

PRO-ED, INC.
PRO-ED EXAMINEE PORTAL
TERMS OF USE AGREEMENT

Effective Date: April 8, 2021

Overview: PRO-ED, Inc. (“PRO-ED”) develops and publishes standardized tests, books, curricular and educational materials, including online software (the “Products and Services”) used by schools, professionals, and caregivers to improve the education and quality of life for students, clients, family members and their caregivers. We have over 250 standardized assessments that require updating every 7 to 10 years. A major part of creating and updating these assessments involves administering paper and pencil and online tests along with collecting basic background data on individuals of varying ages, races, ethnicities, and ability levels. Our “**Tests**” include certain PRO-ED tests and assessments that PRO-ED owns or has the rights to use.

The data we collect is used to establish “norms,” which are national averages so that professional clinicians can use these measures to determine if a given individual has a disability and to determine the severity of that disability. While our Tests are used primarily with persons suspected of having some sort of educational disability, the examinees we need and the data we collect is typically from persons not diagnosed with a disability. However, for some of our tests related to specific conditions, we need examinees that have been diagnosed with certain conditions to validate our tests. As a result, we request demographic and disability/exceptionality information from potential examinees.

PRO-ED has developed this PRO-ED Examinee Portal website online service (the “**PRO-ED Examinee Portal**” or “**Portal**”) to connect individual test examinees who volunteer to take our field tests (“**Examinee(s)**”) with PRO-ED authorized and qualified testing professionals who administer our Tests when we need to update and improve them (“**Field Examiner(s)**”) (Examinees and Field Examiners collectively referred to in this TOU as, “**you**”, or “**your**”).

Legal Terms for PRO-ED Examinee Portal and Field Test Administrations: The legal terms governing your use of this PRO-ED Examinee Portal and participation in any PRO-ED field testing include respectively, the Field Examiner agreement to which each Field Examiner must agree to before being authorized to use the PRO-ED Examinee Portal; the PRO-ED Examinee Portal [Examinee Participation Agreement](#) that Examinees must accept to be authorized to participate in the PRO-ED Examinee Portal and any field Test(s); and this Terms of Use Agreement for the PRO-ED Examinee Portal including your acknowledgement that you have read and understand the PRO-ED Examinee Portal Privacy Policy.

This Terms of Use agreement (the “**Agreement**” or “**Terms of Use**” or “**TOU**”) is between the user of the PRO-ED Examinee Portal (either an “**Examinee**” or a “**Field Examiner**”) and PRO-ED, Inc., and is entered into upon your acceptance by checking the “**Accept**” button below.

By using the PRO-ED Examinee Portal, you indicate that you accept and agree to our Terms of Use and acknowledge that you have read and understand our PRO-ED Examinee Portal [Privacy Policy](#).

Please read these Terms of Service carefully before accessing or using the PRO-ED Examinee Portal.

Any new features or tools which are added to the PRO-ED Examinee Portal shall also be subject to the TOU. You can review the most current version of the TOU at any time on this page. We reserve the right to update, change or replace any part of these Terms of Use by posting updates and/or changes to our PRO-ED Examinee Portal website. It is your responsibility to check this page periodically for changes. Your continued use of or access to the PRO-ED Examinee Portal website or participation in any field Test Administrations following the posting of any changes constitutes acceptance of those changes.

1. PRO-ED Examinee Portal Terms

By agreeing to these Terms of Use, you represent that you are a resident of the United States or its territories, at least the age of majority in your state of residence, or that you are the age of majority in your state of residence and you have given us your consent to allow any of your minor dependents to use this Portal, or you are a legal representative for honorand you have the right to permit the underage individual to access the PRO-ED Examinee Portal and agree on their behalf. A breach or violation of any of this TOU may result in an immediate termination of your use of the PRO-ED Examinee Portal and/or restriction from participating in any PRO-ED field testing.

2. General Conditions/Personal Information

You agree not to reproduce, duplicate, copy, sell, resell, or otherwise exploit for any commercial purpose any portion of any Test, Test Materials, Product or Service, the PRO-ED Examinee Portal, use of the foregoing , or access to the foregoing or any contact on the website through which the PRO-ED Examinee Portal is provided, without express written permission by PRO-ED.

The headings used in this agreement are included for convenience only and will not limit or otherwise affect these Terms.

