

## **Terms of Use**

### **ProgCheck LLC**

**Last Update 8.11.2016**

#### **Acceptance**

These Terms of Use ( "TOU") contains legally binding terms and conditions for your use of any of the websites operated by ProgCheck LLC (the "Site") as well as all other services, features, content, or applications offered through any of the ProgCheck LLC websites (collectively, the "Services"). ProgCheck LLC is referred to herein as "ProgCheck", "Company", "we", "us" and "our". Please read these terms of use carefully before using the Site or Services offered.

**IF YOU DO NOT AGREE WITH ALL OF THE TERMS AND CONDITIONS, DISCONNECT FROM THE SITE AND DO NOT USE THE SITE OR SERVICES.**

By using the Site or Services, you acknowledge that you have read, understood, and agreed to be bound by these Terms of Use and any modifications that may be made to these Terms of Use from time to time. In addition, to the extent our Services requires you to set up an account with a password, if you are the person who first registers for the Services in such account, you agree to ensure all users on your account are informed of and comply with these Terms of Use and any modifications that may be made to the Terms of Use from time to time. If you do not agree to these Terms of Use, you should not use the Services, or visit or browse the Site. If you are using the Site or Services, on behalf of any entity or person (including a child), you represent and warrant that you are authorized to accept these Terms of Use on such entity's behalf or such person's behalf, and that such entity or person agrees to indemnify you and ProgCheck for violations of these Terms of Use.

For purposes of these Terms of Use and ProgCheck's [Privacy Policy](#) the phrase "Individual Customer" means a teacher who has directly purchased the Services for use with students and "School Customer" means an educational institution that has purchased the Services and provisions accounts for individual student users. Individual Customers and School Customers are collectively referred to as "Users" herein. Student Users means a student enrolled on an Individual Customer or School Customer account.

#### **Modifications to TOU**

ProgCheck LLC reserves the right, at its sole discretion, to modify or replace any of this TOU, or change, suspend, or discontinue the Site or the Services (including without limitation, the availability of any feature, database, or content) at any time. ProgCheck LLC may also impose limits on certain features and services or restrict your access to parts or all of the Services without notice or liability. It is your responsibility to check this TOU periodically for changes. Your continued use of the Services following the posting of any changes to this TOU constitutes acceptance of those changes.

## **Registration of Account**

To use certain parts of the Site or Services, you are required to register an account through the Site. If you are an Individual Customer, you must be 18 years of age or older to register for a ProgCheck account. After registration, you may add or register students to use the Services who are younger than 18 years old only if you are such student's teacher who has obtained consent from the student's parent or legal guardian ("Student Users"). You agree to provide true, accurate, current, and complete information about yourself and the Student Users of the account as prompted by the Site's registration form (such information, being the "Registration Data"), and you agree to maintain and promptly update the Registration Data to keep it true, accurate, current, and complete. If you provide any information that is untrue, inaccurate, not current, or incomplete, or we have any reasonable grounds to suspect that such information is untrue, inaccurate, not current, or incomplete, we may suspend or terminate your account and refuse to offer you any and all current or future use of the Site or Services. If you are an Individual Customer, you agree that, if you provide any personally identifiable information about a Student User under age 13 in order to allow them to use the Site or Services, that you are teacher who has obtained written consent from the parent/legal guardian using ProgCheck's Parental Consent Form; and you agree to be bound to these Terms of Use with respect to the Student User's use. You understand that our Privacy Policy will apply to the Student User's use of the Site and Services.

For our School Customers, as explained in our Privacy Policy, ProgCheck does not use personally identifiable information (as that term is defined by the Family Educational Rights and Privacy Act) provided by the School Customer about Student Users for any purpose other than to provide services to the School Customer and the Student User. Such information is maintained confidentially not shared with or sold or otherwise provided to third parties. Additionally, to the extent that we collect, use, or disclose any personal information (as that term is defined by the Children's Online Privacy Protection Act) from children under the age of 13, that information is used solely to permit us to provide services to the School Customer and the Student User.

