

Terms of Use

Effective Date/Last Updated: June 22, 2023

These Terms of Use (“**Terms**”) govern your access to and use of the Mobiletoolbox.org website (“**Site**”) and the Mobile Toolbox webtools (“**Webtools**”) (collectively, the “**Platform**”), made available to you by Toolbox Assessments, Inc. (“**Toolbox Assessments**,” “**we**,” “**us**,” or “**our**”).

BY ACCESSING OR USING THE SITE, YOU (“YOU”) AGREE THAT YOU HAVE READ AND UNDERSTAND THESE TERMS AND OUR PRIVACY POLICY. IF YOU DO NOT AGREE WITH THESE TERMS OR OUR PRIVACY POLICY, DO NOT ACCESS OR USE THE PLATFORM.

We may modify these Terms at any time. All changes will be effective immediately upon posting to the Site. Material changes will be conspicuously posted on the Site or otherwise communicated to you. By using the Site after changes are posted, you agree to those changes.

- 1. Privacy Policy.** We may collect certain information about you and about your use of the Site as described in our Privacy Policy, which is incorporated into these Terms. The Privacy Policy describes our information collection, use, and sharing practices. If you do not agree to any terms in our Privacy Policy, do not access or use the Platform.
- 2. Accounts.** You are responsible for maintaining the confidentiality of your password and account. You are fully responsible for all uses of your password and account, including any unauthorized use. You agree to: (a) keep your password confidential and not share it with anyone else, and (b) immediately notify us of any unauthorized use of your password or account. You acknowledge and agree that we are authorized to act on instructions received through use of your password and account, and that we may, but are not obligated to, deny access or block any transaction made through use of your password or account without prior notice if we believe your password and account are being used by someone other than you, or for any other reason.
- 3. Content.** The Platform, including its text, audio, video, graphics, charts, photographs, interfaces, icons, software, computer code, data, trademarks, logos, slogans, documentation, Webtools, other components and content, and the design, selection, and arrangement of content, and all intellectual property rights in the foregoing (collectively, the “**Content**”) are exclusively the property of Toolbox Assessments or, as applicable, its vendors or licensors. Except for the rights expressly granted to you in the next section, Toolbox Assessments reserves all other rights in and to the Site and Content, including all intellectual property rights.
- 4. Use Rights.** In order to have access to certain Content, you must create an account, and you must go through additional background verification of your licensure information. You may only use the Platform or Content for your non-exclusive use so long as you comply with these Terms, the Privacy Policy, all other terms posted throughout the Platform as applicable to you (if any), and all applicable laws. You may only use the Platform and the Content for their intended purposes for which they are made available to you by Toolbox Assessments.
- 5. Use of Marks.** Toolbox Assessments or its licensors owns certain trademarks, names, logos, insignia, or service marks (“**Marks**”). You do not have the right to use any Marks except as expressly agreed to in writing by Toolbox Assessments. In addition, the Platform may contain third-party marks and third-party copyrighted materials, which are the property of their respective owners. Nothing in these Terms grants to you any rights in or to those third-party marks or materials without such third-party's consent.
- 6. Intellectual Property Rights.** The Platform and Content are protected by copyright, trademark, and other intellectual property laws. Any unauthorized use of any trademarks, trade dress, copyrighted materials,

or any other intellectual property belonging to Toolbox Assessments or any third party is strictly prohibited and may be prosecuted to the fullest extent of the law.

7. Compliance with Laws. In connection with your access to and use of the Platform, you are responsible for complying with all applicable laws, regulations, and rules of all relevant jurisdictions, including all applicable rules regarding online conduct.

8. Children Under 18. This Platform is not directed at children under the age of eighteen (18) years old. If you are under eighteen (18) years old, you must immediately stop using the Platform.

