

Arinui School Subscription Agreement

Arinui Terms of Use:

By clicking the "Purchase" button in electronic form or signing this agreement as part of the Arinui ordering process, you agree to the following terms and conditions (the "Agreement") governing your use of Arinui. If you are entering into this agreement on behalf of your School, you represent that you have the authority to bind your School to these terms and conditions, in which case the terms "you" or "your" shall refer to the School. If you do not have such authority, or if you do not agree with these terms and conditions, you must not continue with the "Purchase" process.

Welcome

Evaluation Associates Limited (EAL) is the company that brings you Arinui. Your registration for, or use of, Arinui shall be deemed to be your agreement to abide by this Agreement including any materials available on the Arinui website incorporated by reference herein, including but not limited to Evaluation privacy and security policies. For reference, a Definitions section is included at the end of this Agreement.

Arinui is offered in several configurations and details relating to your specific requirements are contained in the Order Form.

1. Privacy & Security; Disclosure

EAL's privacy and security policies may be viewed at www.evaluate.co.nz/terms and should be viewed in association with section 4 and 5 of this agreement. EAL reserves the right to modify its privacy and security policies in its reasonable discretion from time to time. Note that because Arinui is a hosted, online application, EAL occasionally may need to notify all users of Arinui of important announcements regarding the operation of Arinui. If you become a paying customer of Arinui, you agree that EAL can disclose the fact that you are a customer of Arinui but provide no details of that relationship without your permission.

2. License Grant & Restrictions

EAL hereby grants you a non-exclusive, non-transferable, worldwide right to use Arinui, solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by EAL and its licensors.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party Arinui or the Content in any way; (ii) modify or make derivative works based upon Arinui or the Content; (iii) create Internet "links" to Arinui or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access Arinui in order to (a) build a competitive product or, (b) build a product using similar ideas, features, functions or graphics of Arinui. User licenses cannot be shared or used by more than the number of Users specified in the Order Form. One individual User but may be reassigned from time to time to new Users who are replacing former Users who have changed status or function and no longer use your configuration of Arinui.

You may use Arinui only for your internal purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libellous, or otherwise unlawful or tortuous material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of Arinui or the data contained therein; or (v) attempt to gain unauthorized access to Arinui or its related systems or networks.

3. Your Responsibilities

You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of Arinui, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) notify EAL immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to EAL immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another Arinui user or provide false identity information to gain access to or use Arinui.

4. Account Information and Data

EAL does not own any data, information or material that you submit to Arinui in the course of using Arinui ("Customer Data"). You, not EAL, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and EAL shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. EAL reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Customer Data immediately ceases, and EAL shall have no obligation to maintain or forward any Customer Data.

5. Intellectual Property Ownership

EAL alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Arinui Technology, Content and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to Arinui. This Agreement is not a sale and does not convey to you any rights of ownership in or related to Arinui, the Arinui Technology or the Intellectual Property Rights owned by EAL. The Arinui name, the Arinui logo, and the product names associated with Arinui are trademarks of EAL or third parties, and no right or license is granted to use them.

6. Charges and Payment of Fees

You shall pay all fees or charges to your account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. The charges applicable are contained in the Order Form. All payment obligations are non cancellable and all amounts paid are non refundable. You are responsible for paying for all User licenses ordered for the entire License Term,

whether or not such User licenses are actively used. You must provide EAL with valid credit card or approved purchase order information as a condition to signing up for Arinui. EAL reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to you, which notice may be provided by e-mail. All pricing terms are confidential, and you agree not to disclose them to any third party.

7. Billing

You agree to provide EAL with complete and accurate billing and contact information. You agree to update this information within 30 days of any change to it. If you believe your bill is incorrect, you must contact us in writing within 14 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

8. Non-Payment and Suspension

In addition to any other rights granted to EAL herein, EAL reserves the right to suspend or terminate this Agreement and your access to Arinui if your account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to interest of 1.50% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection.

9. Termination upon Expiration/Reduction in Number of Users

This Agreement commences on the Effective Date. The Initial Term will be as disclosed in the Order Form or as you elect during the online subscription process. Either party may terminate this Agreement or reduce the number of Users, effective only upon the expiration of the then current Term, by notifying the other party in writing at least five (5) business days prior to the date of the invoice for the following term.

10. Termination for Cause

Any breach of your payment obligations or unauthorized use of the EAL Technology or Arinui will be deemed a material breach of this Agreement. EAL, in its sole discretion, may terminate your password, account or use of Arinui if you breach or otherwise fail to comply with this Agreement. In addition, EAL may terminate a free account at any time in its sole discretion. You agree and acknowledge that EAL has no obligation to retain the Customer Data, and may delete such Customer Data, if you have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.

11. Representations & Warranties

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. EAL represents and warrants that it will provide Arinui in a manner consistent with general industry standards reasonably applicable to the provision thereof and that Arinui will perform substantially in accordance with the Arinui documentation under normal use and

circumstances. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to Arinui and that your billing information is correct.

