

TeamTreks Terms of Use

I. Welcome to TeamTreks

Portage Interactive's production, www.TeamTreks.com, ("TeamTreks") provides teacher toolkit services that allow you, as a teacher or educational leader, ("you") to manage groups of students, customize the game and learning content, and track student performance over time through the Internet (the "Services").

These Terms of Use (the "Terms") set forth the terms and conditions of your use of the Services and your use of the TeamTreks website at www.TeamTreks.com and related websites (collectively, "TeamTreks Site") as a visitor. Any information you provide to TeamTreks is subject to our Privacy Policy, the most current terms of which are incorporated by reference.

By creating an account with TeamTreks, you also agree to the provisions of Section II below.

II. Accounts

1. **30-day Free Trial.** You may use the Services on a trial basis for thirty (30) days after you set up your account (the "Trial Use Period"). Prior to the end of your Trial Use Period, you may cancel the subscription for the Services. If you do nothing after 30 days, you allow your subscription to go into effect. If you cancel your subscription, you shall no longer be able to access and use the Services and all licenses to the Software and access to the Services shall automatically expire. At the end of the Trial Use Period, your subscription will continue with the Services you have selected. You may only use the Services on a trial basis for one Trial Use Period.

2. **Accounts.** Following the Trial Use Period, when your paid account with TeamTreks goes into effect, your subscription continues based on type of account (number of logins and months of use) that you have selected. You can upgrade your account whenever you like by going to our subscription plan descriptions and following the listed instructions. To the extent that you manage a group of students, customize the game and learning content, and track student performance, you *represent and warrant* that you are an adult with the right to provide learning materials such as TeamTreks in an educational setting and that TeamTreks' materials and services do not violate any other agreements or policies that govern your working with students.

3. **Subscription Fee.** 31 days after you first register for your paid account with TeamTreks, TeamTreks will charge your credit card the current fee for the type of account you've chosen, plus applicable taxes. All payments are non-refundable. To the extent that payment mechanisms are provided through third parties, you acknowledge and agree that TeamTreks shall have no liability to you arising out of the acts or omissions of such third parties. Your creation of a paid account with TeamTreks constitutes your consent for TeamTreks to charge to the credit card provided by you the charges

applicable to your paid account for your initial subscription period. You represent and warrant that you have the legal right to use the credit card used to set up your paid account and/or to purchase any products through TeamTreks .

4. Subscription Period. The subscription period for your account depends upon your account type and may be month-to-month or yearly, described in the account features for your account (the “Subscription Period”). The term of your account is for the Subscription Period and any renewal Subscription Period.

5. Renewal; Cancellation. Your paid subscription can be renewed for an additional Subscription Period *only if you renew your account by the end of the then-current Subscription Term*. You can cancel your account at any time by contacting customer service. Cancellation will be effective immediately. Please note that after you cancel your account, you will not be able to use or access the Services. Also, you will not be entitled to a refund or credit to the Subscription Fee you paid for your Subscription Period.

6. Requirements to Use the Services.

(a) To use the services, you must set up a TeamTreks account online. Your account and any specific URL associated with your account is for your instructional use only and may not be used by or shared with others. Software made available to you from TeamTreks is available from the TeamTreks Site. All internet access charges, equipment and third party services and related costs and expenses necessary to use the Services are your sole responsibility.

(b) By setting up an account you represent that you: (i) ARE AN INDIVIDUAL OF LEGAL AGE TO FORM A BINDING CONTRACT; THE ACCOUNT IS FOR YOUR INSTRUCTIONAL USE AND MAY BE USED WITH ANY SCHOOL, PARTNERSHIP, COMPANY, TRUST OR GROUP, ENTITY OR ORGANIZATION INVOLVED IN THE EDUCATION OF STUDENTS IN GRADES 4-7; THAT YOU WILL COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS, AND THAT THERE IS NO LAW OR RESTRICTION BARRING YOU FROM USING THE SERVICES OR SOFTWARE; (ii) will provide and maintain true, accurate, current, and complete information about yourself when setting up an account and update such information as necessary to keep it current; and (iii) will not use the Service for any other purpose that it is not intended. To the extent that you synchronize, upload, import or authorize the importation of any data with the Services, you represent and warrant that: (i) you have the right to provide such data to TeamTreks; and (ii) importation of data is at your authorization.

(c) You also understand and agree that the Services may include certain communications from TeamTreks, such as service announcements and administrative messages and that these communications are considered part of your membership and you will not be able to opt out of receiving them. TeamTreks also may send you special offers, promotional offers and news about TeamTreks, but you can opt out from receiving those communications at any time.

7. License to Use the Services and Software.

(a) Subject to these Terms, TeamTreks grants you a non-exclusive, non-transferable license when you set up a TeamTreks account, to: (i) use the TeamTreks software on the number of logins you have subscribed to; and (ii) use the Software to access and use the Services for your educational purposes. You may not use, copy, modify, or transfer the Software, in whole or in part, or use the Services, except as expressly provided in these Terms. Except for the foregoing license grant, these Terms do not grant you any rights to patents, copyrights, trade secrets, trademarks, source code, or any other rights in respect to the Software or Services. Any additional Software, including updates, made available to you shall be licensed to you under these Terms unless such Software is licensed to you under a separate agreement.

