

TOP Education, LLC

Terms of Use

Updated January 16, 2018
Effective November 01, 2015

1. SCOPE OF AGREEMENT

This Terms of Use Agreement ("Agreement") by and between TOP EDUCATION, LLC ("we", "us", "our" or "TOP EDUCATION") and you ("you" or "your") governs your use of the toolsofpractice.com web site ("Site") together with all information, content, products, materials and services made available to you through the same by us and/or third parties (which together with the Site shall be collectively referred to as the "Services"). By using or otherwise accessing the Service, or any component thereof, in any manner whatsoever, you agree to be bound by and comply with the terms and conditions of this Agreement. If you do not agree to this Agreement, do not access or use the Service in any manner.

When we refer to the "use" of the Services in this Agreement, we mean any actual or attempted access or use of the Services, including, without limitation, any transmission, exchange of information or communication associated with the Services. These terms and conditions, together with the other terms of use applicable to other TOP EDUCATION owned or controlled web sites and any other policies, rules and provisions which are described, linked or otherwise referred to and form a part of this Agreement, including, without limitation our Privacy Policy at <http://www.toolsofpractice.com>, constitute the entire agreement between you and us, superseding any and all prior or inconsistent understandings, representations or agreements regarding the Services.

We may add, delete or modify any of our Services at any time in our sole discretion. We may similarly change this Agreement at any time and we will notify you of any changes by posting the changes on the Site. Changes will take effect once we notify you ("effective date"). You can always obtain a current copy of this Agreement at any time on our Site. If any change is not acceptable to you, you must stop using the Services. Your use of the Services after the effective date shall constitute your acceptance of such changes. If any new products or services become available, they will be considered a part of the Services and your use of them will be governed by the terms and conditions of this Agreement unless we notify you that different terms and conditions apply. You must also comply with any additional terms which apply to third-party content, material, information, software or other services.

2. INFORMATION AND PASSWORDS

You may be required to provide us with certain information in order to obtain access to and use of certain features and functions of the Services including, without limitation, your name or your company's name, member number, address, telephone number(s), e-mail address, and/or applicable payment data for orders placed for goods and services via the Services (e.g., credit card number, e-mail address, and expiration date) (collectively, your "Information"). You represent, warrant and covenant to us that any and all Information and any other information or data you provide to us, is and will be true, accurate and complete when given to us, that in providing such information to us you will not knowingly omit or misrepresent any material facts or information. You further consent and authorize us to verify your Information as required for your use and access to the Services, as applicable.

Certain features and functions of the Services are not generally available to the public. In order to access and use such features and functions, we may require you to enter a unique user ID (email) and password. We and/or third parties may also, from time to time, provide you with additional codes or passwords necessary to perform certain transactions or otherwise access the Services. Your user ID, password, and any additional codes or passwords are collectively referred to herein as "IDs". Your IDs are personal to you. You agree that you will not allow another person to use your IDs to access and use the Services under any circumstances.

You are solely responsible for maintaining the strict confidentiality of your IDs and for any charges, damages, liabilities or losses incurred or suffered as a result of your failure to do so. We are not liable for any harm caused by or related to the theft of your IDs, your disclosure of your IDs, or your authorization to allow another person to access and use the Services using your IDs. You agree to immediately notify us if you become aware of any unauthorized use of your IDs or other need to deactivate an ID due to security concerns.

3. ACCESS TO AND USE OF THE SERVICES

You may not use or allow others to use, your IDs and/or the Services, directly or indirectly, nor upload, distribute, transmit, communicate, link to, publish or access any data, information or material through, using or otherwise in connection with the Services, that: (a) is libelous, defamatory, vulgar or obscene, pornographic, sexually offensive or explicit, harmful or harassing, threatening, hateful, racially, culturally, ethnically or otherwise objectionable or offensive, discriminatory or abusive; (b) violates any law or regulation or the rights of others; (c) causes duress, distress or discomfort to another or is likely to deter or discourage others from using the Services; and/or (d) infringes any intellectual property, proprietary rights or confidentiality obligations of others. You are solely responsible and liable for any such activity, behavior, use and conduct. We have no liability and you bear the sole and exclusive risk associated with use of or reliance on the accuracy, quality, completeness, reliability or usefulness of any data, information or material in connection with your IDs.

