



MasteryTrack Terms of Service

Last Updated: August 9, 2016

Welcome, and thank you for your interest in the MasteryTrack service at www.masterytrack.org (our “**Service**”) and offered by The Learning Accelerator (“**TLA**,” “**we**,” or “**us**”). These Terms of Service are a legally binding contract between you and TLA regarding your use of the Service. If you agree to these Terms on behalf of an organization, then you represent and warrant that you have the authority to bind that organization to these Terms. In that case, the term “you” will refer to the organization.

PLEASE READ THE FOLLOWING TERMS CAREFULLY. BY CLICKING “I ACCEPT,” OR BY USING THE SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD, AND AGREE TO BE BOUND BY, THE FOLLOWING TERMS AND CONDITIONS, INCLUDING THE MASTERYTRACK PRIVACY POLICY (TOGETHER, THE “**TERMS**”). If you are not eligible, or do not agree to the Terms, then you do not have our permission to use the Service.

These Terms provide that all disputes between you and TLA will be resolved by BINDING ARBITRATION. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract, except for matters that may be taken to small claims court. Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury, and your claims cannot be brought as a class action. Please review Section 19 (“Dispute Resolution and Arbitration”) for the details regarding your agreement to arbitrate any disputes with TLA.

1. **MasteryTrack Service Overview.** The Service is an online, mastery-based dashboard and assessment tool that displays students’ learning progress to instructors and helps students demonstrate mastery of subjects and skills at their own pace.
2. **Eligibility.** By agreeing to these Terms, you represent and warrant to us that (a) you have not previously been suspended or removed from the Service and (b) your registration and your use of the Service will not violate any law or regulation.
3. **Accounts and Registration.** To use the Service, you may be required to register an account. When you register an account, you may be required to provide us with some information about yourself (or the person on whose behalf you register the account) such as a name, educational institution, or email address. You agree that any information you provide to us is accurate and that you will keep it accurate and up-to-date at all times. You are solely responsible for maintaining the confidentiality of your account and the password enabling access to your account, and you accept responsibility for all activities that occur under your account. If you have reason to believe that your account is no longer secure, then you must immediately notify us at support@masterytrack.org. When you register an account on behalf of a student, you represent and warrant that you are submitting student-related information to the Service in compliance with applicable law, such as the U.S. Children’s Online Privacy Protection Act, and you have provided any required notices and collected any required consents from students, parents and/or guardians so that we may receive, maintain, process, use and disclose the information you submit as described in these Terms and our Privacy Policy. You acknowledge and agree that you, and not TLA,

are obligated to provide any notices and obtain any consents from students, parents and/or guardians as required by applicable law.

4. **Fees.** No fees are required to register an account. However, accessing certain content or features may require you to pay fees to TLA or a third party. Any fees paid to TLA in connection with the Service are non-refundable. TLA takes no responsibility for fees paid to a third party, even if such third party provides services or content that integrates with the Service, and all of your rights with respect to such fees are governed by the terms of your agreement with such third party.

5. **User Content**

- 5.1 **User Content Generally.** Certain features of the Service may permit users to upload and publish on the Service text-based notes, messages and other content that is visible to other users (“**User Content**”), including hyperlinks to content hosted on third-party websites from the Service (“**Linked Content**”). You retain copyright and any other proprietary rights that you may hold in the User Content that you upload to the Service subject to the licenses granted in this Section 5.
- 5.2 **Limited License Grant to TLA.** By posting or publishing User Content, you grant TLA a worldwide, non-exclusive, royalty-free, fully paid right and license (with the right to sublicense) to host, store, transfer, display, perform, reproduce, modify for the purpose of formatting for display, and distribute your User Content, in whole or in part, in any formats and through any distribution methods now known or hereafter developed, in connection with making the Service available to you and other users.
- 5.3 **Limited License Grant to Other Users.** By posting and sharing User Content with another user of the Service, you hereby grant that user a non-exclusive license to access and use such User Content as permitted by these Terms and the functionality of the Service.
- 5.4 **User Content Representations and Warranties.** You are solely responsible for your User Content and the consequences of posting or publishing User Content, including hyperlinks to Linked Content. By uploading, posting or publishing User Content, you affirm, represent, and warrant that:
 - a. you are the owner of the User Content, or have the necessary licenses, rights, consents, and permissions to authorize TLA to exercise the licenses granted by you in these Terms; and
 - b. your User Content, and the use of your User Content as contemplated by these Terms, does not and will not: (i) infringe or misappropriate any third-party intellectual property right, including any copyright, trademark, patent, trade secret, or moral right; (ii) defame or otherwise violate any person’s rights, including any privacy or publicity right; or (iii) cause TLA to violate any law or regulation.
- 5.5 **User Content Disclaimer.** We are under no obligation to edit or control User Content, and will not be in any way responsible or liable for User Content or Linked Content. TLA may, however, at any time and without prior notice, screen, remove, edit, or block any User Content that in our sole judgment violates these Terms or is otherwise objectionable. You agree to waive, and do waive, any legal or equitable right or