12. Mutual Indemnification

You shall indemnify and hold EAL, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that EAL (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defence and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release EAL of all liability and such settlement does not affect EAL's business or Arinui); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.

EAL shall indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that Arinui directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by EAL of its representations or warranties; or (iii) a claim arising from breach of this Agreement by EAL; provided that you (a) promptly give written notice of the claim to EAL; (b) give EAL sole control of the defence and settlement of the claim (provided that EAL may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to EAL all available information and assistance; and (d) have not compromised or settled such claim. EAL shall have no indemnification obligation, and you shall indemnify EAL pursuant to this Agreement, for claims arising from any infringement arising from the combination of Arinui with any of your products, Arinui, hardware or business process(s).

13. Disclaimer of Warranties

EAL and its licensors make no representation, warranty, or guarantee as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of Arinui or any content. EAL and its licensors do not represent or warrant that (a) the use of Arinui will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data, (b) Arinui will meet your requirements or expectations, (c) any stored data will be accurate or reliable, (d) the quality of any products, services, information, or other material purchased or obtained by you through Arinui will meet your requirements or expectations, (e) errors or defects will be corrected, or (f) Arinui or the server(s) that make Arinui available are free of viruses or other harmful components. Arinui and all content is provided to you strictly on an "as is" basis. All conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law by EAL and its licensors.

14. Internet Delays

Arinui may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. EAL is not responsible for any delays, delivery failures, or other damage resulting from such problems.

15. Limitation of Liability

In no event shall either party's aggregate liability exceed the amounts actually paid by and/or due from you in the twelve (12) month period immediately preceding the event giving rise to such claim. In no event shall either party and/or its licensors be liable to anyone for any indirect, punitive, special, exemplary, incidental, consequential or other damages of any type or kind (including loss of data, revenue, profits, use or other economic advantage) arising out of, or in any way connected with Arinui, including but not limited to the use or inability to use Arinui, or for any content obtained from or through Arinui, any interruption, inaccuracy, error or omission, regardless of cause in the content, even if the party from which damages are being sought or such party's licensors have been previously advised of the possibility of such damages.

16. Notice

EAL may give notice by means of a general notice on Arinui, electronic mail to your e-mail address on record in EAL's account information, or by written communication sent by first class mail or pre-paid post to your address on record in EAL's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to EAL (such notice shall be deemed given when received by EAL) at any time by email to info@arinui.com.

17. Modification to Terms

EAL reserves the right to modify the terms and conditions of this Agreement or its policies relating to Arinui at any time, effective upon posting of an updated version of this Agreement on Arinui. You are responsible for regularly reviewing this Agreement. Continued use of Arinui after any such changes shall constitute your consent to such changes.

18. Assignment; Change in Control

This Agreement may not be assigned by you without the prior written approval of EAL but may be assigned without your consent by EAL to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void.

19. General

This Agreement shall be governed by the laws of New Zealand. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable

provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between you and EAL as a result of this agreement or use of Arinui. The failure of EAL to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by EAL in writing. This Agreement, together with any applicable Order Form, comprises the entire agreement between you and EAL and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

20. Definitions

As used in this Agreement and in any Order Forms and now or hereafter associated herewith: "Agreement" means these terms of use, any Order Forms, whether written or submitted online, and any materials available on the Arinui website specifically incorporated by reference herein, as such materials, including the terms of this Agreement, may be updated by EAL from time to time in its sole discretion; "Content" means the audio and visual information, documents, software, products and services contained or made available to you in the course of using Arinui; "Customer Data" means any data, information or material provided, created or submitted by you to Arinui in the course of using Arinui; "Effective Date" means the earlier of either the date this Agreement is accepted by signature on the physical Agreement, selecting the "Purchase" option presented on the screen after this Agreement is displayed or the date you begin using Arinui; "Initial Term" means the initial period during which you are obligated to pay for Arinui. "Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world; "License Administrator(s)" means those Users designated by you who are authorized to purchase licenses online or by executing written Order Forms and otherwise administer your use of Arinui; "Order Form(s)" means the form evidencing the initial subscription for Arinui and any subsequent order forms submitted online or in written form, specifying, among other things, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Order Form to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Order Form, the terms of this Agreement shall prevail); "EAL" means collectively Evaluation Associates Limited, a New Zealand corporation, having its principal place of business in Auckland; "Arinui Technology" means all of EAL's (or its licensors) proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by EAL in providing Arinui; "Arinui" means the specific edition of EAL's online school appraisal tool, or other services identified during the ordering process, developed, operated, and maintained by EAL, accessible via <https://arinui.com> or another designated web site or IP address, or ancillary online or offline products and services provided to you by EAL, to which you are being granted access under this Agreement; "User(s)" means your staff, representatives, consultants, contractors or agents who are authorized to use Arinui and have been supplied user identifications and passwords by you (or by EAL at your request).

Questions or Additional Information:

If you have questions regarding this Agreement or wish to obtain additional information, please send an e-mail to info@arinui.com