

BIOZONE DIGITAL PLATFORM

TERMS OF SERVICE

1 APPLICATION OF TERMS OF SERVICE

- 1.1 These Terms of Service apply to the School's use of the Services (as those terms are defined below). By both the School and BIOZONE (or its authorised representative) signing an order form which references these Terms of Service, and/or by clicking on [*I agree*] during Registration:
- a you agree to these Terms of Service; and
 - b where your signing, agreement, and/or access and use is on behalf of:
 - i a School, you confirm that you are authorised to, and do in fact, agree to these Terms of Service on the School's behalf and that, by agreeing to these Terms of Service on the School's behalf, that School is bound by these Terms of Service; or
 - ii a School District, you confirm that you are authorised to, and do in fact, agree to these Terms of Service on the School District's behalf, and on behalf of each School within the School District's responsibility, and that by agreeing to these Terms of Service, the School District and those Schools are bound by these Terms of Service.
- 1.2 If you do not agree to these Terms of Service, you are not authorised to access and use the Services, and you must immediately stop doing so.

2 CHANGES

- 2.1 BIOZONE may change these Terms of Service by updating them on the Website and/or notifying the School by email. BIOZONE will provide the School with reasonable notice of the upcoming changes as is practical in the circumstances. Unless stated otherwise, any change takes effect from the date specified on the Website or in the email (as applicable). The School is responsible for ensuring it is familiar with the latest Terms of Service. By continuing to access and use the Services, the School agrees to be bound by the changed Terms of Service.
- 2.2 **These Terms of Service were last updated on 15 July 2020.**

3 INTERPRETATION

- 3.1 **Definitions:** In these Terms of Service, the following terms have the stated meaning:

Term	Meaning
Agreement	The agreement between BIOZONE and the School, governed by these Terms of Service and any other terms agreed in writing with BIOZONE or its authorised representative.
Academic Year	In relation to the Northern hemisphere means 1 July to 30 June; and in relation to the Southern hemisphere means 1 January to 31 December.
BIOZONE	<i>[BIOZONE International Limited, a New Zealand registered company, company number 901079.]</i>
BIOZONE Service	the online services provided by BIOZONE via either of the two digital platforms on the Websites, that enable a School and its Students to access and use selected Online Materials.
Confidential Information	any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, these Terms of Service. BIOZONE's Confidential Information includes Intellectual Property owned by BIOZONE (or its licensors). The School's Confidential Information includes the Data.
Data	all data, content, and information (including Personal Information) owned, held, used or created by or on behalf of the School or its Students, which is stored using, or input into, the Services.
Fees	<p>the fees set out in BIOZONE's pricing page available at: BIOZONE Academy (www.thebiozone.com/academy) BIOZONE eBooks (www.thebiozone.com/ebooks)</p> <p>as updated from time to time in accordance with clause 9.4, or as otherwise agreed in writing with BIOZONE or its authorised representative.</p>
Force Majeure	<p>an event that is beyond the reasonable control of a party, excluding:</p> <ul style="list-style-type: none"> ▲ an event to the extent that it could have been avoided by a party taking reasonable steps or reasonable care; or ▲ a lack of funds for any reason.
Intellectual Property Rights	includes copyright and all rights in any jurisdiction conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trade marks and designs, circuit layouts, data and databases, confidential information, know how, and all other rights resulting

Term	Meaning
	from intellectual activity. Intellectual Property has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.
Objectionable	includes being objectionable, defamatory, obscene, harassing, threatening, potentially harmful or unlawful in any way.
Online Materials	the online educational materials and any related materials made available by BIOZONE via the Website as part of the BIOZONE Service.
Personal Information	information about an identifiable individual.
Privacy Law	any applicable privacy or data protection legislation governing the collection, storage, use and disclosure of Personal Information.
Privacy Policy	BIOZONE's privacy policy, available at: BIOZONE Academy (www.thebiozone.com/academy/privacypolicy) BIOZONE eBooks (www.thebiozone.com/ebooks/privacypolicy)
Registration	the online process of the School setting up an account with BIOZONE, which enables the School to access and use selected Online Materials.
Related Services	has the meaning given in clause 6.5a.
Sales Tax	goods and services tax, value added tax, sales tax or equivalent tax payable under any applicable law.
School	the educational institution authorised to use the Services under these Terms of Service.
School District	in the United States, means a legal entity known as a school district, community college district, or similar, and which has responsibility for a number of schools or other educational institutions.
Services	the BIOZONE Service and other services provided by BIOZONE under these Terms of Service.
Start Date	the date of acceptance of these Terms of Service under clause 1.1.

