

## PLEASE READ THESE TERMS CAREFULLY

Clicking the 'Accept' button on the 'Terms' page of Trinity's English language testing software solution will form a legally binding, 'right to access software' agreement which is subject to the terms and conditions set out below (**Agreement**). The Agreement is between you (**User** or **you**) and Trinity College London, a company limited by guarantee and registered in England and Wales with company number 2683033 and a charity registered in England and Wales under registration number 1014792 and in Scotland under registration number SC049143, the registered office of which is at Blue Fin Building, 110 Southwark Street, London SE1 0TA (**Trinity, us** or **we**). The Agreement is for the right to access and use:

- this software solution (**Software**) for Trinity's English language testing services (the **Purpose**), on a 'software-as-a-service' basis; and
- associated online documentation (**Documentation**).

This Agreement sets out the terms on which you may access the Software and Documentation. We are not selling the Software or Documentation to you. This Agreement does not transfer any ownership of any Software or Documentation, such owners being: one or more third parties with whom we have contracted and/or; us.

## AGREED TERMS

### 1. GRANT AND SCOPE OF RIGHT

- 1.1 In consideration of your agreeing to abide by the terms of this Agreement, we hereby grant to you a non-exclusive, non-transferable right to access and use the Software and the Documentation on the terms of this Agreement for the period for which you have valid credentials to access the Software in connection with the Purpose.
- 1.2 You may use the Software on a 'software-as-a-service' basis, for the Purpose only, provided you comply with the provisions in condition 2,
- 1.3 You may use any Documentation in support of the Purpose. You may only make copies of the Documentation if you have our prior written confirmation.
- 1.4 The Software and/or Documentation may be amended or updated from time to time.

### 2. Restrictions and User Obligations

- 2.1 Except as expressly set out in this Agreement or as permitted by any local law, you undertake not to:
  - (a) distribute, or otherwise transfer all or any part of the Software or Documentation to any other person;
  - (b) modify, reverse engineer, decompile or disassemble the Software;

- (c) remove, obliterate or alter any copyright, proprietary or similar notices on the Software or Documentation;
- (d) duplicate, copy or create derivative works from, mirror, republish, download all or any parts of the Software or Documentation or visual design elements of concepts contained in the Software or Documentation in any form or media or by any means;
- (e) modify another website so as to falsely imply that it is associated with the Software or Documentation in any way;
- (f) use access to the Software to: (a) harvest, collect, gather, assemble or copy information or data regarding other users without their consent or other legal basis as appropriate; (b) knowingly interfere with or disrupt the integrity or performance of the Software or the data contained therein; or (c) harass or interfere with other users' use and enjoyment of the Software;
- (g) knowingly transmit to the Software any worms or viruses or any code of a destructive or restrictive nature or otherwise intentionally damage, destroy, disrupt, disable or otherwise intentionally damage, impair or interfere with or harm the Software or any part of it;
- (h) carry out penetration testing on the live hosting infrastructure; or
- (i) enter into the Software any content which is unlawful, offensive, threatening, libellous, defamatory, pornographic or obscene, or violates or infringes any party's intellectual property rights.

2.2 You undertake to:

- (a) use the Software only in compliance with any usage guides or documentation we may provide to you;
- (b) keep your account and login credentials secure and confidential, including not sharing your password with any other person, not writing down your username or password, and changing your password regularly in accordance with good industry practice; and
- (c) notify us promptly if you become aware that you are, or may become, in breach of this Agreement, or if you believe someone is engaging in unauthorized access or use of the Software.

2.3 Should you breach any of the provisions in this clause 2, we, or a relevant third party with whom we have contracted, may in our/their absolute discretion take action to mitigate or prevent re-occurrence of such breach, including terminating or suspending your access to the Software, or removing or refusing any offending content.

### **3. Intellectual property rights**

- 3.1 You acknowledge that all intellectual property rights in the Software and the Documentation throughout the world belong either to us or to third parties with whom we have contracted. You acknowledge that you are granted access rights to the Software, that ownership rights in the Software are not being sold to you, and that you have no intellectual property rights in, or to, the Software or the Documentation other than the right to use the Software and the Documentation in accordance with the terms of this Agreement.
- 3.2 You acknowledge that you have no right to have access to the Software in source code form other than as expressly provided in this Agreement.

