

OPENCOLLAB SUBSCRIPTION SERVICES ACCEPTABLE USE POLICY

If you are seeing this for the first time, please acknowledge this agreement by selecting the relevant checkbox and/or clicking the relevant accept button.

IMPORTANT - READ CAREFULLY: Welcome to the OPENCOLLAB Subscription Services (“Services”) owned and managed by OPENCOLLAB (Pty) Limited (“we”, “us” “our”). By selecting the relevant checkbox and/or clicking the relevant accept button, the user (“You” or “User”) agree(s) to be bound by the terms and conditions contained herein (“**the AUP**”).

IMPORTANT: By accepting these terms and conditions you agree that we may process your Personal Information in accordance with our Privacy Policy.

1. SERVICE AGREEMENT

- 1.1. You are hereby notified that your access to the Services is a result of You or your employer or your educational service provider that have accepted our General Terms and Conditions or entered into another similar services agreement with us (“Terms and Conditions”). Your use of the Services is subject to the Terms and Conditions which shall take precedent over these terms and conditions if there is any conflict between the Terms and Conditions and these terms and conditions.
- 1.2. **YOU ACKNOWLEDGE AND AGREE THAT WE ARE NOT AN EDUCATIONAL INSTITUTION OR A PROVIDER OF ACCREDITED COURSES, WE ARE A TECHNOLOGY SERVICE PROVIDER THAT ENABLE THIRD PARTIES TO MAKE AVAILABLE TO YOU CERTAIN SERVICES VIA OUR TECHNOLOGY. IT WILL BE YOUR RESPONSIBILITY TO ENSURE YOU UNDERSTAND THE TERMS AND CONDITIONS OF THE THIRD PARTY YOU CONTRACT WITH WHEN YOU ENGAGE WITH HIM/HER/IT.**

2. RIGHTS TO USE OF OUR SERVICES

- 2.1. We hereby grant you a worldwide, non-assignable, non-exclusive and revocable right to access and use the Services. The right granted is for the sole purpose of enabling you to use and enjoy the benefit of the Services, in the manner permitted by these terms and conditions.
- 2.2. You may not:-
 - 2.2.1. Use the Services if you are younger than 18 years, unless a competent person (i.e. parent or guardian) has agreed to these terms and conditions on your behalf;
 - 2.2.2. assign (or grant a sub-license of) your rights to use the Services, or grant a security interest in or over your rights to use the Services, or otherwise transfer any part of your rights to use the Services, unless agreed to in writing with us.

3. USER RESTRICTIONS

In addition to clauses 5, 6 and 7 below, you further agree not to:-

- 3.1. access (or attempt to access) any product or services offered via our Services by any means other than the interface that is provided by us.
- 3.2. use any of the content available via our Services to provide services to third parties, unless specifically agreed to;
- 3.3. access all or any part of the Services in order to build a product or service which competes with our services.

4. INTERACTIVE SERVICES

- 4.1. We may from time to time provide interactive Services, that will enable you to upload information / data to the OPENCOLLAB Services.
- 4.2. Where we do provide any interactive service, we will provide clear information to you about the kind of service offered, if it is moderated and what form of moderation is used (including whether it is human or technical).
- 4.3. We will do our best to assess any possible risks for users from third parties when they use any interactive service provided, and we will decide in each case whether it is appropriate to use moderation of the relevant service (including what kind of moderation to use) in the light of those risks. However, we are under no obligation to oversee, monitor or moderate any interactive service we provide on our site, and we expressly exclude our liability for any loss or damage arising from the use of any interactive service by a user in contravention of our content standards, whether the service is moderated or not.
- 4.4. Where we do moderate an interactive service, we will normally provide you with a means of contacting the moderator, should a concern or difficulty arise.