Your submission of Personal Information through the PRO-ED Examinee Portal, Registration Form, Test Authorization Form and/or participation in any field Test administration is governed by our PRO-ED Examinee Portal [Privacy Policy](#).

3. PRO-ED Examinee Portal Not for Medical Advice or Treatment

The PRO-ED Examinee Portal does not provide any medical or healthcare products, services, treatment or advice, and is not for medical emergencies or urgent situations.

4. Cost

There is no charge for using the PRO-ED Examinee Portal or participating in any field testing..

5. Newsletters/Educational Resources

PRO-ED may send you email communications including information about its Tests, Products and Services, and newsletters regarding its needed Test administrations. Such information is not a substitute for seeing an appropriate healthcare professional for medical treatment. The information contained in these communications and resources may be compiled from a variety of sources. PRO-ED makes no warranty as to the content of these materials or the information contained therein.

6. Your Account

Upon registration, you will create a unique username and password. You are solely responsible for maintaining the confidentiality of your unique username and password and for all activities that occur under your username and password. You agree to prohibit anyone else from using your username and password and will immediately notify PRO-ED of any unauthorized use of your username and password or other security concerns of which you become aware.

You agree that PRO-ED may access, preserve, and disclose your account information, including your username and password, and Personal Information if required to do so by law or in good faith belief that it is necessary to: (i) enforce this Terms of Use, (ii) respond to your requests for customer service, (iii) comply with federal, state, or local laws or legal process, (iv) respond to claims that information you have provided violates the rights of others, (v) prevent fraud and help ensure security; or (vi) protect the rights, property or personal safety of PRO-ED, any Tests, Products and Services, the PRO-ED Examinee Portal and its users, or the public.

You agree to use the PRO-ED Examinee Portal website in accordance with this Terms of Use, and abide by the obligations hereunder. You are responsible for maintaining the confidentiality of your password and for all activities that occur under your password. You agree to prohibit anyone else from using your password and will immediately notify PRO-ED of any unauthorized use of your password or other security concerns of which you may become aware.

7. Intellectual Property

PRO-ED hereby grants you a limited, revocable, non-transferable, and non-exclusive license limited solely to viewing or downloading a single copy of the material on the PRO-ED Examinee Portal website and/or any Tests including any materials related to the Tests, and to use the PRO-ED Examinee Portal website and any Tests or portion thereof to the extent necessary to use the PRO-ED Examinee Portal services or to take a field Test solely for their intended purposes. With the exception of any Personal Information (see definition in the PRO-ED Examinee Portal Privacy Policy) submitted by an Examinee and/or Field Examiner, PRO-ED retains all right, title and interest in and to its Tests, any Test related materials, any of its other Products and Services, the PRO-ED Examinee Portal website, the PRO-ED Examinee Portal services and any content, products, documentation, or other materials on the PRO-ED Examinee Portal website and any patent, copyright, trade secret, trademark, service mark, or other intellectual property or proprietary right in any of the foregoing. With the exception of any Personal Information submitted by an Examinee or Test Examiner, the information available through the PRO-ED Examinee Portal website or during or related to a field Test administration is the property of PRO-ED and is protected by United States copyright, trademark, and other intellectual property laws; and any copy made of such information obtained from the PRO-ED Examinee Portal website as provided herein must include the copyright and/or trademark notice when applicable and only as authorized by PRO-ED. You agree not to reproduce, retransmit, distribute, disseminate, sell, publish, broadcast, or circulate the information owned by PRO-ED, and made available to you during a field Test administration, from the Test database, and/or from the PRO-ED Examinee Portal, or received from any other party or individual through the foregoing. Use, reproduction, copying, or redistribution of any PRO-ED Tests, Test materials, other Products and Services, PRO-ED Examinee Portal or PRO-ED name, mark, or logo or any of its participating sites' name, mark, or logo is strictly prohibited without written permission from PRO-ED.

8. Third Party Sites

Although the PRO-ED Examinee Portal may include links providing direct access to third-party Internet sites as a convenience, the inclusion of a link does not imply endorsement of the linked site by PRO-ED. PRO-ED takes no responsibility for the content or information contained on those other sites, and does not exert any editorial or other control over those other sites. Nor does PRO-ED take responsibility for the privacy policies and practices of these third-party links.