Term	Meaning
Students	the School's students.
Subscription	permission for a Student to use the Online Materials.
Support Services	<p>means:</p> <ul style="list-style-type: none"> ▲ telephone and email support to the School and its Students in the form of consultation, assistance and advice; and ▲ reasonable efforts to assist in the resolution of the issue (taking into account the nature and severity of the issue), <p>as may be further described on the Website, but excludes training of the School, its personnel and Students.</p>
Terms of Service	these terms of service, and any terms incorporated by reference.
Underlying Systems	the software, IT solutions, systems and networks (including software and hardware) used to provide the Services, including any third party solutions, systems and networks.
Website	<p>the internet site at either digital platform:</p> <p>BIOZONE Academy: https://biozone.academy</p> <p>BIOZONE eBooks: https://ebooks.thebiozone.com/</p>
Website Terms of Use	<p>the terms of use at:</p> <p>BIOZONE Academy www.thebiozone.com/academy/termsandconditions</p> <p>BIOZONE eBooks www.thebiozone.com/ebooks/termsandconditions</p> <p>and any other terms that govern a Student's access and use of the Online Materials, as updated from time to time by BIOZONE.</p>
Year	in relation to:

Term	Meaning
	<ul style="list-style-type: none"> ▲ the first Year of the Agreement, means a period (of 12 months or less) starting on the Start Date and ending on the expiry of the first Academic Year; and ▲ subsequent Years of the Agreement, means an Academic Year.
you	you, the person entering into these Terms of Service.

3.2 Interpretation: In these Terms of Service:

- a clause and other headings are for ease of reference only and do not affect the interpretation of these Terms of Service;
- b words in the singular include the plural and vice versa;
- c a reference to:
 - i a **party** to these Terms of Service includes that party's permitted assigns;
 - ii **personnel** includes officers, employees, contractors and agents, but a reference to the School's personnel does not include BIOZONE;
 - iii a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity;
 - iv **including** and similar words do not imply any limit; and
 - v a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them;
- d no term of these Terms of Service is to be construed against a party because the term was first proposed or drafted by that party; and
- e if there is any conflict between Section B and Section A of these Terms of Service, Section B prevails unless expressly stated otherwise in Section A.

4 BETA VERSION

Note: This section is no longer applicable as both platforms are no longer in Beta Versions.

5 TRIAL PERIOD

- 5.1 **Application of terms to trial:** Where the BIOZONE Service is provided to the School for a free trial period, then these Terms of Service apply except to the extent varied in this clause 5.
- 5.2 **Trial period:** Access to the BIOZONE Service is provided to the School for a single period of only 30 days from the Start Date (**Trial Period**). The School must purchase access to the

BIOZONE Service if it wishes to access and use the BIOZONE Service following expiry of the Trial Period.

- 5.3 **As is basis:** The BIOZONE Service is provided during the Trial Period on an *as is* basis, and, despite any other provision in these Terms of Service, all conditions, warranties, guarantees and indemnities in relation to the BIOZONE Service for the Trial Period are excluded by BIOZONE to the fullest extent permitted by law.
- 5.4 **Fees:** No fees are payable for the Trial Period.
- 5.5 **Evaluation:** In consideration of BIOZONE providing the Trial Period for the discounted fees, the School agrees to inform BIOZONE of all problems, defects, bugs, errors, issues, and ideas for improvement, relating to the BIOZONE Service of which it becomes aware.
- 5.6 **Automatic roll-over:** Unless the School provides notice to BIOZONE at least 7 days before the expiry of the Trial Period that it is not purchasing the paid version of the BIOZONE Service, the School will be deemed to have agreed to purchase, and BIOZONE will provide, the Services from the expiry of the Trial Period in accordance with the further Terms of Service and any terms agreed in writing with BIOZONE or its authorised representative.
- 5.7 **No obligation:** Nothing in these Terms of Service imposes any obligation on BIOZONE to maintain any feature or part of the Online Materials or other aspect of the BIOZONE Service in any paid version of the BIOZONE Service or any other service.