5. UPLOADING CONTENT TO OUR SITE/SERVICES OR SOCIAL NETWORK SITES

- 5.1. Whenever you upload content (including but not limited to textual, visual - or audio content and information, User ratings or feedback related to the Services, or support requests) (“**User Content**”) to our Services, or to make contact with other Users of our Services, you must comply with the content standards set out in paragraph 6 below.
- 5.2. You represent and warrant that:
 - 5.2.1. You either are the sole and exclusive owner of all User Content or you have all rights, licenses, consents and releases necessary to grant Us the license to the User Content as set forth above;
 - 5.2.2. neither the User Content nor your submission, uploading, publishing or otherwise making available of such User Content nor Our use of the User Content as permitted herein will infringe, misappropriate or violate a third party's intellectual property or proprietary rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.
 - 5.2.3. any such contribution does comply with those standards, and you will be liable to us and indemnify us for any breach of that warranty. This means you will be responsible for any loss or damage we or any third party suffer as a result of your breach of warranty.
- 5.3. You retain all of your ownership rights in your User Content. However, by providing User Content to Us, you grant Us a worldwide, perpetual, irrevocable, transferrable, royalty-free license, to use (including copying) same to execute our Services as requested by you, without further notice to or consent from you, and without the requirement of payment to you or any other person or entity
- 5.4. We have the right to use any idea or suggestion that you make in terms of our Services and incorporate it into our intellectual property that we will own.
- 5.5. We also have the right to disclose your identity to any third party who is claiming that any content posted or uploaded by you to our Services constitutes a violation of their intellectual property rights, or of their right to privacy. We will notify you as soon as reasonable possible on receipt of such third-party claim.
- 5.6. We do not review User Content except for branding amendments and possible format changes and are not involved in the actual transactions between our Clients and their customers. As most of the User Content on our application comes from our Clients and/or other end users, we do not guarantee the accuracy of User Content or user communications or the quality, safety, or legality of what's offered. In no event do we accept liability of any description for the User Content of any unlawful, threatening, abusive, defamatory, obscene or indecent information, or material of any kind which violates or infringes upon the rights of any other person, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any applicable law.
- 5.7. We have the right to remove any posting you make on our application if, in our opinion, your post does not comply with the content standards set out in this policy.
- 5.8. The views expressed by other users on our site do not represent our views or values.
- 5.9. Unless otherwise agreed to in writing, OPENCOLLAB shall follow its back-up and archiving procedures as set out in its Back-Up Policy, which policy shall be made available on receipt of your written request. In the event of any loss or damage to User Content, Your sole and exclusive remedy shall be for OPENCOLLAB to use reasonable commercial endeavours to restore the lost or damaged User Content from the latest back-up of such User Content maintained by OPENCOLLAB in accordance with the archiving procedure described in its Back-Up Policy. OPENCOLLAB shall not be responsible for any loss, destruction, alteration or disclosure of User Content caused by any third party (except those third parties sub-contracted by OPENCOLLAB to perform services related to User Content maintenance and back-up).

6. CONTENT STANDARDS

- 6.1. These content standards apply to any and all material which you contribute to our site or any social network site we may make available (contributions), and to any interactive services associated with it.
- 6.2. You must comply with the spirit and the letter of the following standards. The standards apply to each part of any contribution as well as to its whole.
- 6.3. Contributions must:
 - 6.3.1. Be accurate (where they state facts).
 - 6.3.2. Be genuinely held (where they state opinions).
 - 6.3.3. Comply with applicable law in the Republic of South Africa and in any country from which they are posted.
- 6.4. Contributions must not:
 - 6.4.1. Contain any material which is defamatory of any person.
 - 6.4.2. Contain malware, viruses, corrupted files, or any other similar software or programs that may damage the operation of our Services or another person's computer;
 - 6.4.3. Contain any material which is obscene, offensive, hateful or inflammatory.

- 6.4.4. Promote sexually explicit material.
- 6.4.5. Promote violence.
- 6.4.6. Promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age.
- 6.4.7. Infringe any copyright, database right or trade mark of any other person.
- 6.4.8. Be likely to deceive any person.
- 6.4.9. Be made in breach of any legal duty owed to a third party, such as a contractual duty or a duty of confidence.
- 6.4.10. Promote any illegal activity.
- 6.4.11. Be threatening, abuse or invade another's privacy, or cause annoyance, inconvenience or needless anxiety.
- 6.4.12. Be likely to harass, upset, embarrass, alarm or annoy any other person.
- 6.4.13. Be used to impersonate any person, or to misrepresent your identity or affiliation with any person.
- 6.4.14. Give the impression that they emanate from us, if this is not the case.
- 6.4.15. Advocate, promote or assist any unlawful act such as (by way of example only) copyright infringement or computer misuse.
- 6.5. We are not obligated to, but may choose to, remove any prohibited materials and deny access to any person who violates this AUP. We further reserve all other rights.