9. Operation and Record Retention

PRO-ED reserves complete and sole discretion with respect to the operation of PRO-ED Examinee Portal website. PRO-ED may, among other things withdraw, suspend, or discontinue any functionality or feature of PRO-ED Examinee Portal features or services. PRO-ED is not responsible for transmission errors, or any corruption or compromise of data carried over local or interchange telecommunication carriers. PRO-ED is not responsible for maintaining data arising from or associated with the use of the PRO-ED Examinee Portal services. PRO-ED reserves the right to maintain, delete or destroy all communications and materials posted or uploaded to the PRO-ED Examinee Portal.

10. Limitations on Use

You agree not to access or use the PRO-ED Examinee Portal website in an unlawful way or for any unlawful purpose or for any purposes other than its intended purposes. You agree not to post or transmit: (a) a message under a false name; or (b) any information which (i) is libelous, defamatory, obscene, fraudulent, false or contrary to the ownership or intellectual property rights of any other person, or (ii) contains any virus, worm, Trojan horse or other code which is contaminating or destructive to the files or programs of PRO-ED Examinee Portal or any of its users. PRO-ED Examinee Portal reserves the right to delete any information provided by you that it, in its sole discretion, deems to be fraudulent, abusive, defamatory, obscene or in violation of a copyright, trademark or other intellectual property or ownership right of any other person.

11. Disclaimers

General Disclaimers

YOU ACKNOWLEDGE THAT YOUR USE OF THE PRO-ED EXAMINEE PORTAL AND ANY PARTICIPATION IN FIELD TEST ADMINISTRATIONS IS AT YOUR SOLE RISK, AND THAT YOU ASSUME FULL RESPONSIBILITY FOR ALL RISK ASSOCIATED THEREWITH. ALL INFORMATION, PRODUCTS OR SERVICES CONTAINED ON OR PROVIDED THROUGH THIS WEBSITE ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW PRO-ED, INC. AND ITS AFFILIATES, DIRECTORS, OFFICERS, MANAGERS, EMPLOYEES OR OTHER REPRESENTATIVES (COLLECTIVELY, "AFFILIATES") HEREBY DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND FREEDOM FROM COMPUTER VIRUS STRAINS. WITHOUT LIMITING THE FOREGOING, PRO-ED AND ITS AFFILIATES MAKE NO WARRANTY AS TO THE RELIABILITY, ACCURACY, TIMELINESS, USEFULNESS, ADEQUACY, COMPLETENESS OR SUITABILITY OF THE PRO-ED EXAMINEE PORTAL, INFORMATION RECEIVED THROUGH THE PRO-ED EXAMINEE PORTAL, FIELD TEST ADMINISTRATIONS AND OTHER SERVICES PROVIDED HEREUNDER.

Limitation of Liability

IN NO EVENT SHALL PRO-ED, INC. OR ITS AFFILIATES BE LIABLE FOR ANY DAMAGES OR OTHER LIABILITY TO YOU OR ANY OTHER USERS OF THE PRO-ED EXAMINEE PORTAL OR FOR PARTICIPATION IN ANY FIELD TEST ADMINISTRATIONS. TO THE MAXIMUM EXTENT PERMITTED BY LAW. IN NO EVENT SHALL PRO-ED, INC. OR ANY OF ITS AFFILIATES BE LIABLE FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY, WRONGFUL DEATH, LOSS OF GOODWILL, LOSS OF USE, LOSS OF PROFITS, INTERRUPTION OF SERVICE OR LOSS OF DATA, WHETHER IN ANY ACTION IN WARRANTY, CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO NEGLIGENCE OR FUNDAMENTAL BREACH), OR OTHERWISE ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF, OR THE INABILITY TO USE, THIS PRO-ED EXAMINEE PORTAL, PARTICIPATE IN ANY FIELD TEST ADMINISTRATION OR ANY SERVICE OFFERED THROUGH THIS PRO-ED EXAMINEE PORTAL OR ANY MATERIAL OR INFORMATION CONTAINED IN, ACCESSED THROUGH, OR PRODUCTS OR SERVICES OBTAINED THROUGH THIS PRO-ED EXAMINEE PORTAL, EVEN IF AN AUTHORIZED REPRESENTATIVE OF PRO-ED IS ADVISED OF THE LIKELIHOOD OR POSSIBILITY OF THE SAME. TO THE EXTENT ANY OF THE ABOVE LIMITATIONS OF LIABILITY ARE RESTRICTED BY APPLICABLE FEDERAL, STATE, OR LOCAL LAW, SUCH LIMITATIONS SHALL NOT APPLY TO THE EXTENT OF SUCH RESTRICTIONS.