6 SERVICES

- 6.1 **Aims:** BIOZONE's general aims are to:
- a produce and provide high quality student and teacher resources for students in grades (years) 9-12;
 - b improve science education performance in schools across the world; and
 - c *excite, enrich, engage and empower* students to succeed in biology.
- 6.2 **Tool:** BIOZONE provides the Online Materials and other aspects of the Services solely to assist Schools in their delivery of education to their students, and to assist Students to receive the benefit of that education. The BIOZONE Service merely provides an additional tool to assist Schools and Students in achieving their educational goals. While BIOZONE takes care to provide Online Materials that are relevant to the stated curriculum, neither the Online Materials nor any other aspect of the Services is guaranteed to comply with any particular curriculum, or to enable the School to comply with any statutory or other mandated role or responsibility.
- 6.3 **General:** BIOZONE will provide the Services:
- a in accordance with these Terms of Service and applicable law;

- b exercising reasonable care, skill and diligence; and
- c using suitably skilled and experienced personnel.

6.4 Availability:

- a Subject to clause 6.4b, BIOZONE will use reasonable efforts to ensure the BIOZONE Service is available *[on a 24/7 basis] [and that the Support Services are available between Sunday to Thursday 1.30pm and 10.00pm Pacific Standard Time]*. However:
 - i BIOZONE relies partly on third party service providers to Underlying Systems and to help BIOZONE deliver the Services, including *Amazon Web Services* to provide IT infrastructure services, Learning Works Limited and Magic Software Inc. to host the Website and provide storage of Website content. The availability and performance of any services and Underlying Systems provided by third party service providers is beyond the reasonable control of BIOZONE. BIOZONE makes no warranty or representation on the availability or performance of those third party Underlying Systems or services; and
 - ii it is possible that on occasion the BIOZONE Service may be unavailable to permit maintenance or other development activity to take place, or in the event of Force Majeure. BIOZONE will use reasonable efforts to publish on the Website advance details of any unavailability.
- b Through the use of web services and APIs, the BIOZONE Service interoperates with a range of third party service features. BIOZONE does not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third party feature provider ceases to provide that feature or ceases to make that feature available on reasonable terms, BIOZONE may cease to make available that feature to the School. To avoid doubt, if BIOZONE exercises its right to cease the availability of a third party feature, the School is not entitled to any refund, discount or other compensation.

6.5 Related Services:

- a BIOZONE may, from time to time, make available additional services (e.g. training) to supplement the BIOZONE Service (**Related Services**).
- b At the request of the School and subject to the School paying the applicable Fees, BIOZONE may agree to provide to the School an additional Related Service on the terms of these Terms of Service.

6.6 Non-exclusive: BIOZONE's provision of the Services to the School is non-exclusive. Nothing in these Terms of Service prevents BIOZONE from providing the Services to any other person.

7 SCHOOL DISTRICT AND SCHOOL OBLIGATIONS

7.1 **School Districts:** Where clause 1.1bii applies (but without limiting that clause), the School District must ensure that each of its Schools complies with these Terms of Service. A breach of these Terms of Service by a School is, in addition, deemed to be a breach of these Terms of Service by the School District.

7.2 **General use:** The School and its personnel must:

- a use the Services in accordance with these Terms of Service solely for the School's own internal business and educational purposes; and
- b not resell, sublicense or make available the Services to any third party (whether for payment or not), or otherwise exploit the Services, except that a School may:
 - i enable Students to use the Online Materials in accordance with these Terms of Service, provided that the total number of Students permitted to use the Online Materials must not exceed the number of Seats purchased by the School under these Terms of Service; and
 - ii pass on to Students some or all of the costs incurred by the School in procuring the Services.