9. Restrictions on Your Use of the Platform.

- You will not copy, duplicate, sell, publish, post, license, rent, distribute, modify, translate, adapt, reverse-engineer, or create derivative works of the Platform or Content without Toolbox Assessments's prior written consent.
- You will not use the Platform for unlawful purposes.
- You will not submit inaccurate, incomplete, or out-of-date information via the Platform, commit fraud or falsify information in connection with your use of the Platform.
- You will not engage in data mining or similar data gathering or extraction activities from the Platform. You will not use the Platform to harvest email addresses, names, or other information of the users of the Platform or to spam other users of the Platform.
- You will not access, use, or copy any portion of the Platform or Content, through the use of indexing agents, spiders, scrapers, bots, web crawlers, or other automated devices or mechanisms.
- You will not use the Platform to post, transmit, input, upload, or otherwise provide any information or material that contains any viruses, worms, Trojan horses, malware, ransomware, adware, or other harmful computer code that may disable, damage, impair, or otherwise interfere with the Platform, the servers used to make the Platform available, or any other network, computers, hardware, software or systems.
- You will not engage in activities that aim to render the Platform or associated services inoperable or to make their use more difficult.
- You may not frame, mirror, or circumvent the navigational structure of any part of the Platform.
- You may not upload, distribute, transmit, or post anything to or through the Platform that: (i) is fraudulent, libelous, obscene, pornographic, indecent, violent, offensive, hate speech, harassing, threatening, defamatory, harms another person, or the like; (ii) invades the privacy of another or includes the confidential or proprietary information of another; or (iii) is protected by intellectual property rights without the express prior written consent of the owner of such intellectual property rights.
- You may not engage in any conduct while using the Platform that Toolbox Assessments considers inappropriate, unauthorized, or contrary to the intended purpose of the Platform.

10. Feedback and Other Content Submitted By You. If you submit comments or feedback to us regarding the Platform or its Content, or any other comments, questions, requests, content or information that is not

personal information ("Feedback"), we may use any comments and feedback that you send us in our discretion and without attribution or compensation to you.

11. **NO WARRANTY.** THE PLATFORM AND CONTENT ARE PROVIDED "AS IS," "AS AVAILABLE," AND WITHOUT ANY WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TOOLBOX ASSESSMENTS EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND WITH RESPECT TO THE PLATFORM AND CONTENT, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM STATUTE, SUCH AS COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE IN TRADE.

TOOLBOX ASSESSMENTS MAKES COMMERCIALY REASONABLE EFFORTS TO ENSURE THAT ALL CONTENT ON THE PLATFORM IS ACCURATE AND RELIABLE, BUT NEITHER ACCURACY NOR RELIABILITY ARE GUARANTEED. TOOLBOX ASSESSMENTS DOES NOT WARRANT OR GUARANTEE THE QUALITY, COMPLETENESS, TIMELINESS, OR AVAILABILITY OF THE PLATFORM OR CONTENT. TOOLBOX ASSESSMENTS DOES NOT WARRANT OR GUARANTEE THAT THE PLATFORM OR CONTENT WILL BE UNINTERRUPTED OR ERROR-FREE, THAT ANY DEFECTS IN THE PLATFORM OR CONTENT WILL BE CORRECTED, OR THAT THE PLATFORM OR THE SERVERS THAT MAKE THE PLATFORM AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL CONDITIONS OR COMPONENTS.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WE DO NOT WARRANT OR ENDORSE ANY THIRD-PARTY CONTENT.

12. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL TOOLBOX ASSESSMENTS OR ITS DIRECTORS, OFFICERS, OWNERS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES, CONSULTANTS, VOLUNTEERS, AGENTS, SUPPLIERS, ATTORNEYS OR LICENSORS (TOGETHER, "TOOLBOX ASSESSMENTS PARTY(IES)") BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL LOSS OR DAMAGE, ARISING OUT OF OR IN CONNECTION WITH THE PLATFORM OR CONTENT, OR YOUR ACCESS TO OR USE OF, OR INABILITY TO ACCESS OR USE, THE PLATFORM OR CONTENT, REGARDLESS OF THE FORM OF ACTION, WHETHER THE CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, WARRANTY, OR OTHERWISE, AND EVEN IF A TOOLBOX ASSESSMENTS PARTY HAS EXPRESS KNOWLEDGE OF THE POSSIBILITY OF THE LOSS OR DAMAGE.

