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## Terms of Services



**SwiftAssess**  
Assessment Redefined

## Abstract

This document outlines the terms of service associated with the usage of the SwiftAssess platform from GamaLearn



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## GamaLearn Terms of Service

Date Modified: Sept 03, 2015

### PLEASE READ THE FOLLOWING CAREFULLY

GamaLearn Terms of Service ("Terms") are a legal agreement between GamaLearn (including its subsidiaries, "GamaLearn", "us", or "we") and you, as recipient of GamaLearn software, products, and/or services. These Terms govern your access to and use of GamaLearn software, products, and/or services (individually or collectively, the "Products") and any information, content, text, graphics, photos or other materials uploaded, downloaded, purchased, or appearing on or through the Product (individually or collectively, the "Content"). The Service may be delivered to you through the Internet via your browser. These Terms apply to all visitors, users, and others who access and use the Products ("Users").

It is important to us that the Service provides you with a helpful and reliable experience. To protect our rights and yours, we have prepared the Terms of Service that apply to all users of the Service.

**BY USING THE SERVICE, YOU REPRESENT THAT YOU HAVE READ AND UNDERSTOOD THE TERMS OF SERVICE AND AGREE TO BE BOUND BY THEM. YOU AGREE TO USE THE SERVICE IN A MANNER CONSISTENT WITH ALL APPLICABLE LAWS AND REGULATIONS AND IN ACCORDANCE WITH THE TERMS OF SERVICE. DO NOT USE THIS SERVICE IF AT ANY TIME YOU DO NOT AGREE WITH ANY PART OF THE TERMS OF USE.**

### CHILDRENS' RIGHT

1. **General.** GamaLearn offers certain Services to schools for the benefit of the schools and their students. In providing such educational Services, we may collect personal information from students. In order to collect, use, or disclose personal information from users under 13 years of age ("Children"), we are required to comply with the Children's Online Privacy Protection Act of 1998 ("COPPA"). Please read this Children's Privacy Policy (<http://www.coppa.org>) carefully as it explains:

(a) Our practices regarding the collection, use, and disclosure of personal information from Children who use the Service,

(b) The Child's parent's or guardian's ("Parent's") ability to limit the collection, use and disclosure of personal information collected from their Children, and



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(c) The role of the Child's school ("School") in this process.

2. **Parents.** If your Child wants to use our Services, he/she must first get an Account from her school. Please contact your Child's school for an Account.

3. **Schools.** If you are accepting this Agreement on behalf of a School:

(a) You represent and warrant that:

(i) You have read GamaLearn's Privacy Policy; and

(ii) With respect to students at your School who are Children and are using this Site ("Child Students"), the School has the authority to act as the agent of the Child Students' Parents, for the purposes of COPPA compliance, including the following purposes:

- (1) for receiving notice of our policies regarding the collection, use and disclosure of personal information from their Children through the Service, and any changes to such policies;
- (2) for providing consent to such collection, use and disclosure;
- (3) for revoking the foregoing consent;
- (4) for requesting to review the personal information collected from their Children; and
- (5) for requesting to delete the personal information collected from their Children.

(b) You agree to use the Service solely for the benefit of your School and the students in your School, and not for commercial purposes. If at any time your School does not have the authority to act as the agent of a Child Student's Parent, you agree to notify us immediately.

(c) You, on behalf of the School (on behalf of each Child Student's Parent), hereby

(i) consent to the collection, use and disclosure of personal information of Child Students, through the Site, in accordance with the Children's Privacy Policy and

(ii) agree that the Child Student's online activities are subject to these Terms of

Use.



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## ACCEPTING OF TERMS

1. In order to use the Services, you acknowledge that you have read, understood and accepted the following terms.
2. You may not use the Services and may not accept the Terms if
  - (a) you are not of legal age to form a binding contract with GamaLearn, and
  - (b) in case you do not understand or agree to any of the terms, you should immediately exit this Website.

## CHANGES IN TERMS OF USE

GamaLearn reserves the right to update the TERMS OF SERVICE (TOS) at any time without notice to you. Such changes or modifications shall be effective immediately upon notice, which may be given by means including, but not limited to, posting within the Service, or by electronic or conventional mail, messaging, or by any other means by which you may obtain notice. Any use of the Service by you subsequent to such notice shall be deemed to constitute your acceptance of such changes or modifications.