7.3 **Access conditions:** The School and its personnel must:

- a when using the Services:
 - i use them only for lawful purposes;
 - ii not impersonate another person or misrepresent authorisation to act on behalf of others or BIOZONE; and
 - iii correctly identify the sender of all electronic transmissions;
- b not attempt to undermine the security or integrity of the Underlying Systems;
- c not use, or misuse, the Services in any way which may impair the functionality of the Underlying Systems or impair the ability of any other Student to use the Services;
- d not attempt to view, access or copy any material or data other than that to which the School is authorised to access;
- e neither use the Services in a manner, nor transmit, input or store any Data, that breaches any third party right (including Intellectual Property Rights and privacy rights) or is Objectionable, incorrect or misleading;
- f not copy, translate, modify, make derivative works of, communicate, distribute or otherwise make available all or any part of the Online Materials or any other aspect of the BIOZONE Service except as is expressly permitted in these Terms of Service;

- g not decompile, reverse-engineer, or otherwise attempt to derive the source code of, any software comprising any part of the BIOZONE Service or the Underlying Systems except as is expressly permitted by any applicable law which cannot be excluded by these Terms of Service;
- h ensure the Online Materials and all other aspects of the BIOZONE Service are protected at all times from misuse, damage, destruction or any form of unauthorised use, copying or disclosure;
- i maintain all proprietary notices on the Online Materials or that appear elsewhere in the BIOZONE Service; and
- j not transfer, assign or otherwise deal with or grant a security interest in the BIOZONE Service or the School's rights under these Terms of Service.

7.4 **Specific restrictions:** Without limiting in any way the other obligations and restrictions on the School under these Terms of Service, the School and its personnel must not, and must not permit any other person to:

- a reproduce all or any part of the Online Materials on any other website (including social media or file-sharing site); or
- b share, disclose or communicate the Online Materials to any individual or person who is not authorised to access and use them.

7.5 **Personnel and Student use:** The School must ensure that its Students comply with terms equivalent to those set out above in clauses 7.3 and 7.4, and the Website Terms of Use, when accessing and using the Online Materials.

7.6 **Notification:** The School must notify BIOZONE immediately after it becomes aware of any circumstance which may suggest that any person may have unauthorised knowledge, possession or use of the Online Materials or any other aspect of the BIOZONE Service.

7.7 **Responsibility:** Any act or omission by a member of the School's personnel, which if carried out by the School would be a breach of these Terms of Service, is deemed to be a breach of these Terms of Service by the School.

8 DATA

8.1 **Personal Information:** In accessing, collecting, holding, processing or distributing any Personal Information, including any Personal Information about Students, BIOZONE will comply with:

- a Privacy Law;
- b the Privacy Policy;

8.2 Student terms and conditions and Privacy Policy:

- a Before a Student can use and access the Online Materials, BIOZONE will ask the Student to agree to BIOZONE's terms and conditions for Students (which includes agreement to the Privacy Policy). Subject to the remainder of this clause 8.2, BIOZONE's terms and conditions for Students and the Privacy Policy contain the necessary permissions and disclosures required for BIOZONE and its personnel and service providers to collect, use and disclose Personal Information about Students in accordance with these Terms of Service.
- b If the Student does not agree to BIOZONE's terms and conditions for Students, he or she will not be able to access any Online Materials using the BIOZONE Service. BIOZONE will not be responsible, liable, or held to be in breach of these Terms of Service for any failure to perform its obligations under these Terms of Service or otherwise, to the extent that the failure is caused by a Student failing to agree to BIOZONE's terms and conditions for Students.
- c The School must ensure that it obtains, and its Students obtain, any parental or guardian consent necessary to give effect to the Student's consent referred to in clause 8.2a.

8.3 Other consents: The School is responsible for procuring all licences, authorisations and consents (other than that referred to in clause 8.2a) required for it, its personnel, and its Students to use the Services, including to use, store and input Data into, and process and distribute Data through, the Services.

8.4 Student Personal Information: Without limiting clause 8.1, BIOZONE will not disclose, or use for its own purposes, any Personal Information of any Student other than:

- a to provide the Services and to perform its other obligations and exercise its rights under these Terms of Service; and
- b as required by law (including as required by Privacy Law);

8.5 Agent: The School acknowledges and agrees that to the extent that Data contains Personal Information, in collecting, holding and processing that information through the Services, BIOZONE is acting as an agent of the School for the purposes of any applicable Privacy Law.

8.6 Backups of Data: While BIOZONE will take standard industry measures to back up all Data stored using the Services, the School must keep its own separate back-up copies of all Data uploaded onto, or generated using, the BIOZONE Service by it or its Students.

