

TERMS OF USE

Last Modified: May 15, 2019

These Terms of Use (“**Terms**”) are between you and Elite Solutions, LLC, an Iowa limited liability company (“**Elite Solutions**”, “**we**” or “**us**”) and govern orders you place for Elite Solutions services, including without limitation its SaaS services (each a “**Service**”) as well as your use of www.elitesolutionsia.com and Elite Solutions’ other websites and mobile apps, if applicable, that link to these Terms (collectively the “**Sites**”). The terms and conditions governing use of the Elite Solutions SaaS products are covered in our SaaS Agreement which you must accept and agree to be bound and abide to before being granted access to our SaaS products. Please read these Terms carefully before ordering Services (“**order**”) or using the Sites. **By using the Sites or placing an order, you accept and agree to be bound and abide by these Terms. If you are using the Sites on behalf of a company or other legal entity, the term “you” shall refer to such entity in addition to the individual user, and the individual accepting these Terms on behalf of such entity represents that he or she has the authority to bind the entity to these Terms.**

1. ELIGIBILITY

You must be at least 18 years old to place orders for Services or to use our Sites. You represent and warrant that you are at least 18 years old.

2. CHANGES TO THE TERMS

We reserve the right to revise and update these Terms from time to time in our sole discretion. All changes are effective immediately when we post them. Your continued use of the Sites following the posting of revised Terms means that you accept and agree to the changes.

3. CONFLICTS.

To the extent the terms and conditions herein conflict with the SaaS Agreement, if applicable to you, the SaaS Agreement will control.

4. PAYMENT

Payment must be made at the time your order is placed online. If you would like to discuss alternative or customized payment options, please contact our sales department.

5. CHANGES TO PRICING AND SERVICES

5.1. Pricing and Availability. Prices for Services are posted on the Sites or at the point of purchase. Elite Solutions reserves the right to change the prices for Services on a going forward basis at any time in its sole discretion. We do our best to ensure that the prices posted for our Services are correct, but errors may occur. If we discover an error in the price of any Service, or the availability of a Service you have ordered, we will inform you of the error as soon as possible and give you the option of reconfirming your order or cancelling it. If we are unable to reach you regarding the error, we will cancel the order and refund payment to you.

5.2. Services.

- 5.2.1. We reserve the right to discontinue or change a Service at any time.
- 5.2.2. We make reasonable efforts to represent each Service as it will be delivered to you, but you understand and agree that the final Services delivered to you may differ in appearance from the images and descriptions provided at the time you place your order.
- 5.2.3. We do not accept returns or requests for refunds.

6. SERVICES NOT FOR RESALE

Services are for your own use and not for resale, unless otherwise explicitly stated and agreed to by Elite Solutions in a SaaS Agreement. You are responsible for complying with all applicable laws, regulations and ordinances in connection with your use of any Services. Services may be subject to export control laws and other laws and regulations of the United States and other countries. You are responsible for compliance with all applicable export control laws and regulations, and you represent and warrant that you will not export, re-export, or transfer indirectly or directly any Service in violation of such laws and/or regulations. Additionally, we utilize Absorb Software, Inc.'s Learning Management System (the "Absorb LMS") to deliver our Services to you. You agree you are responsible for and represent and warrant that you and your end users will comply with the Absorb LMS Terms and Conditions and have read the Absorb LMS Privacy Policy prior to accessing our Services and/or services. You will defend and hold Elite Solutions harmless against all claims, damages, or liability resulting from your breach of the foregoing.

7. THIRD PARTY MATERIALS

To the extent that any information, material, or functionality on the Sites is provided by third party content providers ("**Third Party Materials**"), Elite Solutions has no responsibility over such Third Party Materials. All statements and/or opinions expressed in Third Party Materials are solely the opinions and the responsibility of the third party providing those materials. Third Party Materials do not necessarily reflect the opinion of Elite Solutions, and Elite Solutions does not endorse such opinions. We are not responsible, or liable to you or any third party, for the accuracy or reliability of any information provided by any third party, or for your use of any Third Party Materials that may infringe rights of third parties not owned or affiliated with Elite Solutions.

8. ACCESSING THE SITES AND ACCOUNT SECURITY

We reserve the right to withdraw or modify these Sites, and any material we provide on the Sites, in our sole discretion without notice. We will not be liable if for any reason all or any part of the Sites is unavailable at any time or for any period. From time to time, we may restrict access to some parts of the Sites, or the entire Sites.

All information we collect through or in connection with our Sites is subject to our Privacy Notice. By using or providing information to or through the Sites, you consent to all actions taken by us with respect to your information in compliance with the Privacy Notice.

You are responsible for maintaining the confidentiality of your account, including any username or password created by, or provided to, you in connection with the Sites. You are solely responsible for the actions taken by you on the Sites, or in connection with your account

or username. You agree to notify us immediately of any unauthorized access to or use of your username or password or any other breach of security on the Sites. We reserve the right to disable any account, username, password or other identifier at any time in our sole discretion for any or no reason, including if, in our opinion, you have violated any provision of these Terms.

