



Terms of Service

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This page explains the terms by which you may use the online services, and mobile services, web site and software (collectively, the “Service”) made available by TouchMath (“TouchMath,” “we,” “our,” or “us”). By signing an order form that incorporates these Terms of Service by reference, by clicking a button or checking a box marked “I Agree” (or something similar) or by otherwise accessing or using the Service, you signify that you have read, understood and agree to be bound by these Terms of Service (this “Agreement”). In addition, you acknowledge that you have read and understood our Privacy Notice. TouchMath reserves the right to modify this Agreement and will provide notice of material changes as described below. This Agreement applies to all visitors, users and others who access the Service (“Users”), including without limitation: (a) educational institutions such as a school districts, school boards and individual schools within a district (“Educational Institutions”); (b) individual teachers, interventionists, specialists, data analysts, district- and school-level administrators, qualified clinicians and other educators (“Educators”); (c) students (“Students”); and (d) Students’ parents or guardians (“Parents”).

1. TouchMath Service

1.1 Description of Service

TouchMath’s Service is focused on students who are struggling with mathematics, including students with developmental disabilities, intellectual disabilities, autism spectrum disorder (ASD), emotional and behavior disorders, and moderate to severe disabilities.

1.2 Eligibility

This is a contract between you and TouchMath. You must read and agree to this Agreement before using the TouchMath Service. If you do not agree, do not use the Service. You may use the Service only if you can form a binding contract with TouchMath, and only in compliance with this Agreement and all applicable laws. The Service is not available to any Users previously removed from the Service by TouchMath.

1.3 Terms for Access by Students

Any access to or use of the Service by anyone under eighteen (18) years of age is strictly prohibited and in violation of this Agreement unless you are under the supervision of an Educational Institution, Parent or Educator. If you are under eighteen (18) years of age, your use of the Service may be subject to additional policies and restrictions imposed by your Educational Institution, Parent or Educator with which you must comply.

1.4 Limited License

Subject to the terms and conditions of this Agreement, you are hereby granted a limited, non-exclusive, non-transferable, freely revocable license to use the Service in the United States and Canada as permitted by the features of the Service. TouchMath reserves all rights not expressly granted herein in the Service and the TouchMath Content (as defined below). TouchMath may terminate this license at any time for any reason or no reason.

1.5 User Accounts

Your account on the Service (your “User Account”) gives you access to the services and functionality that we may establish and maintain from time to time and in our sole discretion. You may cancel your User Account at any time. User Accounts are limited to one named person and cannot be shared.

We may maintain different types of User Accounts for different types of Users. If you open a User Account on behalf of an Educational Institution, company, organization or other entity, then: (i) “you” includes you and that entity, and (ii) you represent and warrant that you are an authorized representative of the entity with the authority to bind the entity to this Agreement, and that you agree to this Agreement on the entity’s behalf.

By connecting to the Service with a third-party service, you give TouchMath permission to access and use your information from that service as permitted by that service, and to store your log-in credentials for that service.

You may never use another User’s User Account. When creating your User Account, you must provide accurate and complete information, and you must keep this information up to date. You are solely responsible for the activity that occurs on your User Account, and you must keep your User Account password secure. We encourage you to use “strong” passwords (passwords that use a combination of uppercase and lowercase letters,

numbers and symbols) with your User Account. You must notify TouchMath immediately of any breach of security or unauthorized use of your User Account. TouchMath will not be liable for any losses caused by any unauthorized use of your User Account.

By providing TouchMath your email address you consent to our using the email address to send you Service-related notices, including any notices required by law, in lieu of communication by postal mail. We may also use your email address to send you other messages, such as changes to features of the Service and special offers. If you do not want to receive such email messages, you may opt out by clicking on the “unsubscribe” link provided in such communications. Opting out may prevent you from receiving email messages regarding updates, improvements or offers.

1.6 Service Rules

You agree not to, or to assist, aid or otherwise encourage any third party to, engage in any of the following prohibited activities: (i) copying, distributing or disclosing any part of the Service in any medium, including without limitation by any automated or non-automated “scraping”; (ii) using any automated system, including without limitation “robots,” “spiders,” “offline readers,” etc., to access the Service in a manner that sends more request messages to the TouchMath servers than a human can reasonably produce in the same period of time by using a conventional on-line web browser (except that TouchMath grants the operators of public search engines revocable permission to use spiders to copy materials from TouchMath.com for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials); (iii) transmitting spam, chain letters or other unsolicited email; (iv) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Service; (v) taking any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure; (vi) uploading invalid data, viruses, worms or other software agents through the Service; (vii) collecting or harvesting any personally identifiable information, including account names, from the Service; (viii) using the Service for any commercial solicitation purposes; (ix) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; (x) interfering with the proper working of the Service; (xi) accessing any content on the Service through any technology or means other than those

provided or authorized by the Service; (xii) bypassing the measures we may use to prevent or restrict access to the Service, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Service or the content therein; (xiii) accessing the Service for the purpose of building a competitive product or service or copying any of its elements or features; or (xiv) using the Service for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without TouchMath's prior written consent.