You also may not use, nor allow others to use, your IDs, the Services, directly or indirectly, to: (a) attempt to or actually disrupt, impair or interfere with, alter or modify the Services or any information, data or materials posted and/or displayed by us or anyone else; (b) act in a way that affects or reflects negatively on us, the Services, or anyone else; (c) collect or attempt to collect any information from others including, without limitation, personally identifiable information, without such party's prior consent. You agree to comply with all local, state, federal laws, statutes, rules and regulations, as well as any international treaties, which are applicable to your use of the Services.

You are prohibited from violating or attempting to violate the security of the Services, including, without limitation: (a) accessing data not intended for you or logging onto a processor, communications or access device or account which you are not authorized to access; (b) attempting to probe, scan or test the vulnerability of the Services or to breach security or authentication measures, regardless of your motives or intent; (c) attempting to interfere with or disrupt the Services or service to any user, processor, host or network, including, without limitation, by submitting a virus, worm or Trojan horse; or (d) sending unsolicited e-mail or other information, including promotions or advertising. Violations of system or network security or this Agreement may result in civil or criminal liability. We have the right to investigate occurrences which may involve such violations and may involve, provide information to and cooperate with, law enforcement authorities in prosecuting users who are involved in such violations.

4. INTERACTIVE SERVICES

In connection with your use of the Services, you may have access to and use of discussion groups, chat rooms, bulletin boards and other interactive functionality ("Interactive Services"). If you participate in or use any Interactive Services, you are responsible for any information, data, text, software, music, sound, photographs, graphics, video, messages, webinars or other materials ("Content") you upload, post, link to or otherwise transmit (collectively "transmit") and the consequences thereof. If you choose to transmit any Content using such Interactive Services, you agree to do so solely for lawful purposes and in compliance with all applicable laws. You expressly agree that we have no responsibility for or control over the Content you may transmit using these Interactive Services. We make no representation that your use of the Interactive Services will comply with applicable laws or that they were designed to comply with the applicable laws. Additionally, we do not represent, warrant or guarantee the truthfulness, accuracy, quality, or reliability of any of the Content posted, displayed, linked to or otherwise transmitted via any Interactive Services. We also do not endorse any opinions expressed in or through any Interactive Services. You agree that you must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content.

Although we do not actively monitor, regulate or pre-screen your use of the Services, we reserve the unconditional right (but not the obligation) to remove, move or edit any Content we consider harmful, offensive, disruptive, in violation of law, regulation or any agreement, including, without limitation, which is or may be in violation of this Agreement. We have no liability or responsibility to you or any other person or entity for performance or nonperformance of the monitoring activities.

You hereby grant to us a non-exclusive, worldwide, royalty-free, perpetual license, with right to sublicense, to reproduce, distribute, transmit, create derivative works of, publicly display and publicly perform any Content you submit via the Interactive Services by all means and in any media now known or hereafter developed for any use or purpose.

5. SHOPPING

All goods and services offered for sale on the Site (collectively, "Products") are guaranteed by Us against defects within 60 days. Within that time period, you must contact Customer Service (sales@toolsofpractice.com) and we will coordinate attempting to correct, repair or replace the defective Product. ALL SALES OF ANY PRODUCTS INCLUDING BUT NOT LIMITED TO DOWNLOAD PRODUCTS, SOFTWARE OR WEBINARS PURCHASED VIA THE SITE ARE FINAL AND ARE NOT ELIGIBLE FOR RETURN.

We have no responsibility or liability whatsoever for goods or services you may obtain from or through other web sites or web pages, even if you were directed or linked to such a site or page through the Site, nor are we responsible for assisting you in correcting any problem you may experience with Products if you do not notify us within the 60 day period noted above or for any goods or services not obtained directly on the Site. You agree that your sole and exclusive remedy and our sole, exclusive and maximum liability arising from or relating in any way to any Product shall be the amount you actually paid us (or our suppliers or other e-commerce partners) for it.

If a Product is listed at an incorrect price or with incorrect information, we reserve the right to refuse or cancel orders placed for that Product, whether or not the order has been confirmed and even if your account has been charged (in which event we will issue a credit to your account in the amount of the charge).