9. INTELLECTUAL PROPERTY RIGHTS

9.1. **Ownership.** The Sites and its contents, features, and functionality (including but not limited to all information, software, text, displays, images, video and audio, and the design, selection and arrangement thereof), are owned by Elite Solutions, its licensors or other providers of such material and are protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws.

Except as expressly provided in Section 9.3 below, you may not reproduce, distribute, modify, create derivative works of, publicly display, publicly perform, frame in another web page, republish, download, store, transmit or otherwise use any of the materials and content on the Sites without our prior written authorization. No right, title or interest in or to the Sites or any content on the Sites is transferred to you, and all rights not expressly granted herein are reserved by Elite Solutions. Any use of the Sites not expressly permitted by these Terms is a breach of these Terms and may violate copyright, trademark and other laws.

9.2. **Trademarks.** ELITE SOLUTIONS and related logos are registered or unregistered trademarks and service marks owned or licensed by Elite Solutions. Other product and company names and logos appearing on the Sites may be registered or unregistered trademarks, service marks or trade names of their respective owners. Any use of the trademarks, service marks or trade names displayed on the Sites is strictly prohibited, and nothing appearing on the Sites will be construed as granting, by implication or otherwise, any license or right to use any of those trademarks, service marks or trade names.

9.3. **License.** Elite Solutions grants you permission to view the Sites and its contents and to print individual pages from the Sites for your own personal, noncommercial use, provided that you accept and abide by these Terms.

9.4. **Feedback.** You grant Elite Solutions a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into our Sites or our Services and otherwise fully exploit any suggestions, enhancement requests, recommendations or other feedback provided to Elite Solutions by you or your end users. You shall obtain the necessary consent from your end users to ensure your ability to comply with this Section 9.4.

10. PROHIBITED USES

You may use the Sites only for lawful purposes and in accordance with these Terms. You agree not to use the Sites:

- In any way that violates any federal, state, local or international law or regulation.

- To transmit, or procure the sending of, any advertising or promotional material, including any "junk mail," "chain letter," or "spam" or any other similar solicitation.
- To transmit any data or content that is harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, or otherwise objectionable, that may invade another's right of privacy or publicity, infringe upon another's intellectual property rights, or that you otherwise do not have a right to transmit.
- To impersonate or attempt to impersonate Elite Solutions, an Elite Solutions employee, another user or any other person or entity (including, without limitation, by using e-mail addresses or screen names associated with any of the foregoing).
- To register, subscribe, attempt to register, attempt to unsubscribe, or attempt to unsubscribe, any party for products or services if you are not expressly authorized by such party to do so.
- To engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the Sites, or which, as determined by us, may harm Elite Solutions or users of the Sites or expose them to liability.

Additionally, you agree not to:

- Use the Sites in any manner that could disable, overburden, damage, or impair the Sites or interfere with any other party's use of the Sites, including their ability to engage in real time activities through the Sites.
- Use any robot, spider or other automatic device, process or means to access the Sites for any purpose, including monitoring or copying any of the material on the Sites.
- Introduce any viruses, trojan horses, worms, logic bombs or other material which is malicious or technologically harmful.
- Probe, scan, test the vulnerability of or breach the authentication measures of, the Sites or any related networks or systems.
- Access the Sites to create a competing service or product or copy features or functions of our Services.
- Access the Sites for the purposes of monitoring the availability, performance or functionality of the Sites or Services for competitive purposes or bringing an IP infringement claims against Elite Solutions.
- Otherwise attempt to interfere with the proper working of the Sites.

11. MONITORING AND ENFORCEMENT

We have the right to:

- Take any action that we deem necessary or appropriate in our sole discretion in connection with your use of the Sites or Services.
- Take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the Sites or Services.
- Terminate or suspend your access to all or part of the Sites for any or no reason, including without limitation, any violation of these Terms.

YOU WAIVE AND HOLD HARMLESS ELITE SOLUTIONS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY US AS A CONSEQUENCE OF INVESTIGATIONS BY EITHER ELITE SOLUTIONS OR LAW ENFORCEMENT AUTHORITIES.

12. LINKS FROM THE SITES

Any links to other sites from our Sites or our Services are provided for your convenience only. This includes links contained in advertisements, including banner advertisements and sponsored links. We have no control over the contents of those sites or resources and accept no responsibility for them or for any loss or damage that may arise from your use of them. If you decide to access any of the third party sites linked to our Sites or our Services, you do so entirely at your own risk and subject to the terms and conditions of use for such Sites.

13. ELECTRONIC COMMUNICATION

When you use the Sites or send e-mails to us, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you by e-mail or by posting notices on the Sites. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing. You further agree that any notices provided by us electronically are deemed to be given and received on the date we transmit any such electronic communication.