You are responsible for maintaining the confidentiality of your account and password and for restricting access to your computer. You are solely responsible for any activity related to your account. If you suspect any unauthorized use of your account, notify us immediately. You acknowledge and agree that we may preserve user information and may also disclose user information, if required to do so by law or if we believe, in good faith, that such preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce these Terms of Use; (c) respond to claims that any Content violates the rights of third parties; or (d) protect the rights, property, or personal safety of ProgCheck, its users, or the public. Without limiting the foregoing, teachers and school officials who have registered accounts hereunder, understand that they are responsible for the acts and activities of Student Users in connection with any use of the Site or Services and that the Privacy Policy will apply to their use of the foregoing.

## **Fees for Services**

The Services may be offered for a fee. All fees are quoted and must be paid in U.S Dollars. If you elect to purchase a fee-based Services, you warrant that the credit card or other ProgCheck

accepted payment method is authorized and that all information that you submit to ProgCheck or any third party designated by ProgCheck is true and accurate. You agree to pay all fees, including any applicable sales taxes, you incur. Any account name, password, or user ID supplied to you in connection with any fee-based Services you purchase is personal to you, and you may not transfer or make available your account name, password, or user ID to others. Any violation of this term may result in termination of the Services without refund and the imposition of additional charges based on your unauthorized use.

## **Site and Services Content**

All Content, whether publicly posted or privately transmitted, is the sole responsibility of the person who originated such Content. ProgCheck cannot guarantee the authenticity of any Content or information which Users may provide about themselves or the organizations which they represent. You acknowledge that your access and use of any Content is at your own risk and you will be solely responsible and liable for any damage or loss to you or any other party that may result. For purposes of this TOU, the term "Content" includes, without limitation, comments, information, data, or text generated, provided, or otherwise made accessible by ProgCheck on or through the Services. Content provided, added, created, uploaded, submitted, distributed, or posted by Users, including Content that may be added to the Site or Services in connection with Users linking their accounts to third party websites and services, is collectively referred to as "User Submissions."

The Services contain Content specifically provided by ProgCheck or its partners and such Content is protected by copyrights, trademarks, service marks, patents, trade secrets or other proprietary rights and laws, as applicable. Users shall abide by and maintain all copyright notices, information, and restrictions contained in any Content accessed through the Site or Services.

Subject to this TOU, ProgCheck grants each user of the Site or Services a non-exclusive, non-sublicensable, non-transferable revocable license to use, store and reproduce the Content, solely for the User's own internal use. Modification or distribution of any Content for other than the User's own internal use is expressly prohibited without prior written permission from ProgCheck, or from the copyright holder identified in such Content's copyright notice, as applicable. You shall not sell, license, rent, or otherwise use or exploit any Content for commercial use that in any way violates any third party right to the Content, including ProgCheck's rights to the Content.

**Rules and Conduct.** As a condition of use, you promise not to use the Site or Services for any purpose that is prohibited by this TOU. You are responsible for all activity in connection with your account. Additionally, you shall abide by all applicable local, state, national and international laws and regulations and, if you represent a business, any advertising, marketing, privacy, or other self-regulatory code(s) applicable to your industry.

By way of example, and not as a limitation, you shall not (and shall not permit any third party to) either (a) take any action or (b) upload, download, post, submit or otherwise distribute or facilitate distribution of any Content on or through the Site or Services that:

- infringes any patent, trademark, trade secret, copyright, right of publicity or other right of any other person or entity or violates any law or contractual duty;
- you know is false, misleading, untruthful or inaccurate;
- is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, vulgar, pornographic, offensive, profane, contains or depicts nudity, contains or depicts sexual activity, promotes bigotry, discrimination or violence, or is otherwise inappropriate as determined by ProgCheck in its sole discretion;
- constitutes unauthorized or unsolicited advertising, junk or bulk e-mail ("spamming");
- involves commercial activities (whether or not for profit) and/or sales ProgCheck's prior written consent, which consent may be granted to Members through the ProgCheck Member Code of Conduct;
- contains software viruses or any other computer codes, files, worms, logic bombs or programs that are designed or intended to disrupt, disable, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any system, data, password or other information of ProgCheck or any third party;
- impersonates any person or entity, including any employee or representative of ProgCheck;
- includes anyone's personally-identifiable information; or
- breaches the Privacy Policy and/or any of the other policies and rules incorporated herein.

