the required legal documentation, including applicable consent documentation, prior to using the Service, (iii) cause bodily harm or death, or (iv) commit an act of gross negligence or intentional misconduct. Your obligation to indemnify Pink Cat and its Representatives arises so long as Pink Cat: (a) promptly gives written notice of the Claim against Pink Cat (b) gives you sole control of the defense and settlement of the Claim except that you shall not enter any settlement or disposition that attributes liability or confers a financial obligation on Pink Cat without Pink Cat's advance written consent, which shall not be unreasonably withheld or delayed; and (c) gives all reasonable assistance, at your expense.

### **7. GENERAL**

#### **7.1 No Joint Relationship with Teachers**

Nothing in the TOU shall be construed to create any joint partnership, joint venture, employer-employee or agency relationship between a Teacher and Pink Cat.

#### **7.2 Governing Law**

The TOU and Privacy Policy are governed by the laws of the province of British Columbia and the laws of Canada, without reference to principles of conflicts of laws. The parties



irrevocably attorn to the jurisdiction of the appropriate provincial and federal courts of the province of British Columbia to hear any proceedings related to the TOU or Privacy Policy.

### **7.3 Severability and Waiver**

If any provision of the TOU or Privacy Policy is held by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law with remaining provisions of the TOU in full force and effect. No failure or delay by a party in exercising any right, power or remedy under the TOU constitutes a waiver.

### **7.4 Assignment**

Pink Cat may assign the TOU without your consent or notice to you. You cannot assign the TOU.

### **7.5 Survival**

**Sections 3.3 and 4 to 7 survive termination of the TOU.**

### **7.6 Entire Agreement**

The TOU, together with the Privacy Policy, constitute the entire agreement between you and Pink Cat with respect to the subject matter hereof and supersedes any prior oral or written agreements, communications, representations or undertakings provided.