## DATA PRIVACY AND SECURITY

### 1. Your Password and Account Security

- 1.1 You agree and understand that you are responsible for maintaining the confidentiality of passwords associated with any account you use to access the Services.
- 1.2 Accordingly, you agree that you will be solely responsible to GamaLearn for all activities that occur under your account.
- 1.3 If you become aware of any unauthorized use of your password or of your account, you agree to notify GamaLearn immediately at [support@GamaLearn.com](mailto:support@GamaLearn.com)

### 2. Privacy and Personal Information

Any information that you provide to GamaLearn, including first name, last name, email address, and any other information including personal information you have provided, may provide, or may be collected by us in connection with your use of the Products will be collected, maintained and used in order to provide the Products to you or your institution, or in accordance with these Terms, our privacy policy located at <https://www.swiftassess.com/site/resources/sa-privacy.pdf> ("Privacy Policy"), any



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additional terms applicable to an individual Product, and any agreement entered into by your institution/schools relating to the Product. You understand that, through your use of the Products, you consent to the collection and use (as set forth in these Terms, the Privacy Policy and any agreement entered into by your institution/schools relating to the Product) of Your Information.

## **INTELLECTUAL PROPERTY RIGHT**

These Software and any authorized copies that user makes are the intellectual property of and are owned by GamaLearn. The structure, organization, and source code of this Software are the valuable trade secrets and confidential information of GamaLearn. The Software is protected by law, including but not limited to the copyright laws of the United Arab Emirates.

## **BILLING AND PAYMENT**

1. User may choose to subscribe and pay for the Services on either a monthly or annual basis and GamaLearn will bill the account administrator in advance for use of the Services. GamaLearn reserves the right to modify pricing at any time, provided however that GamaLearn will notify the account administrator of a paid level account by email prior to any monthly or annual price increase affecting that account if you upgrade to a higher paid level or plan. You may choose to discontinue your paid level account at any time; however, GamaLearn does not issue refunds for unused subscription periods.
2. All payments due are in U.S. dollars or in AED equivalent unless otherwise indicated on the subscription pricing page or invoice
3. **Credit Card or Debit Card.** Fees for accounts where you are paying with a credit card, debit card or other non-invoice form of payment are due at the beginning of the month for which Services will be provided to you. For credit cards, or debit cards:
  - (i) GamaLearn will charge you for all fees when due at the beginning of each service month or year, as applicable; and (ii) These fees are considered delinquent if not received at the start of each service month or year.
4. **Invoices.** Payments for invoices are due thirty days after the invoice date, unless otherwise specified, and are considered delinquent after such date.
5. **Renewal.** For paid levels, at the end of each annual or monthly subscription period (as applicable), the Services will automatically renew for an additional year or month, respectively.



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If you wish to change your subscription level or term, the account administrator must change the settings in the account administration console provided as part of the Services.

6. These billing and payment terms may not apply if you are not subscribing to the Services directly from GamaLearn.

## **LINKS TO THIRD PARTY SITE**

The Service contains links to websites and applications other than the Service, including websites and applications operated by affiliates and other third parties ("Third Party"). If you submit personal information to any of those sites, your information is governed by their privacy policies. We encourage you to read the privacy statements of Third Party websites and applications linked to the Service when you leave the service. This Policy applies only to information collected by the Service.

GamaLearn may use certain trusted third party companies and individuals to help us provide, analyze, and improve our Services (including but not limited to data storage, maintenance services, database management, web analytics, email communication, and improvement of the Service's features). These third parties may have access to your information only for purposes of performing these tasks on our behalf and under obligations similar to those in this Term of Service. As of the date this Term of Service went into effect, we use:

- Mailchimps and Campaign Monitor marketing platform to perform personalized email communication
- Zendesk and Zopim, for better customer service engagement
- Google Analytics, to evaluate usage of our Site

GamaLearn may share your Information with a third party application with your consent, for example when you choose to access our Services through such an application. We are not responsible for what those parties do with your information, so you should make sure you trust the application and that it has a privacy policy acceptable to you.

## **LICENSE TO USE THE SOFTWARE**

You are granted a limited, personal, non-exclusive, non-assignable, and non-transferable license to access and use the Service for non-commercial, personal use only. You may not adapt, download, revise, broadcast, reverse engineer, duplicate, publish, modify, disseminate, display, perform, transfer, or otherwise distribute any content or other material on the Service, unless specifically authorized by GamaLearn or this Terms of Use.