YOUR SOLE AND EXCLUSIVE REMEDY IS TO STOP ACCESSING AND USING THE PLATFORM OR CONTENT.

WITHOUT LIMITING THE FOREGOING, IN NO EVENT WILL THE AGGREGATE LIABILITY OF THE TOOLBOX ASSESSMENTS PARTIES ARISING OUT OF OR IN CONNECTION WITH THE PLATFORM OR CONTENT, OR YOUR ACCESS TO OR USE OF, OR INABILITY TO ACCESS OR USE, THE PLATFORM OR CONTENT EXCEED \$100 U.S.D., EVEN IF ANY REMEDY PROVIDED FAILS OF ITS ESSENTIAL PURPOSE.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO SOME OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

13. INDEMNIFICATION. YOU SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE TOOLBOX ASSESSMENTS PARTIES FROM AND AGAINST ALL LOSSES, CLAIMS, LIABILITIES, DEMANDS, COMPLAINTS, ACTIONS, DAMAGES, JUDGMENTS, SETTLEMENTS, FINES, PENALTIES, EXPENSES, AND COSTS (INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES) THAT ARISE OUT OF OR IN CONNECTION WITH (A) YOUR VIOLATION OF APPLICABLE LAWS, (B) YOUR MISUSE OF THE PLATFORM OR ANY CONTENT, AND (C) YOUR BREACH OF THESE TERMS OR ANY OTHER TERMS ON THE PLATFORM. WE RESERVE, AND YOU GRANT TO US, THE EXCLUSIVE RIGHT TO ASSUME THE DEFENSE AND CONTROL OF ANY MATTER SUBJECT TO INDEMNIFICATION BY YOU (SUBJECT TO YOUR CONTINUING INDEMNIFICATION).

14. Third-Party Websites and Content. The Platform may link to, or be linked to, websites not maintained or controlled by Toolbox Assessments. Those links are provided as a convenience to the visitors of our Platform. Toolbox Assessments is not responsible for examining or evaluating the content or accuracy of third-party websites linked through the Platform. Toolbox Assessments does not warrant or endorse any third-party website or any products or services made available through those websites. When leaving the Platform, it is the terms and privacy policy of that third party that govern your use of the third-party site (and such third-party's use of your personal information), not these Terms.

The Platform may also contain certain third-party Content. We provide third-party content for your convenience, not as an endorsement. The presence of third-party Content does not mean that Toolbox Assessments has reviewed the third-party Content or that there is any association between Toolbox Assessments and any third party. You access third-party Content at your sole risk. Toolbox Assessments has no responsibility for any third-party Content. Nothing in these Terms grants you any rights to any third-party Content.

15. Linking to the Platform. You are prohibited from linking to the Platform on your website or elsewhere without the prior express written consent of Toolbox Assessments. If Toolbox Assessments grants you a right to link to the Platform, certain terms may apply, and Toolbox Assessments reserves the right to revoke such consent at any time. You are responsible for any costs incurred by Toolbox Assessments in enforcing its rights under this Section.

16. Use in the United States. The Platform is intended for use in the United States only. We do not guarantee that use of the Platform will be available or permitted in any location other than the United States. If you choose to access the Platform from a location other than the United States, you do so at your own risk.

THE EXISTENCE OF THE PLATFORM OR ANY CONTENT SHALL NOT BE CONSTRUED AS TOOLBOX ASSESSMENTS OR THE TOOLBOX ASSESSMENTS PARTIES OFFERING SUCH PLATFORM OR CONTENT TO PERSONS IN JURISDICTIONS WHERE THE PROVISION OF SUCH PLATFORM OR CONTENT IS PROHIBITED BY LAW.