Your rights under this Agreement will automatically terminate without notice from TouchMath if you engage in, or otherwise assist, aid or otherwise encourage any third party to engage in, the foregoing.

1.7 Changes to the Service

We may, without prior notice, change the Service; stop providing the Service or features of the Service, to you or to Users generally; or create usage limits for the Service. We may permanently or temporarily terminate or suspend your access to the Service without notice and liability for any reason, including if in our sole determination you violate any provision of this Agreement, or for no reason.

1.8 Service Location

The Service is controlled and operated from facilities in the United States. TouchMath makes no representations that the Service is appropriate or available for use in other locations than the United States and Canada. Those who access or use the Service from other jurisdictions do so at their own volition and are entirely responsible for compliance with all applicable United States and local laws and regulations, including but not limited to export and import regulations. You may not use the Service if you are a resident of a country embargoed by the United States, or are a foreign person or entity blocked or denied by the United States government. Unless otherwise explicitly stated, all materials found on the Service are solely directed to individuals, companies or other entities located in the United States or Canada.

2. Our Proprietary Rights

Except for the materials posted or submitted to the Service by you (your "User Content"), the Service and all materials therein or transferred thereby, including, without limitation, any training materials, software, images, text, graphics, illustrations, logos, patents, trademarks,

service marks, copyrights, photographs, audio, videos, music and User Content belonging to other Users (the “TouchMath Content”), and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world (collectively, “Intellectual Property Rights”) related thereto, are the exclusive property of TouchMath and its licensors (including other Users who post User Content to the Service). You acknowledge and agree that, as between you and TouchMath, TouchMath is the sole and exclusive owner of, and you shall and hereby do assign to TouchMath, all right, title and interest (including was) in and to any and all improvements or enhancements to the Service, including improvements based on the use of User Content submitted, provided or made available by you pursuant to this Agreement (for example, Intellectual Property rights in algorithms or models developed through the processing of such data), provided by you retain all rights to User Content. Except as explicitly provided herein, nothing in this Agreement shall be deemed to create a license in or under any such Intellectual Property Rights, and you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any TouchMath Content. Use of the TouchMath Content for any purpose not expressly permitted by this Agreement is strictly prohibited.

You may choose to or we may invite you to submit comments or ideas about the Service, including without limitation about how to improve the Service or our products (“Ideas”). By submitting any Idea, you agree that your disclosure is gratuitous, unsolicited and without restriction and will not place TouchMath under any fiduciary or other obligation, and that we are free to use the Idea without any additional compensation to you, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, TouchMath does not waive any rights to use similar or related ideas previously known to TouchMath, or developed by its employees, or obtained from sources other than you.

3. Payment Terms

3.1 Paid Services.

Certain aspects of the Service may be provided for a fee or other charge. If you elect to use paid aspects of the Service, then you agree to our pricing and payment terms in the order form that you submit to us or such other pricing terms, as we may make available and update from time to time. We may add new services for additional fees and charges, add or amend fees and charges for existing services, at any time in our sole discretion.

3.2 Payment Methods.

We accept various payment methods for product purchases through our Service, including without limitation, check, ACH, Mastercard, Visa and American Express. We will bill your payment method when you place an order for a product through the Service. TouchMath reserves the right not to fulfill any product order without authorization validation of your purchase from your payment method.

3.3 Refunds.

In the event that TouchMath suspends or terminates your User Account or this Agreement or you cancel your User Account or terminate this Agreement, you understand and agree that TouchMath, in its sole discretion, will determine whether you are eligible for any or no refund or exchange, any unused time on a subscription, any license or subscription fees for any portion of the Service, any content or data associated with your User Account, or for anything else.

3.4 Payment Information; Late Payments; Taxes.

All information that you provide in connection with a purchase or transaction or other monetary transaction interaction with the Service must be accurate, complete and current. You agree to pay all charges incurred by users of your credit card, debit card or other payment method used in connection with a purchase or transaction or other monetary transaction interaction with the Service at the prices in effect when such charges are incurred. All payments shall be made in U.S. Dollars. In the event that any payment is more than thirty (30) days late, TouchMath shall have the right to suspend your access to the Service until all payments are made current. You shall pay for all costs incurred by TouchMath in connection with the collection of late payments. You will pay any applicable

taxes, if any, relating to any such purchases, transactions or other monetary transaction interactions.