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Under no circumstances may a user of the Service

- (i) frame or utilize framing techniques to enclose any part of the Service;
- (ii) gather, obtain, use, access or otherwise copy any part of the Service by using any bot, spider, crawler, spy ware, engine, device, software or any other automatic device, utility or manual process of any kind;
- (iii) use the Service or any features available on the Service in any manner with the intent to interrupt, damage, disable, overburden or impair the Service or such services; or
- (iv) engage in any activity that interferes with another user's access, use or enjoyment of this Service.

Use of the Service for any purpose other than as contemplated in the Terms of Use is a violation of GamaLearn's and/or its licensors' copyright and proprietary rights. Neither Pearson nor its licensors guarantee the accuracy or completeness of any information or content. You agree that you must evaluate, and bear all risks associated with, the use of any content, including any reliance on the accuracy, completeness, or usefulness of such content. All rights not expressly granted herein are reserved by Pearson.

## **INDENIFICATION**

The user hereby agree to indemnify, hold harmless, and defend GamaLearn and its suppliers and resellers from and against any and all claims or lawsuits, including attorney's fees, which arise out of or result from

- (i) your breach of any of the terms and conditions of this Agreement; and
- (ii) the use, procurement, reproduction or distribution of Service by you, your users or other third parties.

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The use of this the Services is entirely at your own risk. The Materials have not been verified or authenticated in whole or in part by GamaLearn, and they may include inaccuracies or typographical or other errors. GamaLearn does not warrant the accuracy or timeliness of the materials contained on this Site or otherwise made available through the Services.



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YOU ACKNOWLEDGE AND AGREE THAT GAMALEARN AND THE OTHER GAMALEARN PARTIES DO NOT REPRESENT, WARRANT, COVENANT OR GUARANTEE THAT USING THE SERVICES WILL RESULT IN ANY IMPROVED PERFORMANCE BY ANY USER OR WILL RESULT IN ANY PARTICULAR STUDENT/USER ADVANCEMENT OR ATTAINMENT.

THE SERVICES, AND MATERIALS, AND ANY INFORMATION OR CONTENT CONTAINED OR PRESENTED BY GAMALEARN ARE PROVIDED TO YOU ON AN "AS IS," "AS AVAILABLE" AND "WHERE-IS" BASIS WITH NO WARRANTY OR IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. GAMALEARN DOES NOT PROVIDE ANY WARRANTIES AGAINST VIRUSES, SPYWARE OR MALWARE THAT MAY BE INSTALLED ON YOUR COMPUTER.

## **LIMITATION OF LIABILITY**

1. YOU EXPRESSLY UNDERSTAND AND AGREE THAT GAMALEARN SHALL NOT BE LIABLE TO YOU FOR:

1.1 ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL OR EXEMPLARY DAMAGES WHICH MAY BE INCURRED BY YOU, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY. THIS SHALL INCLUDE, BUT NOT BE LIMITED TO, ANY LOSS OF PROFIT (WHETHER INCURRED DIRECTLY OR INDIRECTLY), ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY LOSS OF DATA SUFFERED, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSS;

1.2 ANY LOSS OR DAMAGE WHICH MAY BE INCURRED BY YOU, INCLUDING BUT NOT LIMITED TO LOSS OR DAMAGE AS A RESULT OF

(a) ANY CHANGES WHICH GAMALEARN MAY MAKE TO THE SERVICES, OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE SERVICES (OR ANY FEATURES WITHIN THE SERVICES);





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(b) THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY CONTENT AND OTHER COMMUNICATIONS DATA MAINTAINED OR TRANSMITTED BY OR THROUGH YOUR USE OF THE SERVICES;

(c) YOUR FAILURE TO PROVIDE GAMALEARN WITH ACCURATE ACCOUNT INFORMATION;

(d) YOUR FAILURE TO KEEP YOUR PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL;

2. THE LIMITATIONS ON GAMALEARN' LIABILITY MENTIONED ABOVE SHALL APPLY WHETHER OR NOT GAMALEARN, HAVE BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

## TERMINATION

1. GamaLearn shall be entitled to terminate this TOS effective immediately upon serving written notice on the Licensee if he following circumstances:
  - 1.1. Fail to pay any required fee
  - 1.2. Otherwise fail to comply with any of the terms and conditions of the Agreement
  - 1.3. Fail to comply with the terms and conditions set forth for activating the Licensed Software as part of a Subscription, in which case the license shall terminate immediately.
2. If you want to terminate your legal agreement with GamaLearn, you may do so by :
  - 2.1 Notifying GamaLearn at any time and
  - 2.2 Closing your accounts for all of the Services which you use, where GamaLearn has made this option available to you. Your notice should be sent, in writing, to GamaLearn address which is set out at the beginning of these Terms.