14. GEOGRAPHIC RESTRICTIONS

The owner of the Sites is based in the state of Iowa in the United States. We provide our Sites for use only by persons located in the United States. We make no claims that the Sites or any of its content is accessible or appropriate outside of these countries. Access to the Sites may not be legal by certain persons or in certain countries. If you access the Sites from outside the United States, you do so on your own initiative and are responsible for compliance with local laws.

15. DISCLAIMER OF WARRANTIES

YOUR USE OF THE SITES, ITS CONTENT, AND ANY SERVICES, PRODUCTS OR ITEMS OBTAINED THROUGH THE SITES IS AT YOUR OWN RISK. THE SITES, ITS CONTENT AND ANY SERVICES, PRODUCTS OR ITEMS OBTAINED THROUGH THE SITES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER ELITE SOLUTIONS NOR ANY PERSON ASSOCIATED WITH ELITE SOLUTIONS MAKES ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY OR AVAILABILITY OF THE SITES. WITHOUT LIMITING THE FOREGOING, NEITHER ELITE SOLUTIONS NOR ANYONE ASSOCIATED WITH ELITE SOLUTIONS REPRESENTS OR WARRANTS THAT THE SITES, ITS CONTENT OR ANY SERVICES OR PRODUCTS OBTAINED THROUGH THE SITES WILL BE ACCURATE, RELIABLE, ERROR-FREE OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT OUR SITES OR THE SERVER THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THAT THE SITES OR ANY SERVICES OR PRODUCTS OBTAINED THROUGH THE SITES WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS.

YOU AGREE THAT FROM TIME TO TIME WE MAY REMOVE THE SITES OR SERVICES FOR INDEFINITE PERIODS OF TIME OR INDEFINITELY, WITHOUT NOTICE TO YOU.

ELITE SOLUTIONS HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR PURPOSE.

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

16. LIMITATION ON LIABILITY

IN NO EVENT WILL ELITE SOLUTIONS, ITS AFFILIATES OR THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS OR DIRECTORS BE LIABLE FOR ANY LOSS, COST, OR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE SITES, ANY SITES LINKED TO IT, ANY CONTENT ON THE SITES OR SUCH OTHER SITES OR ANY SERVICES, PRODUCTS OR ITEMS OBTAINED THROUGH THE SITES OR SUCH OTHER SITES, OR THE TRANSMISSION OF INFORMATION TO OR FROM THE SITES OVER THE INTERNET, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHERWISE, EVEN IF FORESEEABLE. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF ELITE SOLUTIONS, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, ARISING OUT OF OR RELATING TO THE USE OF THE SITES OR THE CONTENT LOCATED THEREON EXCEED ONE HUNDRED DOLLARS (\$100.00).

THE FOREGOING DOES NOT AFFECT ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

17. INDEMNIFICATION

You agree to defend, indemnify and hold harmless Elite Solutions, its affiliates, licensors and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses or fees (including reasonable attorneys' fees) arising out of or relating to content, data, or information that you submit or transmit through the Sites, your violation of these Terms, your violation of any applicable law, regulation or code, your violation of any rights of another, or your use of the Sites, including, but not limited to, any use of the Sites' content, Services and products other than as expressly authorized in these Terms and/or the SaaS Agreement or your use of any information obtained from the Sites.

18. GOVERNING LAW AND JURISDICTION

All matters relating to the Sites and these Terms and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the internal laws of the State of Iowa without giving effect to any choice or conflict of law provision.

Any legal suit, action or proceeding arising out of, or related to, these Terms, the Sites, and/or Services shall be instituted exclusively in the federal and state courts located in Fort Madison, Iowa. Elite Solutions reserves the right to bring any suit, action or proceeding against you for breach of these Terms in your country of residence or any other relevant country. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

19. LIMITATION ON TIME TO FILE CLAIMS

ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS, THE SERVICES OR THE SITES MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE

CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

20. INJUNCTIVE RELIEF

You acknowledge and agree that Elite Solutions may bring suit exclusively in federal court in Fort Madison, Iowa, to enjoin infringement or other misuse of any of our intellectual property rights.

21. GENERAL

These Terms constitute the sole and entire agreement between you and Elite Solutions with respect to your use of the Sites and supersede all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to your use of the Sites. These Terms will survive your receipt of your order. No waiver by Elite Solutions of any term or condition set forth in these Terms shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of Elite Solutions to assert a right or provision under these Terms shall not constitute a waiver of such right or provision. If any provision of these Terms is held by a court or other tribunal of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the Terms will continue in full force and effect.

22. CONTACT INFORMATION

To ask questions or provide comments about these Terms, contact us at:

Elite Solutions, LLC
PO Box 531
Fort Madison, IA 52627
mvogel@elitesolutionsia.com

© 2019 Elite Solutions, LLC. All Rights Reserved.