17. Termination. If you violate applicable laws or these Terms, you are immediately prohibited from further use of the Platform or Content, and we may restrict your access to the Platform or Content. Toolbox Assessments may suspend or terminate the Platform or any Content, in whole or in part, at any time in its sole discretion for any reason. Toolbox Assessments shall not be liable to you or anyone else for any damages arising from or related to Toolbox Assessments's suspension or termination of your access to the Platform or the Content, or in the event Toolbox Assessments modifies, discontinues or restricts the availability of the Platform or the Content (in whole or in part).

18. Platform Unavailability. Without limiting the generality of the previous section, the Platform or Content may be unavailable or limited for various reasons, and we shall not be liable to you for any such unavailability, including without limitation (a) hardware, software, server, network, or

telecommunications failures, (b) severe weather, war, riot, act of God, fire, earthquake, strike, labor shortage, etc., (c) regulatory restrictions and other acts of government, (d) interruptions due to utility and power companies, and (e) interruptions due to hacking or other malicious intrusion.

- 19. Cooperation with Law Enforcement.** Toolbox Assessments will cooperate with law enforcement if you are suspected of having violated applicable laws. **YOU WAIVE AND HOLD TOOLBOX ASSESSMENTS AND THE TOOLBOX ASSESSMENTS PARTIES HARMLESS FOR ANY COOPERATION WITH, OR DISCLOSURE OF YOUR INFORMATION TO, LAW ENFORCEMENT RELATING TO YOUR SUSPECTED VIOLATION OF APPLICABLE LAWS.**
- 20. Disputes.** These Terms, and your access to and use of the Platform, are governed by the laws of the State of Illinois, without regards to its conflict of laws principles. Venue is exclusively in the state or federal courts, as applicable, located in Chicago, Illinois. The parties expressly agree to the exclusive jurisdiction of those courts. Any cause of action or other claim brought by you with respect to the Platform or Content must be commenced within one year after the cause of action or claim arises.
- 21. Terms Applicable to New Jersey Customers.** No provision in these Terms shall apply to any consumer in New Jersey if the provision limits remedies for (i) negligence, (ii) products liability claims, (iii) the punitive damages laws, (iv) the New Jersey Uniform Commercial Code, or (v) failure to reasonably protect against harm arising from certain criminal acts of third parties (e.g., computer hacking and identity theft). The provisions of these Terms concerning the exclusion or limitation of certain damages are not applicable in New Jersey with respect to statutory damages, punitive damages, loss of data, and loss of or damage to property. Toolbox Assessments reserves all rights, defenses, and permissible limitations under the laws of New Jersey and under the laws of your state of residence.
- 22. Assignment.** We may assign our rights and delegate our duties under these Terms at any time to any party without notice to you. You may not assign your rights or delegate your duties under these Terms without our prior written consent. These Terms inure to the benefit of Toolbox Assessments' successors and assigns.
- 23. Entire Agreement.** These Terms, the [Privacy Policy](#), and any terms posted throughout the Platform (if any) are the entire agreement between you and Toolbox Assessments with respect to your access to and use of the Platform. In the event of a conflict between these Terms and our Privacy Policy, our Privacy Policy will control.
- 24. Waiver.** Toolbox Assessments's failure to enforce any provision of these Terms will not constitute a waiver of that provision or any other provision. Any waiver of any provision of these Terms will be effective only if in writing and signed by Toolbox Assessments.
- 25. Severability.** If any provision of these Terms is held invalid, void, or unenforceable, that provision will be severed from the remaining provisions and the remaining provisions will remain in full force and effect. The headings in these Terms are for convenience only and do not affect the interpretation of these Terms.
- 26. Contact Us.** Please direct any questions and concerns regarding these Terms to us at:

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