7. FURTHER USE POLICY

- 7.1. When you use our Services you will not:
 - 7.1.1. wilfully tamper with the security of our Services or tamper with our customer accounts;
 - 7.1.2. access data on our Services not intended for you;
 - 7.1.3. log into a server or account on our Services that you are not authorized to access;
 - 7.1.4. attempt to probe, scan or test the vulnerability of any of our Service or part thereof or to breach the security or authentication measures without proper authorization;
 - 7.1.5. wilfully render any part of our Service unusable;
 - 7.1.6. lease, distribute, license, sell or otherwise commercially exploit our Service or make our Service available to a third party other than as contemplated in your subscription to our Service;
 - 7.1.7. use our Service for bureau, timesharing or otherwise for the benefit of a third party; or
 - 7.1.8. provide to third parties any evaluation version of our Service without our prior written consent.

8. PASSWORDS AND SECURITY

You agree and understand that you are responsible for maintaining the confidentiality of passwords associated with any account you use to access the Services. Accordingly, you agree that you are solely responsible to us for all activities that occur under your account. If you become aware of any unauthorized use of your password on the Services or your account that may result in unauthorised access to Personal Information, you agree to notify us immediately at: info@opencollab.co.za.

9. MONITORING

We reserve the right to log, review, and otherwise examine any information stored on or passing through our networks or systems to ensure an effective Service.

10. DEVELOPER TERMS

If you use any of our developer tools including any Application Programming Interfaces (APIs), developer tools, or associated software, you will comply with our Developer Terms as made available by us from time to time.

11. PROCESSING OF YOUR PERSONAL INFORMATION

All Personal information we collect through or in connection with the Services is processed in accordance with our [Privacy Policy](#). By using the Services, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

12. DOWNTIME AND SERVICE SUSPENSIONS

- 12.1. Your access to and use of the Services may be suspended for the duration of any anticipated, unanticipated, scheduled or unscheduled downtime, maintenance, system updates, malfunction, or other unavailability of any portion or all of the Services for any reason, including as a result of power outages, system failures or other interruptions.

- 12.2. We shall also be entitled, without any liability to you, to suspend access to any portion or all of the Services at any time, on a system-wide basis: (a) for scheduled downtime to permit us to conduct maintenance or make modifications to any part of the Services; (b) in the event of a denial of service attack or other attack on the Services or other event that we determine, in our sole discretion, may create a risk to the applicable Services, to You or to any of our other customers if the Services were not suspended; or (c) in the event that we determine that any Service (or any part thereof) is prohibited by law or we otherwise determine that it is necessary or prudent to do so for legal or regulatory reasons.

13. UPDATES

We may from time to time in our sole discretion develop and provide updates to the Services, which may include upgrades, bug fixes, patches and other error corrections and/or new features (collectively, including related documentation, "Updates"). Updates may also modify or delete in their entirety certain features and functionality. You agree that we have no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. You may receive notice of Updates, however there is no obligation on us to notify you. You further agree that all Updates will be deemed part of the Services and be subject to all terms and conditions as per the Terms and Conditions.

14. THIRD PARTY MATERIALS

The Services may display, include or make available third-party content (including data, information, exams and other products, services and/or materials) or provide links to third-party websites or services, including through third-party advertising or to materials of your employer or company that has contracted you for certain services (collectively, "Third Party Materials"). You acknowledge and agree that we are not responsible for Third Party Materials, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect thereof. We do not assume and will not have any liability or responsibility to you or any other person or entity for any Third Party Materials. Third Party Materials and links thereto are provided solely as a convenience to you and you access and use them entirely at your own risk and subject to such third parties' terms and conditions.

15. INTELLECTUAL PROPERTY

Without limitation to the provisions under our Terms of Use, you acknowledge and agree that:-

- 15.1. the Services are provided under a right granted to you, and not sold, to you. You do not acquire any ownership interest in the Services or to the content (our own content, third party content made available via the Services or results from any exams or surveys on the Services) or services under these Terms and Conditions, or any other rights thereto other than to use the Services in accordance with the rights granted, and subject to all terms, conditions and restrictions.
- 15.2. The content on the Services including without limitation, the text, software, scripts, tables and compilations, graphics, photos, sounds, videos, interactive features and the like ("Content") and the trademarks, service marks and logos contained therein ("Marks"), are owned by or licensed to us and subject to copyright and other intellectual property rights under the Republic of South Africa and foreign laws and international conventions. Content on the Services is provided to you "AS IS" for your information and personal use only. Except for the purpose as explained on the Services, the Content may not be used, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited for any other purposes whatsoever without the prior written consent of the respective owners. We reserve all rights not expressly granted in and to the Services and the Content. You agree to not engage in the use, copying, or distribution of any of the Content other than expressly permitted herein. If you download or print a copy of the Content for personal use, you must retain all copyright and other proprietary notices contained therein. You agree not to circumvent, disable or otherwise interfere with security-related features of the Services or features that prevent or restrict use or copying of any Content or enforce limitations on use of the Services or the Content therein.