## 3. Effects of Termination

Upon termination of this EULA:

- 3.1 the rights and licenses granted to Customer pursuant to this Agreement shall automatically and immediately terminate.
- 3.2 any of the licenses that has been purchased will no longer be available and will no longer be used



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## **CONTENT AND YOUR RIGHTS**

1. You understand that all information (such as data files, fonts, written text, computer software, music, audio files, image files or other sounds, photographs, videos or other images) which you may have access to as part of, or through your use of, the Services are the sole responsibility of the person from which such content originated. All such information is referred to as the "Content".

2. You should be aware that Content presented to you as part of the Services, including but not limited to advertisements in the Services and sponsored Content within the Services may be protected by intellectual property rights which are owned by the sponsors or advertisers who provide that Content to GamaLearn (or by other persons or companies on their behalf). You may not modify, rent, lease, loan, sell, distribute or create derivative works based on this Content (either in whole or in part) unless you have been specifically told that you may do so by GamaLearn or by the owners of that Content, in a separate agreement.

3. GamaLearn reserves the right (but shall have no obligation) to pre-screen, review, flag, filter, modify, refuse or remove any or all Content from any Service.

4. You understand that by using the Services you may be exposed to Content that you may find offensive, indecent or objectionable and that, in this respect, you use the Services at your own risk.

5. You agree that you are solely responsible for (and that neither GamaLearn nor the third party provider through whom you purchased GamaLearn has any responsibility to you or to any third party for) any Content that you create, transmit or display while using the Services and for the consequences of your actions (including any loss or damage which GamaLearn may suffer) by doing so.

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## **EXPORT CONTROLS**

Export laws and regulations of the United Arab Emirates and any other relevant local export laws and regulations apply to this Services. User agrees that such export control laws govern its use of this Services (including technical data) and any services deliverables provided under this Agreement, and User agrees to comply with all such export laws and regulations. User agrees that no data, information, software programs and/or materials resulting from services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws.

## **SUBMISSIONS**

GamaLearn always welcomes suggestions and comments regarding the Service. Any comments or suggestions submitted to the Service or GamaLearn, either online or offline, will become GamaLearn's property upon their submission. This policy is intended to avoid the possibility of future misunderstandings when projects developed by GamaLearn might seem to others to be similar to their own submissions or comments.

## **GOVERNING LAW**

These Terms shall be governed by the laws of the United Arab Emirates without regard to conflict of laws principles. You hereby expressly agree to submit to the exclusive personal jurisdiction of the federal and state courts of the United Arab Emirates, for the purpose of resolving any dispute relating to the Terms or access to or use of the Service by You or the User.

Applicable laws of the United Arab Emirates only shall be implemented in connection to any disputes arising from using this Service. In addition, courts of the United Arab Emirates shall have the exclusive jurisdiction to consider and settle such disputes



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## GENERAL PROVISIONS

1. Sometimes when you use the Services, you may (as a result of, or through your use of the Services) use a service or download a piece of software, or purchase goods, which are provided by another person or company. Your use of these other services, software or goods may be subject to separate terms between you and the company or person concerned. If so, the Terms do not affect your legal relationship with these other companies or individuals.
2. The Terms constitute the whole legal agreement between you and GamaLearn and govern your use of the Services (but excluding any services which GamaLearn may provide to you under a separate written agreement), and completely replace any prior agreements between you and GamaLearn in relation to the Services.
3. You agree that GamaLearn may provide you with notices, including those regarding changes to the Terms, by email, regular mail, or postings on the Services.
4. You agree that if GamaLearn does not exercise or enforce any legal right or remedy which is contained in the Terms (or which GamaLearn has the benefit of under any applicable law), this will not be taken to be a formal waiver of GamaLearn rights and that those rights or remedies will still be available to GamaLearn.
5. If any court of law, having the jurisdiction to decide on this matter, rules that any provision of these Terms is invalid, then that provision will be removed from the Terms without affecting the rest of the Terms. The remaining provisions of the Terms will continue to be valid and enforceable.
6. The Terms, and your relationship with GamaLearn under the Terms, shall be governed by the laws of the United Arab Emirates without regard to its conflict of law's provisions. You and GamaLearn agree to submit to the exclusive jurisdiction of the courts located United Arab Emirates, to resolve any legal matter arising from the Terms. Notwithstanding this, you agree that GamaLearn shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.