(b) You may not reverse engineer, disassemble, de-compile, modify or translate the Software, or otherwise attempt to derive the source code of the Software, or authorize any third party to do any of the foregoing (collectively, “Software Limitations”). The Software is licensed, not sold, to you for use only under the terms of these Terms, and TeamTreks reserves all rights not expressly granted to you.

(c) Portage Interactive, LLC owns all right, title, and interest, including all intellectual property rights, in and to the TeamTreks Software and Services. The Software is protected by copyright, trademark, and other intellectual property laws and by international treaties. You acknowledge such ownership and intellectual property rights and will not take any action to jeopardize, limit or interfere in any manner with TeamTreks’ or its suppliers’ ownership of or rights with respect to the Software or provision of the Services. Title and related rights in the content accessed through the Software are the property of the applicable content owner and are protected by applicable law. The licenses granted under these Terms gives you no rights in or to such content other than as expressly set forth in these Terms.

(d) The Software is a “commercial item,” as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End-Users acquire the Software with only those rights set forth herein. **THE SOFTWARE IS PROTECTED BY UNITED STATES COPYRIGHT LAW AND INTERNATIONAL TREATY. UNAUTHORIZED REPRODUCTION OR DISTRIBUTION IS SUBJECT TO CIVIL AND CRIMINAL PENALTIES.**

(f) TeamTreks provides you with the following specific consumer rights notice regarding: The Complaint Assistance Unit of the Office of the Minnesota Attorney General of the Minnesota Department of Consumer Affairs may be contacted by mail at Suite 1409, 445 Minnesota Street, St. Paul, MN 55101, or by telephone at (651) 296-3353 or (800) 657-3787.

8. Student Data. You acknowledge and agree that: (a) TeamTreks has taken reasonable precaution over the privacy and security of your digital data (“Student Data”) sent

through or used with the Service or stored by TeamTreks; (b) TeamTreks does not *review or comment on* Student Data, nor does TeamTreks *share or transmit* Student Data to *any other individual or organization*; (c) you will not use the Software or Service to create, copy, store, share or distribute any accounts or logins which are obscene (as determined in TeamTreks's sole discretion), harassing, racist, malicious, fraudulent or libelous, or violate or infringe the rights of third parties; and (d) you will not use the Service for any activity that may be considered or are unethical, immoral, or give rise to any actual or potential civil or criminal liability. TeamTreks reserves the right in its sole discretion to (a) delete, move, or edit Accounts that it, in its sole discretion, deems to violate these Terms, or (b) take any other action that it deems necessary relating to use or misuse of the Service.

9. Transmissions. You are solely liable for any transmissions (importing, exporting and printing of student data) sent to or from your account. Accordingly, you agree that: (a) you are, and shall be, fully responsible for, and shall take all reasonable steps necessary in order to, limit the control and/or access to your account, the Software, any related data or communications transmitted, stored or received by you through the Services, as well as any related computer systems with which you use to connect to the Services (including, without limitation, the selection of passwords and the like); (b) any data, content, information, text or other communication, etc., which you receive or transmit using the Services may be accessed or intercepted, albeit without authorization from you or TeamTreks, by another person or entity in transit or by reason of an unauthorized intrusion into any of the computer systems and software that are used as part or associated with the Services and/or Software; and (c) TeamTreks shall have no liability to you or any third party for any unauthorized interception, access, receipt, or use of any messages or other communications or other data sent using the Services or Software (including any claims regarding intrusions of privacy or confidentiality with respect to any communications sent using the Service or Software). You acknowledge and agree that TeamTreks reserves the right to establish limits on the number of messages and size of messages transmitted through the Services.

10. Service Limitations. TeamTreks uses reasonable efforts to make the Service available 7 days a week 24 hours a day. However, TeamTreks does not guarantee availability of the Services and is under no obligation to provide you with maintenance, technical support or updates for the Software or Services. TeamTreks reserves the right, from time to time, to make changes in the configuration of TeamTreks' proprietary facilities, type and location of equipment, programming languages, user identification procedures, accessibility periods, allocation and quantity of resources utilized, rules of operation, and its administrative and operational algorithms. You agree that you will not resell any part of the Service. We reserve the right to suspend access to your account if your use of the Services negatively impacts the operation of our Services or use of our Services by other customers. You may not collect, store, copy or use any personal information or Submissions of other TeamTreks users for any purpose except as expressly authorized by such users and subject to the limitations in these Terms. Further, you shall not use the Services in any manner that interferes with, disrupts, impedes, or interrupts the Service or is designed or intended to do so.