8.7 International storage of Data: The School agrees that BIOZONE may store Data (including any Personal Information) in secure servers in the United States of America and may access that Data (including any Personal Information) in the United States of America and New Zealand from time to time for the purpose of performing its obligations and exercising its rights under these Terms of Service and any applicable Privacy Law.

8.8 **Indemnity:** The School indemnifies BIOZONE against any liability, claim, proceeding, cost, expense (including the actual legal fees charged by BIOZONE's solicitors) and loss of any kind arising from any actual or alleged claim by a third party that any Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Data is Objectionable, incorrect or misleading.

9 FEES

9.1 **Fees:** The School must pay to BIOZONE the Fees in accordance with the payment terms set out on the pricing page at BIOZONE Academy (www.thebiozone.com/academy) BIOZONE eBooks (www.thebiozone.com/ebooks) or in accordance with payment terms as otherwise agreed in writing.

9.2 Invoicing and payment:

- a BIOZONE will provide the School with valid Sales Tax invoices [*annually in advance*] for the Fees.
- b The Fees exclude Sales Tax, which the School must pay on taxable supplies under these Terms of Service.
- c The School must pay the Fees electronically in cleared funds, or via another payment means as otherwise agreed in writing, without any set-off or deduction. Where the School is required at law to withhold any withholding tax or other amount in relation to the payment of the Fees, the School must pay an additional amount to BIOZONE so that the total amount received by BIOZONE is equivalent to the Fees.

9.3 **Overdue amounts:** BIOZONE may charge interest on overdue amounts. Interest will be calculated from the due date to the date of payment (both inclusive) at an annual percentage rate equal to the corporate overdraft reference rate (monthly charging cycle) applied by BIOZONE's primary trading bank as at the due date (or, if BIOZONE's primary trading bank ceases to quote that rate, then the rate which in the opinion of the bank is equivalent to that rate in respect of similar overdraft accommodation expressed as a percentage) plus 2% per annum.

9.4 **Increases:** By giving at least 30 days' notice on the Website and/or by email to the School using the email address provided by the School to BIOZONE, BIOZONE may make reasonable increases to the Fees from time to time, but not more often than once each Year, and not in the first Year.

10 SUPPORT SERVICES

10.1 **Support Services:** BIOZONE will provide the School with the Support Services during its ordinary business hours (being *Sunday to Thursday, between 1.30pm and 10.00pm Pacific Standard Time*) on working days, provided the School has:

- a complied with, and is continuing to comply with, these Terms of Service, including paid all Fees due;
- b followed all reasonable guidance from BIOZONE (including any guidance or directions on the Website or in the Online Materials) in relation to the use of the BIOZONE Service and any requirements for the proper operating environment;
- c first used reasonable efforts to resolve the issue including by referring to any guidance on the Website or in the Online Materials; and
- d contacted BIOZONE via one of the *means set out on the Website*.

10.2 **Exclusions:** Nothing in these Terms of Service requires BIOZONE to provide Support Services where support is required as a result of:

- a the modification or alteration of the BIOZONE Service by any person other than BIOZONE; or
- b a breach of these Terms of Service by the School or its Students, including use of the Online Materials or BIOZONE Service in a manner or for a purpose not reasonably contemplated by these Terms or Service or not authorised in writing by BIOZONE.

11 INTELLECTUAL PROPERTY

11.1 Ownership:

- a Subject to clause 11.1b, title to, and all Intellectual Property Rights in, the Services, the Online Materials, the Website and all Underlying Systems is and remains the property of BIOZONE (and its licensors). The School must not dispute that ownership or the validity of those Intellectual Property Rights.
- b Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains the property of the School. The School grants BIOZONE a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Data for any purpose (subject always to BIOZONE's obligations to act in accordance with all applicable Privacy Law in relation to its handling of Personal Information) in connection with the exercise of its rights and performance of its obligations in accordance with these Terms of Service.

11.2 **Know-how:** To the extent not owned by BIOZONE, the School grants BIOZONE a royalty-free, transferable, irrevocable and perpetual licence to use any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by BIOZONE in the provision of the Services for the purposes of providing the Services to the School and any other person.

11.3 **Feedback:** Schools and School Districts are welcome to provide constructive feedback whereby suggested improvements to the service may be made.