Our creation or transmission of an order confirmation does not signify acceptance of your order, nor constitute a binding confirmation of an offer to sell any Product and we reserve the right to accept or decline your order for any reason up until the time the Product is actually delivered to you. We reserve the right at any time, without prior notice, to limit or reduce the quantity you ordered of any Product and we will notify you if we do so. Products are offered for sale only to Members and are not for resale. We do not accept orders from dealers, exporters, wholesalers, distributors, resellers or other similar persons or companies (collectively, "Resellers") via the Site, and reserve the right to refuse, cancel or seek the return of any Products that are purchased in violation of the foregoing restrictions. Resellers wishing to place orders for Products should send an email to the TOP EDUCATION Store manager at paul@toolsofpractice.com for more details.

You are responsible for any taxes imposed on the sale or use of Products and applicable taxes may be added to the amount charged for Products purchased on the Site.

If an order consists of multiple items, they may be shipped separately depending on availability.

6. INTELLECTUAL PROPERTY

The items displayed or otherwise made available via the Services (directly or indirectly), including, without limitation, all text, graphics, images, logos, button icons, programs, software and other data, content, information and materials, tangible and intangible, and all intellectual property rights in and to the same, excluding the Content you upload, post or otherwise transmit via Interactive Services (the "Material"), are owned by or licensed to us or our third party partners. You have no rights in or to such Material and you will not use any Material, except as specifically permitted under this Agreement. Unless otherwise specifically set forth on the Site or we give you written permission, you may only use and access, download and copy the Material for your use, and you will not alter, erase or otherwise obscure our copyright, proprietary or other notices on the Material. You may not do or allow anyone else to do anything with the Material which is not specifically permitted under this Agreement. You acknowledge and agree that the Material is made available for informational and educational purposes only without representation or warranty of any kind, is not a substitute for legal advice or your professional judgment, and unless otherwise specifically specified on the Site, should not be construed as an endorsement by or representation of the opinions of TOP EDUCATION. We do not give legal advice. Your reliance upon Material obtained by you on or through the Services is solely at your own risk. You agree to comply with all notices and requirements accompanying third-party Material. All rights not expressly granted in this Agreement are reserved to us.

7. COPYRIGHT COMPLAINTS

TOP EDUCATION respects the intellectual property rights of others. TOP EDUCATION may, under appropriate circumstances and at its discretion, disable and/or terminate access to or use of the Service for those users who may be infringing the intellectual property rights of others. If you believe that your work has been copied in a manner that constitutes copyright infringement, please provide TOP EDUCATION's copyright agent [paul@toolsofpractice.com] with the information specified below. Please note that this procedure is exclusively for notifying TOP EDUCATION that your copyrighted material has been infringed.

An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest;

A description of the copyrighted work that you claim has been infringed upon;

A description of where the material that you claim is infringing is located on the Site;

Your address, telephone number, and e-mail address;

A statement by you that you have a good-faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;

A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

TOP EDUCATION's Copyright Agent for notice of claims of copyright infringement can be reached as follows: Paul Andrews, 833 Route 28 S Yarmouth MA 02664-5254, or e-mail at paul@toolsofpractice.com

8. LINKS

The Services may provide, or third parties may provide, links to other World Wide Web sites or resources. Because we have no control over such sites and resources, you acknowledge and agree that we are not responsible for the availability of such external sites or resources, and do not endorse and are not responsible or liable for any Content, advertising, products, services or other materials on or otherwise made available via such sites or resources. You further acknowledge and agree that we shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Content, goods or services made available on or through any such site or resource.

9. DISCLAIMER OF WARRANTY

THE SITE AND SERVICES ARE PROVIDED TO YOU ON AN "AS IS, AS AVAILABLE" BASIS, AND YOUR USE THEREOF IS ENTIRELY AT YOUR OWN RISK. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE SITE AND SERVICES, ANY PRODUCTS MADE AVAILABLE TO YOU IN CONNECTION THEREWITH, OR YOUR ACCESS TO OR USE OF ANY OF THE FOREGOING, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND/OR NON-INFRINGEMENT, OR ANY WARRANTIES ARISING BY COURSE OF DEALING OR CUSTOM OF TRADE. WE MAKE NO REPRESENTATION OR WARRANTY THAT ANY MATERIAL, CONTENT, PRODUCTS OR SERVICES DISPLAYED ON OR OFFERED THROUGH THE SITE AND/OR OUR SERVICE ARE ACCURATE, COMPLETE, APPROPRIATE, RELIABLE, OR TIMELY. WE ALSO MAKE NO REPRESENTATIONS OR WARRANTIES THAT THE SERVICES WILL MEET YOUR REQUIREMENTS AND/OR YOUR ACCESS TO AND USE OF THE SITE AND SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, FREE OF VIRUSES, MALICIOUS CODE, OR OTHER HARMFUL COMPONENTS, OR OTHERWISE SECURE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES. ACCORDINGLY, SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