You shall not (directly or indirectly):

- take any action that imposes or may impose (as determined by ProgCheck in its sole discretion) an unreasonable or disproportionately large load on ProgCheck's (or its third party providers') infrastructure;
- interfere or attempt to interfere with the proper working of the Site or Services or any activities conducted on the Site or Services;
- bypass any measures ProgCheck may use to prevent or restrict access to the Site or Services (or other accounts, computer systems or networks connected to the Site or Services);
- run any form of auto-responder or "spam" on the Site or Services;
- use manual or automated software, devices, or other processes to "crawl" or "spider" any page of the Site or Services;
- harvest or scrape any Content from the Site or Services;
- modify, adapt, appropriate, reproduce, distribute, translate, create derivative works or adaptations of, publicly display, republish, repurpose, sell, trade, or in any way exploit the Site or Services Content (other than your own User Submissions), except as expressly authorized by ProgCheck;
- decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of the Site or Services (including without limitation any application or widget), except to the limited extent applicable laws specifically prohibit such restriction;
- copy, rent, lease, distribute, or otherwise transfer any of the rights that you receive hereunder;
- otherwise take any action in violation of ProgCheck's guidelines and policies.

ProgCheck has no obligation to monitor the Sites, Services, Content, or User Submissions, and does not exercise editorial control over the content of any of the Site or Services, except for

Content which is proprietary to ProgCheck. However, ProgCheck reserves the right to (i) remove, suspend, edit or modify any Content in its sole discretion, including without limitation any User Submissions at any time, without notice to the User and for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content or if ProgCheck is concerned that the User may have violated this TOU), or for no reason at all and (ii) to remove, suspend or block any User Submissions from the Site or Services. ProgCheck also reserves the right to access, read, preserve, and disclose any information as ProgCheck reasonably believes is necessary to (i) satisfy any applicable law, regulation, legal process or governmental request, (ii) enforce this TOU, including investigation of potential violations hereof, (iii) detect, prevent, or otherwise address fraud, security or technical issues, (iv) respond to user support requests, or (v) protect the rights, property or safety of ProgCheck, its users and the public. ProgCheck does not guarantee that Content or User Submissions will remain available on the Sites or through the Site or Services, and you may not rely on the continued availability of any of the Site or Services content

### **Termination of Account**

ProgCheck may, in its sole discretion, terminate your account or password, and use of the Site and Services, and remove and discard any Content within the Site, for any reason, including, without limitation, for lack of use or if ProgCheck believes that you have violated or acted inconsistently with the letter or spirit of these Terms of Use. ProgCheck may also in its sole discretion and at any time modify or discontinue providing the Site or the Services, or any part thereof, with or without notice. You agree that any modification or termination of your access to the Site or the Services may be effected without prior notice, and you acknowledge and agree that ProgCheck may immediately deactivate or delete your account and all related information and Content in your account and bar any further access to such information or to the Site or the Services. Further, you agree that ProgCheck shall not be liable to you or any third party for any modification or termination of your access to the Site or Services.

If you wish to terminate your account, you may do so by contacting ProgCheck by telephone at or via email at krisula@progcheck.com.

### **Privacy of Information**

Any information submitted on the Site or the Services is subject to our Privacy Policy, the terms of which are incorporated into these Terms of Use. Our Privacy Policy may be found by [clicking here](#). Please review our Privacy Policy carefully.