11.4 Third party sites and material: The School acknowledges that the BIOZONE Service may link to third party websites or feeds that are connected or relevant to the BIOZONE Service. Any link from the BIOZONE Service does not imply any BIOZONE endorsement, approval or recommendation of, or responsibility for, those websites or feeds or their content or operators. To the maximum extent permitted by law, BIOZONE excludes all responsibility or liability for those websites or feeds.

11.5 Third party Intellectual Property Rights indemnity:

- a BIOZONE indemnifies the School against any claim or proceeding brought against the School to the extent that claim or proceeding holds that the School's use of the BIOZONE Service in accordance with these Terms of Service constitutes an infringement of a third party's Intellectual Property Rights (**IP Claim**). The indemnity is subject to the School:
 - i promptly notifying BIOZONE in writing of the IP Claim;
 - ii making no admission of liability and not otherwise prejudicing or settling the IP Claim, without BIOZONE's prior written consent; and
 - iii giving BIOZONE complete authority and information required for BIOZONE to conduct and/or settle the negotiations and litigation relating to the IP Claim. The costs incurred or recovered are for BIOZONE's account.
- b The indemnity in clause 11.5a does not apply to the extent that an IP Claim arises from or in connection with:
 - i the School's breach of these Terms of Service;
 - ii use of the BIOZONE Service in a manner or for a purpose not reasonably contemplated by these Terms of Service or otherwise not authorised in writing by BIOZONE; or
 - iii any third party data or any Data.
- c If at any time an IP Claim is made, or in BIOZONE's reasonable opinion is likely to be made, then in defence or settlement of the IP Claim, BIOZONE may (at BIOZONE's option):
 - i obtain for the School and Students the right to continue using the items which are the subject of the IP Claim; or
 - ii modify, re-perform or replace the items which are the subject of the IP Claim so they become non-infringing.

12 CONFIDENTIALITY

12.1 Security: Each party must, unless it has the prior written consent of the other party:

- a keep confidential at all times the Confidential Information of the other party;
- b effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use; and
- c disclose the other party's Confidential Information to its personnel or professional advisors on a *need to know* basis only and, in that case, ensure that any personnel or professional advisor to whom it discloses the other party's Confidential Information is aware of, and complies with, the provisions of clauses 12.1a and 12.1b.

12.2 **Permitted disclosure:** The obligation of confidentiality in clause 12.1a does not apply to any disclosure or use of Confidential Information:

- a for the purpose of performing these Terms of Service or exercising a party's rights under these Terms of Service;
- b required by law (including under the rules of any stock exchange);
- c which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
- d which was rightfully received by a party to these Terms of Service from a third party without restriction and without breach of any obligation of confidentiality; or
- e by BIOZONE if required as part of a *bona fide* sale of its business (assets or shares, whether in whole or in part) to a third party, provided that BIOZONE enters into a confidentiality agreement with the third party on terms no less restrictive than this clause 12.

12.3 **Publicity:** BIOZONE may make reasonable use of the School's name for the purposes of publicity, promotion, marketing and advertising of BIOZONE and its products and services, including by identifying that the School is one of its customers for the BIOZONE Service and the Online Materials.

13 WARRANTIES

13.1 **Mutual warranties:** Each party warrants that it has full power and authority to enter into and perform its obligations under these Terms of Service which, when signed, will constitute binding obligations on the warranting party.

13.2 **No implied warranties:** To the maximum extent permitted by law, BIOZONE's warranties are limited to those set out in these Terms of Service, and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise are expressly excluded. BIOZONE makes no representation concerning the quality of the Services and, without limiting any part of this clause 13.2, does not promise that the Online Materials or any other aspect of the Services will:

- a meet the School's requirements or be suitable for a particular purpose, including that their use will fulfil or meet any statutory or other mandated role or responsibility of the School; or
- b meet any Students' requirements, including that their use will enable a Student to satisfy or meet some or all of the requirements of any stated curriculum or other course;
- c contain content that is complete, up-to-date and/or error free;
- d be secure, free of viruses or other harmful code, uninterrupted or error free.

13.3 **Compatibility:** While BIOZONE has taken reasonable care to design the BIOZONE Service to be compatible with the operating systems referred to on the Website, it does not make any representation or warranty that the BIOZONE Service is compatible with any particular operating system, browser or device.