10. LIMITATION OF LIABILITY AND RELEASE

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER TOP EDUCATION, ITS LICENSORS, SUPPLIERS, PARTNERS, AFFILIATES OR THIRD-PARTY SERVICE PROVIDERS SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY OTHER FORM OF DAMAGES IN ANY MANNER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF THE SITE AND SERVICES, REGARDLESS OF THE FORM OF ACTION OR THE BASIS OF THE CLAIM OR WHETHER OR NOT TOP EDUCATION HAS BEEN

ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

IN THE EVENT YOU HAVE ANY DISPUTE WITH ONE OR MORE THIRD PARTIES AS A RESULT OF YOUR USE OF THE MATERIAL OR THE SERVICES, OR ARE IN ANY WAY DAMAGED AS A RESULT OF ANY THIRD PARTY IN CONNECTION THEREWITH, YOU HEREBY RELEASE AND COVENANT NOT TO SUE OR OTHERWISE MAKE A CLAIM, DEMAND OR FILE ANY LEGAL ACTION OR INSTITUTE ANY LEGAL OR REGULATORY PROCEEDINGS AGAINST US, OUR AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES AND SUPPLIERS FROM, FOR ANY CLAIMS, ACTIONS, DEMANDS OR DAMAGES (WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL), OF WHATEVER KIND OR NATURE, KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, WHETHER FORESEEABLE OR NOT, DISCLOSED OR UNDISCLOSED.

11. INDEMNIFICATION

You agree to defend, indemnify and hold us harmless against any losses, expenses, costs or damages (including our reasonable attorneys' fees, expert fees' and other reasonable costs of litigation) arising from, incurred as a result of, or in any manner related to any claim or action based upon (a) your breach of the terms and conditions of this Agreement, (b) your use of the Services, and/or (c) the use of the Services by any other person using your IDs. We may, if necessary, participate in the defense of any such claim or action and any negotiations for its settlement or compromise. No settlement which may adversely affect our rights or obligations shall be made without our prior written approval. We reserve the right, at our own expense and on notice to you, to assume exclusive defense and control of any such claim or action and then your corresponding indemnification obligation will end.

12. TERMINATION

We may terminate this Agreement, restrict, suspend or terminate your access to and use of the Services immediately and without notice or liability, with or without cause, and it will not limit any other rights or remedies which are available to us. You may terminate this Agreement by providing us with written notice of your termination and ceasing to use or access the Services. Termination is your sole right and exclusive remedy if you are not satisfied with the Services. Upon the effective date of any such termination, your right to access and use the Services shall immediately cease.

13. GOVERNING LAW AND INTERPRETATION

This Agreement and your use of the Services, will be interpreted under and governed by the substantive laws of the Commonwealth of Massachusetts, excluding its conflicts-of-law rules. You agree that exclusive jurisdiction and venue of any dispute with TOP EDUCATION or its licensors, or any of their respective affiliates, officers, directors, employees, contractors, agents, representatives or suppliers, arising out of or in any way relating to this Agreement shall reside in the federal and state courts sitting in the Commonwealth of Massachusetts. You expressly consent to the exercise of personal jurisdiction by such courts and agree that you will not object to jurisdiction of or venue in such courts on the grounds of lack of personal jurisdiction, forum non conveniens or otherwise. The parties hereby agree to opt out from and expressly exclude any applicability of the Uniform Computer Information Transactions Act ("UCITA"). This Agreement may not be modified by anyone except in writing signed by an authorized officer of TOP EDUCATION. No failure or delay in enforcing any provision, exercising any option or requiring performance, shall be construed to be a waiver of that or any other right in connection with this Agreement. You may not assign your rights under this Agreement without our prior written

permission and any attempt by you to do so shall be void. If any term of this Agreement is held invalid, illegal or unenforceable, the remaining portions shall not be affected. Any provision of this Agreement which by its nature must survive the termination of this Agreement in order to give effect to its meaning shall survive such termination.