12. Indemnification

YOU AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS PRO-ED, INC. AND ITS OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL LOSSES, LIABILITY, EXPENSES, DAMAGES AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING OUT OF OR RELATED TO ANY BREACH OF THIS TERMS OF USE, ANY NEGLIGENT OR WRONGFUL ACTION OR OMISSION BY YOU RELATED TO YOUR USE OF OR PROVIDING OF SERVICES THROUGH THE PRO-ED EXAMINEE PORTAL OR FIELD TEST ADMINISTRATIONS, OR ANY NEGLIGENT OR WRONGFUL USE OF THE PRO-ED EXAMINEE PORTAL OR FIELD TEST ADMINISTRATIONS (INCLUDING, WITHOUT LIMITATION, INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OR NEGLIGENT OR WRONGFUL CONDUCT) BY YOU OR ANY OTHER PERSON ACCESSING YOUR ACCOUNT.

The indemnification provisions set forth above and the provisions under Disclaimers above are for the benefit of PRO-ED, Inc. and its affiliates. Each of these individuals or entities shall have the right to assert and enforce those provisions directly against you on its own behalf.

13. Term and Termination

This Terms of Use shall commence upon the date you first access or use the PRO-ED Examinee Portal. Either you or PRO-ED may terminate this Terms of Use and your right to use the PRO-ED Examinee Portal at any time, with or without cause. This Terms of Use and the licenses granted hereunder shall terminate without notice in the event you (or any authorized person using your account) fail to comply with the terms and conditions of this Terms of Use posted on the PRO-ED Examinee Portal website from time to time.

14. Notice

PRO-ED may provide notice by e-mail to the e-mail address you provided PRO-ED or by a general notice on the PRO-ED Examinee Portal website, or by written communication delivered by first class U. S. mail

or express courier to your address on record in the PRO-ED Examinee Portal registration information. You may give notice to PRO-ED at any time via electronic mail to privacy@proedinc.com , through the PRO-ED Examinee Portal Contact Page, or by letter delivered by first class postage prepaid U. S. mail or overnight courier to ATTN: PRO-ED, Inc., 1301 W. 25th Street, Suite 300, Austin, Texas 78705-4248

15. Governing Law and Jurisdiction

This Terms of Use shall be governed by and construed in accordance with the laws of the State of Texas without giving effect to any choice of law rules or principles. You agree that Travis County, Texas shall be the sole and exclusive venue for any legal action or proceeding between PRO-ED and you for any purpose concerning this Terms of Use. Any cause of action or claim you may have with respect to the use of the PRO-ED Examinee Portal website or participation in any field testing must be commenced within one (1) year after it arises, except to the extent such limitation is not enforceable. To the fullest extent permitted by law, each party to this Terms of Use waives its or his or her right to a jury trial with respect to any dispute or other controversy arising from hereunder or your use of or access to the PRO-ED Examinee Portal web site or participation in any field testing.

16. Severability

The provisions of this Terms of Use are severable, and in the event any provision hereof is determined to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions, but such provision shall be reformed, if reasonably possible, only to the extent necessary to make it enforceable.

17. Waiver

If PRO-ED does not exercise or enforce any particular right or provision in these Terms, PRO-ED does not waive that right or provision. Failure to exercise or delay in exercising any right hereunder, or failure to insist upon or enforce strict performance of any provision of this Terms of Use, shall not be considered waiver thereof, which can only be made by a signed writing. No single waiver shall be considered a continuing or permanent waiver.

18. Assignment

You may not assign, transfer, or delegate this Terms of Use or any part of it without the prior written consent of PRO-ED. PRO-ED may freely transfer, assign or delegate all or any part of this Terms of Use and any rights and duties hereunder in compliance with its PRO-ED Examinee Portal Privacy Policy. This Terms of Use will be binding upon and inure to the benefit of the heirs, successors and permitted assigns of the parties.

19. Contact Information

Questions or inquiries regarding this Terms of Use agreement should be directed to testsites@proedinc.com or 800.897.3202.

Thank you for reading the PRO-ED PRO-ED Examinee Portal Terms of Use.