13.4 **Third party sites:** BIOZONE makes no representations or warranties in relation to any third party site that is linked from the Website, the Online Materials or any other aspect of the Services. Any such link to other sites does not imply any endorsement, approval or recommendation of, or responsibility for, those sites or their contents, operations, products or operators by BIOZONE or its affiliates.

13.5 **Not a consumer:** The School agrees and represents that it is acquiring the Services, and entering these Terms of Service, for the purpose of a business and that consumer protection legislation does not apply to the supply of the Services to the School or these Terms of Service.

13.6 **Limitation of remedies:** Where legislation or rule of law implies into these Terms of Service a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in these Terms of Service. However, the liability of BIOZONE for any breach of that condition or warranty is limited, at BIOZONE's option, to:

- a supplying the Services again; and/or
- b paying the costs of having the Services supplied again.

14 LIABILITY

14.1 **Maximum liability:** The maximum aggregate liability of BIOZONE to a School under or in connection with these Terms of Service or relating to the Services, whether in contract, tort (including negligence), breach of statutory duty or otherwise, will not in any Year exceed an amount equal to the Fees paid by the School under these Terms of Service in the previous Year (which in the first Year is deemed to be the total Fees paid by the School from the Start Date to the date of the first event giving rise to liability).

14.2 **Unrecoverable loss:** Neither party is liable to the other under or in connection with these Terms of Service or the Services for any:

- a loss of profit, revenue, savings, business, use, data (including Data), and/or goodwill; or

- b consequential, indirect, incidental or special damage or loss of any kind.

14.3 Unlimited liability:

- a Clauses 14.1 and 14.2 do not apply to limit BIOZONE's liability:

- i under the indemnity in clause 11.5a; or
- ii under or in connection with these Terms of Service for:
 - ▲ personal injury or death;
 - ▲ fraud or wilful misconduct; or
 - ▲ a breach of clause 12.

- b Clause 14.2 does not apply to limit the School's liability:

- i to pay the Fees;
- ii under the indemnity in clause 8.8;
- iii for those matters stated in clause 14.3aii; or
- iv for any breach of BIOZONE's Intellectual Property Rights.

14.4 No liability for other's failure: Neither party will be responsible, liable, or held to be in breach of these Terms of Service for any failure to perform its obligations under these Terms of Service or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under these Terms of Service, or by the negligence or misconduct of the other party or its personnel.

14.5 Mitigation: Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with these Terms of Service.

15 TERM, TERMINATION AND SUSPENSION

15.1 Duration: Unless terminated under this clause 15, the Agreement:

- a starts on the Start Date; and
- b subject to the School's continued compliance with these Terms of Service (including payment of all Fees), continues and then expires on the expiry of the initial term agreed in writing between the School and BIOZONE (or its authorised representative).

15.2 Other termination rights:

- a Either party may, by notice to the other party, immediately terminate the Agreement if the other party:

- i breaches any material provision of these Terms of Service and the breach is not:
 - ▲ remedied within 15 days, or (in the case of termination by BIOZONE which would but for this provision take effect within any active teaching period of the Academic Year) 30 days, of the receipt of a notice from the first party requiring it to remedy the breach; or
 - ▲ capable of being remedied;
 - ii becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason; or
 - iii is unable to perform a material obligation under these Terms of Service for 30 days or more due to Force Majeure.
- b If the remedies in clause 11.5c are exhausted without remedying or settling the IP Claim, BIOZONE may, by notice to the School, immediately terminate these Terms of Service.

15.3 Consequences of termination or expiry:

- a Termination or expiry of the Agreement does not affect either party's rights and obligations that accrued before that termination or expiry.
- b Except to the extent required by law, no part of any Fees paid in advance is refundable on termination or expiry of the Agreement for any reason.
- c Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination or expiry of the Agreement, a party must promptly return to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control.
- d At any time prior to one month after the date of termination or expiry, the School may request:
 - i a copy of any Data stored using the BIOZONE Service, provided that the School pays BIOZONE's reasonable costs of providing that copy. On receipt of that request, BIOZONE must provide a copy of the Data in a common electronic form. BIOZONE does not warrant that the format of the Data will be compatible with any software; and/or
 - ii deletion of the Data stored using the BIOZONE Service, in which case BIOZONE must use reasonable efforts to promptly delete that Data.