16. MODIFICATIONS – THE ACCEPTABLE USE POLICY

You agree that we may modify this AUP or any other policy at any time and at our sole discretion. By using the Services, you agree to be bound by any such modifications and should therefore periodically visit this page and the Services to determine the then current terms and conditions of use to which you are bound. You will note that at the bottom of this AUP, the date of last modification is indicated. You are encouraged to check the revision date with each use to ensure you are comfortable with the latest revisions. If you are dissatisfied with the Services, its Content or the revised terms and conditions, you agree that your sole and exclusive remedy is to discontinue using the Services.

17. TERMINATION AND SUSPENSION

We may terminate this Agreement immediately if the Terms and Conditions gets terminated or if we receive a written instruction, signed by an authorised representative of your employer or any third party service provider to terminate your access to the Services. A breach of this AUP shall entitle us in our sole discretion to suspend your access to the Services immediately without notice. We further reserve the right to change, suspend, or discontinue all or any aspects of the Services, for any reason at our sole discretion, however we will endeavour where reasonably possible to provide you with an advance notice. On termination of the AUP your rights under these terms and conditions shall terminate immediately. You are personally liable for any charges (if any) that you incur prior to any termination, change, suspension or discontinuation of this AUP or the Services.

18. WARRANTY DISCLAIMERS AND LIMITATION OF LIABILITY

- 18.1. Although the Website Terms of Use are already applicable between you and us, we hereby confirm that the provisions under the heading “Limitation of Liability” as per the Website Terms of Use will apply during your use of our Services.
- 18.2. Take note: there may be further disclaimers or limitation of liability provisions when engaging with third party service providers (see below).

19. THIRD PARTY SERVICE PROVIDERS

- 19.1. As confirmed, Services enable certain third party service provider (“Third Party Service Providers”) to make available to you certain services or products that you have agreed to with the Third Party Service Provider. We have agreements with these selected Third Party Service Providers to make available their systems or content on our Services. Your use of any of those services or content or products is subject to this AUP and the specific terms and conditions that those service providers may publish from time to time. Where there is any discrepancy between the terms and conditions of the AUP and the specific terms and conditions as presented by the Third Party Service Provider in terms of the service provider product or services, the latter will prevail.
- 19.2. Third Party Service Providers require us to submit to them certain information to understand the behaviour and/or results from your use of their services made available on the Services. By using the Services, you agree that we may submit this information to them. Where we submit any of your personal information to third parties, we will adhere to our Privacy Policy.
- 19.3. For purposes of all Third party Service Providers you hereby agree to indemnify Us and the specific Third Party Service Provider, or any provider of content via the service provider system, against any action, may be taken against us or the Third Party Service Provider or any such product provider, whether natural or legal person, as well as against any damage or loss, including interest or legal costs incurred by us or the Third Party Service Provider or any product provider as a result of such action, damage or loss which we or the Third Party Service Provider or the product provider may suffer or incur as a result of the unauthorised use of the Services or information accessed.

20. GENERAL

- 20.1. **Entire Agreement:** Except for the General Terms and Conditions, this AUP constitutes the entire agreement between you and us regarding the subject matter hereof and supersedes any and all prior or contemporaneous representation, understanding, agreement, or communication between you and us, whether written or oral, regarding such subject matter. Each time you access the Services the current version of the AUP as made available to you will apply.
- 20.2. **Severability:** If any portion of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining portions of the AUP will remain in full force and effect, and any invalid or unenforceable portions shall be construed in a manner that most closely reflects the effect and intent of the original language. If such construction is not possible, the provision will be severed from this AUP, and the rest of the AUP shall remain in full force and effect.
- 20.3. **Waivers:** The failure by us to enforce any provision of the AUP shall in no way be construed to be a present or future waiver of such provision nor in any way affect our right to enforce such provision thereafter. All waivers by us must be in writing to be effective.
- 20.4. **Successors and Assigns:** This AUP is personal and only shall not be to the benefit of any third party, unless agreed to in writing between the parties. This AUP, and any rights granted hereunder, may not be transferred or assigned by you, but may be assigned by us without restriction.
- 20.5. **Governing Law:** This Agreement shall be construed and enforced according to the law of South Africa. You further agree to the jurisdiction of the Western High Court (Cape Town) in terms of any dispute.

End of policy