### **Disclaimers of Warranties; Limitations on Liability**

The Site, Program, and the Services (including all Content) are provided “as is”; ProgCheck LLC makes no representations or warranties of any kind with respect to the Services, the Content, the Site, the Program, or any contents therein. ProgCheck assumes no liability or responsibility for any errors or omissions in providing the Services, the Site or the Content, any losses or damages arising from the use of the Content, or any conduct by users of the Site. PROGCHECK LLC. EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES RELATING

TO THE SERVICES, THE SOFTWARE, THE CONTENT, AND THE SITE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, AUTHENTICITY, TITLE, AND NON-INFRINGEMENT. In addition, ProgCheck does not represent or warrant that the information on or accessible via the Site or Program, or through the Services is complete, current or will be updated or corrected. ProgCheck does not warrant, endorse, guarantee, or assume responsibility for any product or service advertised or offered by a third party through the site or any hyperlinked site or featured in any banner or other advertising. While ProgCheck attempts to make your access and use of the site, the services, and the software safe, ProgCheck cannot and does not represent or warrant that the site, the software, or its server(s) are free of viruses or other harmful components; therefore, you should use industry recognized software to detect and disinfect viruses. PROGCHECK'S AND ITS AFFILATES', SUPPLIERS', AND THEIR RESPECTIVE MEMBERS, MANAGERS, EMPLOYEES', AGENTS', AND REPRESENTATIVES' LIABILITY UNDER THESE TERMS OF USE IS LIMITED TO DIRECT, OBJECTIVELY MEASURABLE DAMAGES. PROGCHECK AND ITS AFFILATES, SUPPLIERS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, STOCKHOLDERS, EMPLOYEES, AGENTS, AND REPRESENTATIVES WILL NOT BE HELD LIABLE FOR ANY INDIRECT OR SPECULATIVE DAMAGES (INCLUDING, WITHOUT LIMITING THE FOREGOING, CONSEQUENTIAL, INCIDENTAL, AND SPECIAL DAMAGES) INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, BUSINESS INTERRUPTIONS, LOSS OF DATA, AND LOSS OF PROFITS, REGARDLESS OF WHETHER THESE PARTIES HAD ADVANCE NOTICE OF THE POSSIBILITY OF ANY SUCH DAMAGES. PROGCHECK'S AND ITS AFFILATES', SUPPLIERS', AND THEIR RESPECTIVE MEMBERS, MANAGERS, OFFICERS, DIRECTORS', STOCKHOLDERS', EMPLOYEES', AGENTS', AND REPRESENTATIVES' TOTAL LIABILITY TO YOU FOR ANY CLAIM ARISING OUT OF OR RELATING TO THE SERVICES, THE SOFTWARE, THE CONTENT, THE SITE OR THESE TERMS OF USE, WHETHER IN CONTRACT OR IN TORT, SHALL NOT EXCEED \$100. EACH PROVISION OF THESE TERMS OF USE THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS UNDER THESE TERMS OF USE BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE FEES WE CHARGE, IF ANY, AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS OF USE. THE LIMITATIONS IN THIS SECTION WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY UNDER THESE TERMS OF USE. Some states do not allow the foregoing limitations of liability, so they may not apply to you. ANY AND ALL PORTIONS OF THIS DISCLAIMER SHALL AUTOMATICALLY APPLY TO ALL IMPROVEMENTS AND/OR AMENDMENTS AS THEY APPEAR ON THE SITE, SERVICES AND/OR THE SOFTWARE.

If you are dissatisfied with the Site or Services, or with any terms, conditions, rules, policies, guidelines or practices of using the Site or Services, your sole remedy is to discontinue using the Site or Services.

## **Indemnity**

You agree to indemnify and hold ProgCheck and its members, managers, employees, agents, representatives, partners, or affiliates harmless from any loss, liability, claim, or demand, including reasonable attorneys' fees, arising out of, resulting from or connected with the use, modification, misinterpretation, misuse, or reuse by you of the Site, the Services, or Content, including without limitation these Terms of Use. For the avoidance of doubt, your indemnification obligations described in this section will not apply in the event that a loss, liability, claim, or demand is caused by our gross negligence.