To avoid doubt, BIOZONE is not required to comply with clause 15.3di to the extent that the School previously requested deletion of the Data.

- e Despite clause 15.3d, where the Agreement is terminated by BIOZONE under clause 15.2a and termination occurs during any active teaching period in the Academic Year, BIOZONE may continue to provide (or offer to do so) to any Student on any terms it sees fit, the Services or similar services for the remainder of the Academic Year, and may use any Data for that purpose.

15.4 **Obligations continuing:** Clauses which, by their nature, are intended to survive termination or expiry of these Terms of Service, including clauses 8.8, 11.1 to 11.4, 12, 14, 15.3, 15.4 and 16, continue in force.

15.5 **Suspending access:** Without limiting any other right or remedy available to BIOZONE, BIOZONE may restrict or suspend the School's access, or the access of a Student, to the Services, where the School or that Student (as applicable):

- a undermines, or attempts to undermine, the security or integrity of the BIOZONE Service or any Underlying Systems;
- b uses, or attempts to use, the BIOZONE Service:
 - i for improper purposes; or
 - ii in a manner, other than for normal operational purposes, that materially reduces the operational performance of the BIOZONE Service; or
- c has otherwise materially breached these Terms of Service (in BIOZONE's reasonable opinion).

15.6 **Notice:** BIOZONE must notify the School where it restricts or suspends the School's access under clause 15.5.

16 DISPUTES

16.1 **Good faith negotiations:** Before taking any court action, a party must use best efforts to resolve any dispute under, or in connection with, these Terms of Service through good faith negotiations.

16.2 **Obligations continue:** Each party must, to the extent possible, continue to perform its obligations under these Terms of Service even if there is a dispute.

16.3 **Right to seek relief:** This clause 16 does not affect either party's right to seek urgent interlocutory and/or injunctive relief.

17 GENERAL

17.1 **Force Majeure:** Neither party is liable to the other for any failure to perform its obligations under these Terms of Service to the extent caused by Force Majeure, provided that the affected party:

- a immediately notifies the other party and provides full information about the Force Majeure;
 - b uses best efforts to overcome the Force Majeure; and
 - c continues to perform its obligations to the extent practicable.
- 17.2 **Rights of third parties:** No person other than BIOZONE and the School has any right to a benefit under, or to enforce, these Terms of Service.
- 17.3 **Independent contractor:** Subject to clause 8.5, BIOZONE is an independent contractor of the School, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under the Agreement.
- 17.4 **Notices:** A notice given by a party under these Terms of Service must be delivered to the other party via email using the email address notified by the other party for this purpose. If the notice is a notice of termination, a copy of that email must be immediately delivered (by hand or courier) to the Chief Executive or equivalent officer of the other party at the other party's last known physical address. BIOZONE's contact email address for this purpose is **support@theBIOZONE.com**.
- 17.5 **Severability:** Any illegality, unenforceability or invalidity of a provision of these Terms of Service does not affect the legality, enforceability or validity of the remaining provisions of these Terms of Service. The illegal, unenforceable or invalid provision is deemed to be modified to the extent necessary to remedy the illegality, unenforceability or invalidity.
- 17.6 **Variation:** Any variation or waiver to these Terms of Service must be in writing and signed by both parties.
- 17.7 **Entire agreement:** These Terms of Service set out everything agreed by the parties relating to the Services, and supersede and cancel anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the subject matter of these Terms of Service that is not expressly set out in these Terms of Service, and no such representation, warranty or agreement has any effect from the Start Date.
- 17.8 **Subcontracting and assignment:** The School may not assign, novate, subcontract or transfer any right or obligation under these Terms of Service without the prior written consent of BIOZONE, that consent not to be unreasonably withheld. The School remains liable for its obligations under these Terms of Service despite any approved assignment, subcontracting or transfer. Any assignment, novation, subcontracting or transfer must be in writing
- 17.9 **Law:** The Agreement is governed by, and must be interpreted in accordance with, the laws of Colorado. Each party submits to the non-exclusive jurisdiction of the courts of Colorado in relation to any dispute connected with these Terms of Service.