remedy you may have against TLA with respect to User Content or Linked Content. We expressly disclaim any and all liability in connection with User Content and Linked Content. If notified by a user or content owner that User Content allegedly does not conform to these Terms, we may investigate the allegation and determine in our sole discretion whether to remove the User Content, which we reserve the right to do at any time and without notice. For clarity, TLA does not permit copyright-infringing activities on the Service.

6. Digital Millennium Copyright Act

6.1 **DMCA Notification.** We comply with the provisions of the Digital Millennium Copyright Act applicable to Internet service providers (17 U.S.C. §512, as amended). If you have an intellectual property rights-related complaint about material posted on the Service, you may contact our Designated Agent at the following address:

The Learning Accelerator
ATTN: Designated Agent - Scott Ellis
10605 Farallone Drive
Cupertino, CA 95014
Email: support@masterytrack.org

Any notice alleging that materials hosted by or distributed through the Service infringe intellectual property rights must include the following information:

- a. an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other right being infringed;
- b. a description of the copyright-protected work or other intellectual property right that you claim has been infringed;
- c. a description of the material that you claim is infringing and where it is located on the Service;
- d. your address, telephone number, and email address;
- e. a statement by you that you have a good faith belief that the use of those materials on the Service is not authorized by the copyright owner, its agent, or the law; and
- f. a statement by you that the above information in your notice is accurate and that, under penalty of perjury, you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

6.2 **Repeat Infringers.** TLA will terminate the accounts of users that are determined by us to be repeat infringers.

7. **Ownership; Proprietary Rights.** The Service is owned and operated by TLA. The assessment questions and answers, visual interfaces, graphics, design, compilation, information, data, computer code, services, and all other elements of the Service, excluding any User Content and Linked Content provided by TLA (“**Materials**”) are protected by

intellectual property and other laws. All Materials are the property of TLA or our third-party licensors. TLA reserves all rights to the Materials not expressly granted in these Terms.

8. Prohibited Conduct. YOU AGREE NOT TO:

- 8.1 sell or otherwise transfer (a) any Materials (including assessment questions and answers), (b) the access granted under these Terms, or (c) any right or ability to view, access, or use any Materials;
- 8.2 use the Service for any illegal purpose or in violation of any local, state, national, or international law;
- 8.3 violate any right of a third party, including by infringing or misappropriating any third party intellectual property right;
- 8.4 upload any User Content or other content, including links to any Linked Content, that is unlawful, defamatory, libelous, or that a reasonable person could deem to be profane, indecent, pornographic, harassing, threatening, embarrassing, hateful, or otherwise inappropriate;
- 8.5 interfere with security-related features of the Service, including by: (a) disabling or circumventing features that prevent or limit use or copying of any content; or (b) reverse engineering any portion of the Service except to the extent that the activity is expressly permitted by applicable law;
- 8.6 interfere with the operation of the Service or any user's enjoyment of the Service, including by: (a) uploading, linking to, or otherwise disseminating any virus, adware, spyware, worm, or other malicious code; (b) collecting personal information about another user or third party without consent; or (c) interfering with, intruding into, or disrupting any network or equipment connected to or used to provide the Service;
- 8.7 perform any fraudulent activity including impersonating any person or entity, claiming a false affiliation, or accessing any other Service account without permission; or
- 8.8 attempt to do any of the acts described in this Section 7, or assist, encourage, permit, or request any person to engage in any of the acts described in this Section 7.

9. Third-Party Services and Linked Websites. TLA may provide tools through the Service that enable you export to or otherwise share information with third party services, or to import or otherwise access information from third party services, including by paying a fee to a third party as described in Section 4. By using an account that is connected to or associated with a third-party service, you agree that we may share information associated with your account (including User Content and data concerning performance on assessments) with, or receive information from, the applicable third-party service. Such third-party services may include the educational institution associated with a user's account. Third-party services are not under our control, and we are not responsible for any third-party service's use of your exported information. The Service may also contain links to third-party websites. Such linked websites and Linked Content are not under our control, and we are not responsible for their content.