## **Links and Advertising**

We do not provide links to other Web sites or resources to our School Customers. However, for our customers that are individuals, we may provide, or third parties may provide, links to other Web sites or resources that are beyond our control. We make no representations as to the quality, suitability, functionality, or legality of any sites to which links may be provided, and you hereby waive any claim you might have against us, with respect to such sites. **PROGCHECK IS NOT RESPONSIBLE FOR THE CONTENT ON THE INTERNET OR WEB PAGES THAT ARE CONTAINED OUTSIDE THE SITE.**

Your correspondence or business dealings with, or participation in promotions of, other users, advertisers, or partners found on or through the Site or the Services, and any other terms, conditions, warranties, or representations associated with such dealings, are solely between you and such user, advertiser, or partner. You agree that we are not responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such advertisers or partners on the Site or the Services.

## **Governing Law and Arbitration**

These Terms of Use are governed in all respects by the laws of the State of Washington, as such laws are applied to agreements entered into and to be performed entirely within Washington between Washington residents. Any controversy or claim arising out of or relating to these Terms of Use, the Services, the Program, or the Site will be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Any such controversy or claim will be arbitrated on an individual basis, and will not be consolidated in any arbitration with any claim or controversy of any other party. The arbitration will be conducted in King County, Washington, and judgment on the arbitration award may be entered into any court having jurisdiction thereof. The award of the arbitrator will be final and binding upon the parties without appeal or review except as permitted by Washington law. Notwithstanding the foregoing, either party may seek any interim or preliminary injunctive relief from any court of competent jurisdiction, as necessary to protect the party's rights or property pending the completion of arbitration. By using the Site or the Services, you consent and submit to the exclusive jurisdiction and venue of the state and federal courts located in King County, Washington, U.S.A.

ProgCheck controls and operates this Site from its offices in Everett, Washington, United States of America and makes no representation that these materials are appropriate or available for use in other locations. If you use this Site and Services from other locations you are responsible for

compliance with applicable local laws. If any portion of these terms is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law to the greatest extent possible and the remainder of the provisions shall remain in full force and effect.

## **Release**

In the event that you have a dispute with one or more users of the Site or the Services, you release ProgCheck LLC and its members, managers, employees, agents, representatives, partners, and affiliates from claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes. If you are a California resident, you waive California Civil Code — 1542, which says: “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

## **Claims of Copyright Infringement**

### **NOTIFICATION OF CLAIMS OF INFRINGEMENT**

If you believe that your intellectual property rights have been violated in connection with the Site or Services, please notify ProgCheck’s agent for notice of claims of copyright or other intellectual property infringement (“Agent”) at

Copyright Act OF 1998 (“DMCA”) is:

ProgCheck LLC

P.O. Box 4126

Everett, WA, 98204

Attn: Copyright Infringement

Please provide the Agent with the following Notice:

- Identify the material that you claim is infringing, with enough detail so that it may be located on the applicable Site;
- 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 declaring under penalty of perjury that (1) the above information in your Notice is accurate, and (2) that you are the owner of the copyright interest involved or that you are authorized to act on behalf of that owner;
- Your address, telephone number, and email address; and
- Your physical or electronic signature.

ProgCheck will remove the infringing posting(s), subject to the procedures outlined in the Digital Millennium Copyright Act (DMCA).



## **General**

ProgCheck's failure to act in a particular circumstance does not waive its ability to act with respect to that circumstance or similar circumstances in the future. By using the Site or Services, you consent to receiving electronic communications from ProgCheck to include notices about your account and information concerning or related to the Services. You agree that any notice, agreements, disclosure, or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing. ProgCheck is excused for any failure to perform to the extent that its performance is prevented by any reason outside of its control. In these Terms of Use, the word "including" shall be construed as if followed by the words "but not limited to." These Terms of Use, together with our Privacy Policy, comprise the entire agreement between you and ProgCheck and supersede all prior agreements between the parties regarding the subject matter contained herein.

## **Questions**

If you have questions regarding these Terms of Use, contact us at [krisula@progcheck.com](mailto:krisula@progcheck.com).