11. Terms and Termination.

(a) Your rights to use the Services and Software are effective through the end of applicable Subscription Period unless earlier terminated. These Terms will terminate immediately without notice to You upon the earlier of (i) your election to cancel your account, (ii) the posting of a new version of these Terms of Use on the TeamTreks website with notice to you, in which case the new Terms of Use shall apply to You; provided, however, that except for updates to the TeamTreks Privacy Policy that do not decrease privacy protections afforded to you, no such change shall be effective until the renewal of your Subscription Period and provided further that TeamTreks shall provide you with advance notice of any price increases and you will be charged, and agree that TeamTreks may charge your credit card, for such increases unless you cancel your account prior to the end of your then-current account Subscription Period, or (iii) your breach or failure to comply with any term or condition of these Terms, including but not limited to the inability of TeamTreks to charge the credit card provided by you. Further, TeamTreks reserves the right to terminate these Terms and your account without prior notice and without liability to you upon requests by government and/or law enforcement agencies;

(b) Further, TeamTreks may terminate your account (i) effective as of the end of the then-current Subscription Period for any reason or no reason and without liability to you; and (ii) without cause during the Subscription Period provided that TeamTreks returns a pro rata portion of the Subscription Fee to you.

(c) Upon termination, the license granted herein shall cease, you will not be able to access or retrieve any data stored in your account, and you shall promptly destroy the Software or return the Software to TeamTreks. If you terminate your account, you agree that TeamTreks may keep your data on its servers for a reasonable time thereafter to enable you to easily renew if you so desire.

12. Rights of Co-Brand & Sales Partners. If you have created a TeamTreks account through a co-branded version of the TeamTreks Site or of a specific service made available through the TeamTreks Site, you hereby authorize TeamTreks to provide your email address to the applicable TeamTreks co-brand partner subject to the privacy policy of such TeamTreks partner. You acknowledge and agree that TeamTreks has no control of, and shall have no liability to you for, the use of your email address by the applicable TeamTreks co-brand partner.

13. Linked Sites. The TeamTreks Site may contain links to partner web sites ("Linked Sites"). These Linked Sites are not under the control of TeamTreks and TeamTreks is not responsible for the availability, contents, or performance of any Linked Sites. TeamTreks is providing these links to you only as a convenience, and the inclusion of any link does not imply endorsement by TeamTreks of the Linked Site. You are responsible for viewing and abiding by the privacy statements and terms of use posted at the Linked Sites. You should direct any concerns regarding these third-party sites to those sites' administrators.

14. Law and Jurisdiction. These Terms shall be governed by and interpreted in accordance with the laws of the State of Minnesota exclusively; as such laws apply to contracts between Minnesota residents performed entirely within Minnesota. The parties consent to the exclusive jurisdiction of and venue in the federal and/or state courts located in Hennepin County, Minnesota, for all claims arising out of or relating to these Terms or the relationship between the parties.

15. Disclaimer of Warranties. The TeamTreks site, the software, the services, and products and merchandise obtained by using the services are provided "as is" and "as available" basis with no warranties whatsoever. To the maximum extent permitted by applicable law, TeamTreks expressly disclaims all warranties of any kind, whether express, implied, or statutory, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose, and non-infringement.

16. Limitation of Liability. To the maximum extent permitted by applicable law, in no event shall TeamTreks or its suppliers be liable for any special, incidental, indirect, punitive, consequential or other damages whatsoever (including, but not limited to, damages for: loss of profits, loss of confidential or other information, business interruption, personal injury, loss of privacy, failure to meet any duty (including of good faith or of reasonable care), negligence, and any other pecuniary or other loss whatsoever) arising out of or in any way related to the use of or inability to use the TeamTreks site, the software or the services or otherwise, or with respect to any purchases made by you through the TeamTreks site, under or in connection with any provision of this agreement, even in the event of the fault, tort (including negligence), strict liability, breach of contract or breach of warranty of TeamTreks or any supplier, and even if TeamTreks or any supplier has been advised of the possibility of such damages. Because some states/jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply to you.

17. Indemnification. You agree to indemnify, defend and hold TeamTreks and its officers, directors, employees, agents, licensors, and suppliers harmless from and against all claims, liabilities, losses, expenses, damages, and costs, including but not limited to reasonable attorneys' fees, resulting from (i) an violation or breach of these Terms by you, (ii) any activity related to access to or use of your account (including but not limited to negligent or wrongful conduct) by you or any other person access or using the services through your account, or (iii) TeamTreks' authorized use of data provided by you or data obtained by TeamTreks as authorized by you under these Terms.

18. General. Neither these Terms nor any rights or obligations of you hereunder may be assigned by you in whole or in part without the prior written approval of TeamTreks. Any assignment in derogation of the foregoing shall be null and void. If any part of these Terms is for any reason found to be invalid, illegal or unenforceable, all other parts nevertheless remain valid, legal and enforceable. In lieu of the unenforceable provision, the parties agree that the court should attempt effect as much as possible the economic, legal and business objectives as were intended by the unenforceable provision.

TeamTreks shall not be liable for any delay in the performance hereunder due to causes beyond its control, including but not limited to an act of God, war or natural disaster. These Terms set forth the entire understanding and complete and exclusive statement of the agreement between TeamTreks and You and they supersede any proposal or prior agreement, oral or written, and any other communications between the parties in relation to the subject matter of these Terms. You have no third party beneficiaries to these Terms. Notwithstanding any law, rule or regulation to the contrary, you agree that any claim or cause of action you may have arising out of these Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred.

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