10. **Termination of Use; Discontinuation and Modification of the Service.** You may terminate your account by contacting us at support@masterytrack.org. If you violate any of these Terms at any time, then you no longer have our permission to use the Service, notwithstanding any permission granted elsewhere in these Terms. In addition, we may terminate your user account on the Service or suspend or terminate your access to the Service at any time, for any reason or no reason, with or without notice. We also reserve the right to modify or discontinue the Service or any of its features at any time, temporarily or permanently, without notice. We will have no liability whatsoever on account of any change to the Service or any suspension or termination of your access to or use of the Service.
11. **Privacy Policy; Additional Terms**
 - 11.1 **Privacy Policy.** Please read the MasteryTrack Privacy Policy carefully for information relating to our collection, use, storage and disclosure of your personal information. The MasteryTrack Privacy Policy is incorporated by this reference into, and made a part of, these Terms.
 - 11.2 **Additional Terms.** Your use of the Service is subject to all additional terms, policies, rules, or guidelines applicable to the Service, or certain features of the Service, that we may post on or link to from the Service (the “**Additional Terms**”), such as end-user license agreements for any downloadable software applications or rules that apply to a particular feature or content on the Service, subject to Section 12. All Additional Terms are incorporated by this reference into, and made a part of, these Terms.
12. **Modification of these Terms.** We reserve the right, at our discretion, to change these Terms on a going-forward basis at any time. Please check these Terms periodically for changes. If a change to these Terms materially modifies your rights or obligations, you will be required to accept the modified Terms in order to continue to use the Service. Material modifications are effective upon your acceptance of the modified Terms. Immaterial modifications are effective upon publication. Disputes arising under these Terms will be resolved in accordance with the version of these Terms that was effective at the time the dispute arose.
13. **Feedback.** If you choose to provide us with input and suggestions regarding problems with or proposed modifications or improvements to the Service (“**Feedback**”), then you hereby grant TLA a perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right to exploit the Feedback in any manner and for any purpose, including to improve the Service and create other products and services.
14. **Indemnity.** You are responsible for your use of the Service, and you will defend and indemnify TLA and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (together, the “**TLA Entities**”) from and against every claim, liability, damage, loss, and expense, including reasonable attorneys' fees and costs, arising out of or in any way connected with: (a) your access to, use of, or alleged use of, the Service; (b) your breach of any portion of these Terms, any representation, warranty, or agreement referenced in these Terms, or violation of any applicable law or regulation; (c) your violation of any third-party right, including any intellectual property or other property right, or any privacy, publicity, or confidentiality right; or (d) any dispute or issue between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (without limiting your indemnification obligations

with respect to that matter), and in that case, you agree to cooperate with our defense of that claim.

15. **Disclaimers; No Warranties.** THE FOLLOWING TERMS OF THIS SECTION 15 APPLY TO THE FULLEST EXTENT PERMITTED BY LAW:

THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE ARE PROVIDED “**AS IS**” AND ON AN “**AS AVAILABLE**” BASIS, AND THE TLA ENTITIES DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (B) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. THE TLA ENTITIES DO NOT WARRANT (1) THAT THE SERVICE OR ANY PORTION OF THE SERVICE, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE SERVICE, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND (2) THAT ANY OF THOSE ISSUES WILL BE CORRECTED.

NO ADVICE, INFORMATION, MATERIALS, OR CONTENT, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM TLA OR THE SERVICE, WILL CREATE ANY WARRANTY REGARDING ANY OF THE TLA ENTITIES OR THE SERVICE THAT IS NOT EXPRESSLY STATED IN THESE TERMS, AND NO AGENT OR EMPLOYEE OF TLA IS AUTHORIZED TO MAKE ANY WARRANTY OR GUARANTEE EXCEPT AS SET FORTH IN THE TERMS OF THIS AGREEMENT. YOU ASSUME ALL RISK FOR ANY DAMAGE THAT MAY RESULT FROM YOUR USE OF OR ACCESS TO THE SERVICE AND ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE. YOU USE AND ACCESS THE SERVICE, ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE, ANY LINKED CONTENT, AND ANY ASSOCIATED SITES OR SERVICES, AT YOUR OWN DISCRETION AND RISK. YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR OTHER EQUIPMENT USED IN CONNECTION WITH THE SERVICE), OR LOSS OF DATA RESULTING FROM USE OF OR ACCESS TO THE SERVICE AND MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE.

16. **Limitation of Liability.** THE FOLLOWING TERMS OF THIS SECTION 16 APPLY TO THE FULLEST EXTENT PERMITTED BY LAW:

IN NO EVENT WILL THE TLA ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR ANY OTHER INTANGIBLE LOSS) RELATED TO THIS AGREEMENT OR THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL THEORY, EVEN IF TLA HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE.