### **4. Our responsibility for loss or damage suffered by you**

- 4.1 **This clause 4.1 applies where you are using the Software and Documentation as a consumer. This would typically be the case where you are a candidate.**
- (a) **We are responsible to you for foreseeable loss and damage caused by us.** If we fail to comply with these terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking this Agreement or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time this Agreement was made, both we and you knew it might happen.
  - (b) **When we are liable for damage to your property.** If defective digital content that we have supplied damages a device or digital content belonging to you, we will either repair the damage or pay you compensation. However, we will not be liable for damage that you could have avoided by following our advice or for damage that was caused by you failing to correctly follow instructions or to have in place the minimum system requirements advised by us.
- 4.2 Where you use the Software or Documentation for any commercial or business purpose we will have no liability to you for any (a) loss of profits, sales, business, or revenue; (b) business interruption; (c) loss of anticipated savings; (d) wasted expenditure; (e) loss or corruption of data or information; (f) loss of business opportunity, goodwill or reputation; (where any of the losses set out in 4.2 (a) to (f) are direct or indirect; or (g) any special, indirect or consequential loss, damage, charges or expenses.
- 4.3 Where you use the Software or Documentation for any commercial or business purpose, our maximum aggregate liability under or in connection with this Agreement whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to £100 (GBP one hundred).

4.4 Where you use the Software or Documentation for any commercial or business purpose, then, except as expressly stated in this Agreement, there are no conditions, warranties, representations or other terms, express or implied, that are binding on us. Any condition, warranty, representation or other term concerning the supply of the Software and Documentation which might otherwise be implied into, or incorporated in, this Agreement whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

4.5 **We do not exclude or limit in any way our liability to you where it would be unlawful to do so.** This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors or for fraud or fraudulent misrepresentation.

4.6 You acknowledge that the Software and Documentation have not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the Software and Documentation meet your requirements.

## 5. Termination

5.1 We may terminate or suspend this Agreement immediately by written notice to you if you commit a material or persistent breach of this Agreement.

5.2 Upon termination for any reason:

- (a) all rights granted to you under this Agreement shall cease;
- (b) you must cease all activities authorised by this Agreement; and
- (c) you must immediately cease accessing the Software immediately destroy or return to the owning party any copies of the Documentation then in your possession, custody or control and, in the case of destruction, certify to us that you have done so.

## 6. Communications

6.1 If you wish to contact us in writing, or if any condition in this Agreement requires you to give us notice in writing, you can send this to us by email or by pre-paid post to our address set out above (FAO: General Counsel) or [legal@trinitycollege.com](mailto:legal@trinitycollege.com). We will confirm receipt of this by contacting you in writing, normally by email.

6.2 If we have to contact you or give you notice in writing, we will do so by email or by pre-paid post to the address you provide or confirm to us.

## 7. How we may use your personal information

- 7.1 Under data protection legislation, we are required to provide you with certain information about who we are, how we process your personal data and for what purposes and your rights in relation to your personal data and how to exercise them. This information is provided:
- (a) if you are a candidate, in the 'Privacy Statement for Exam Candidates' which can be found on our website ([trinitycollege.com](http://trinitycollege.com));
  - (b) if you are a Trinity employee or worker, in the 'Privacy Notice for Employees and Workers', of which you have been notified; and
  - (c) if you are a third party contractor or personnel from a third party organisation with which we have contracted (such as IT or educational consultancies or service providers), in the data privacy particulars of the relevant contract, and in relevant data privacy notices from the third party organisation for which you work.

## 8. Other important terms

- 8.1 In this Agreement, any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 8.2 We may transfer our rights and obligations under these terms to another organisation. We will always tell you in writing if this happens and we will ensure that the transfer will not affect your rights under this Agreement.
- 8.3 You may only transfer your rights or your obligations under this Agreement to another person if we agree in writing.
- 8.4 Each of the conditions of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining conditions will remain in full force and effect.
- 8.5 If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this Agreement, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.
- 8.6 **Which laws apply to this Agreement and where you may bring legal proceedings.** This Agreement is governed by English law and you can bring legal proceedings in respect of it in the English courts. If you live in Scotland you can bring legal proceedings in respect of it in either the Scottish or the English courts. If you live in Northern Ireland you can bring legal proceedings in respect of it in either the Northern Irish or the English courts.