EXCEPT AS PROVIDED IN SECTION 19.4(iii), THE AGGREGATE LIABILITY OF THE TLA ENTITIES TO YOU FOR ALL MATTERS ARISING OUT OF THIS AGREEMENT OR RELATED TO THE SERVICE IS LIMITED TO \$100.

THE PROVISIONS OF SECTION 15 AND THIS SECTION 16 ALLOCATE RISKS BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS

IN THIS SECTION 16 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

17. **Governing Law.** These Terms are governed by the laws of the State of California without regard to conflict of law principles. If a lawsuit or court proceeding is permitted under these Terms, then you and TLA agree to submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Santa Clara County, California for the purpose of litigating any dispute.

18. **General.** These Terms, including the Privacy Policy, any consent provided by you regarding TLA's collection, use, or disclosure of personal information, and any other agreements expressly incorporated by reference into these Terms, are the entire and exclusive understanding and agreement between you and TLA regarding your use of and access to the Service. Except as expressly permitted above, these Terms may be amended only by a written agreement signed by authorized representatives of all parties to these Terms. You may not assign or transfer these Terms or your rights under these Terms, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms at any time without notice or consent. The failure to require performance of any provision will not affect our right to require performance at any other time after that, nor will a waiver by us of any breach or default of these Terms, or any provision of these Terms, be a waiver of any subsequent breach or default or a waiver of the provision itself. Use of section headers in these Terms is for convenience only and will not have any impact on the interpretation of any provision. If any part of these Terms is held to be invalid or unenforceable, the unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect. Upon termination of these Terms, any provision that by its nature or express terms should survive will survive such termination or expiration, including, but not limited to Sections 2, 4, 5.2, 5.3 and 7 through 20 (and any defined terms used therein), along with the Privacy Policy and any other accompanying agreements.

19. **Dispute Resolution and Arbitration**

19.1 **Generally.** In the interest of resolving disputes between you and TLA in the most expedient and cost effective manner, you and TLA agree that every dispute arising in connection with these Terms will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. **YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND TLA ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.**

19.2 **Exceptions.** Despite the provisions of Section 19.1, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (c) seek injunctive relief in a court of law; or (d) to file suit in a court of law to address an intellectual property infringement claim.

- 19.3 **Arbitrator.** Any arbitration between you and TLA will be settled under the Federal Arbitration Act, and governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, “**AAA Rules**”) of the American Arbitration Association (“**AAA**”), as modified by these Terms, and will be administered by the AAA. The AAA Rules and filing forms are available online at www.adr.org, by calling the AAA at 1-800-778-7879, or by contacting TLA.
- 19.4 **Notice; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if such other party has not provided a current physical address, then by electronic mail (“**Notice**”). TLA’s address for Notice is: The Learning Accelerator, 10605 Farallone Drive, Cupertino, CA 95014. The Notice must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought (“**Demand**”). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice is received, you or TLA may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or TLA must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the dispute is finally resolved through arbitration in your favor, TLA will pay you the highest of the following: (i) the amount awarded by the arbitrator, if any; (ii) the last written settlement amount offered by TLA in settlement of the dispute prior to the arbitrator’s award; or (iii) \$1,000.
- 19.5 **Fees.** If you commence arbitration in accordance with these Terms, TLA will reimburse you for your payment of the filing fee, unless your claim is for more than \$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in Santa Clara County, California, but if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse TLA for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator’s ruling on the merits.
- 19.6 **No Class Actions.** YOU AND TLA AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and TLA agree otherwise, the arbitrator may not consolidate more than one person’s claims, and may not otherwise preside over any form of a representative or class proceeding.

- 19.7 **Modifications to this Arbitration Provision.** If TLA makes any future change to this arbitration provision, other than a change to TLA's address for Notice, you may reject the change by sending us written notice within 30 days of the change to TLA's address for Notice, in which case your account with TLA will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.
- 19.8 **Enforceability.** If Section 19.6 is found to be unenforceable or if the entirety of this Section 19 is found to be unenforceable, then the entirety of this Section 19 will be null and void and, in that case, the parties agree that the exclusive jurisdiction and venue described in Section 17 will govern any action arising out of or related to these Terms.
20. **Consent to Electronic Communications.** By using the Service, you consent to receive certain electronic communications from us as further described in our Privacy Policy. Please read our Privacy Policy to learn more about our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing.
21. **Contact Information.** The Service is offered by The Learning Accelerator, located at 10605 Farallone Drive, Cupertino, CA 95014. You may contact us by sending correspondence to that address or by emailing us at support@masterytrack.org.