3.5 Free Trial.

You may be granted access to the Service for a trial period (“Free Trial”). During the Free Trial, we will not charge you any fees related to the access or use of your membership (“Trial Use”). At the end of the Free Trial, your access and use the Service shall automatically terminate unless you convert to a paid membership. TouchMath reserves the right to determine the length of the Free Trial and to end the Free Trial and revoke your Trial Use at any time, at its sole discretion and without notice to you.

3.6 Pilot Account

You may be granted access to the Service for a trial period (“Pilot Account”). During the Pilot, you will have access to portions of the Service to use with your students in your classroom only. Portions of the Service should not be saved, downloaded, or printed with intent to reproduce after the terms of the trial period. At the end of the pilot period, your access and use the Service shall automatically terminate unless you convert to a paid membership. TouchMath reserves the right to determine the length of the trial period and to end the Pilot Account and revoke your Trial Use at any time, at its sole discretion and without notice to you. During a trial period (“Pilot Account”) it is strictly prohibited to mass download, store, or save instructional materials. No portion of the Services, including the trademarks and service marks, may be used, displayed or reproduced without the prior written consent from TouchMath. You may not share or reproduce any portion of the Services outside of the Services or in any public forum

4. Personal Information; Student Data

4.1 Data Definitions.

When TouchMath is used by an Educational Institution or Educator or otherwise for an educational purpose, TouchMath may collect or have access to Student Data. “Student Data” is personal information that is directly related to an identifiable Student that is maintained by an Educational Institution or related entity or organization, or by us on behalf of such entity. Student Data may include “educational records” as defined by the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232(g).

4.2 Confidentiality.

TouchMath agrees to treat Student Data as confidential and not to share it with third parties other than as described in this Agreement and in our Privacy Notice.

4.3 Student Data Ownership and Control.

TouchMath shall collect and process Student Data as a School Official with a legitimate educational interest pursuant the Family Educational Rights and Privacy Act (“FERPA”), under the direction and control of the Educational Institution. As between TouchMath and an Educational Institution that enters into this Agreement with us, the Educational Institution owns all right, title and interest to all Student Data processed by TouchMath its behalf, and TouchMath does not own, control or license such Student Data, except so as to provide the Service and as described in the Agreement.

4.4 Student Data Access.

We may access and collect Student Data manually, such as when an Educator or other individual authorized to access an Educational Institution’s account enters such Student Data through the Educational Institution’s login and dashboard; or automatically, if the Educational Institution chooses to integrate its Student Information System (“SIS”) with the Service. We also collect, receive and generate Student Data in connection with your authorized use of the Service. If you are an Educational Institution or Educator, you represent and warrant that you have the authority to provide Student Data to TouchMath and authorize TouchMath to collect Student Data for the purpose of providing the Service, and that you have provided appropriate disclosures to the parents or legal guardian regarding your sharing of such personal information with TouchMath.

4.5 Compliance with Laws

TouchMath and the Educational Institutions, Educators and Parents each agree to uphold their responsibilities under laws governing personal information and Student Data, including, without limitation, the Family Educational Rights and Privacy Act (“FERPA”), the Protection of Pupil Rights Amendment (“PPRA”), and the Children’s Online Privacy and Protection Act (“COPPA”) and any and all applicable state laws. We rely on Educational Institutions and Educators to obtain and provide appropriate consent and disclosures, if necessary, for TouchMath to collect any Student Data, including the collection of Student

Data directly from Students under thirteen (13) years of age, as permitted under COPPA. We recommend that you provide a copy of the Privacy Notice to Parents.

You are required to comply with this Agreement and all regulations and laws governing the privacy of children and children's personal information in your territory. You represent and warrant that you are in compliance with all applicable data protection laws governing the protection of personal information and the sharing of student education records.

4.6 Use of Student Data.

By submitting or providing us access to Student Data, you agree that TouchMath may use the Student Data solely for the purposes of (i) providing the Service, (ii) maintaining, supporting, evaluating, diagnosing, improving and developing the Service (including without limitation provision and use of such personal information to train, develop and improve its machine learning and other artificial intelligence algorithms and other models), (iii) enforcing our rights under this Agreement, (iv) using aggregated Student Data for research purposes and (v) as permitted with the Educational Institution's, Educator's or Parent's consent. For clarity and without limitation, we may use Student Data for adaptive learning purposes or customized student learning and to provide recommendation engines to recommend content or services relating to school purposes or other educational or employment purposes, provided such recommendation is not determined in whole or in part by payment or other consideration from a third party.

4.7 Restrictions of Disclosure of Student Data.

TouchMath is prohibited from using Student Data to (a) direct targeted online advertising to Students; (b) develop a profile of a Student, Parent or other individual, other than for the purpose of providing educational services or as authorized by an Educational Institution, Educator or Parent; or (c) for any commercial purpose unless authorized by an Educational Institution, Educator or Parent or permitted by applicable law.

Notwithstanding the foregoing, you agree that TouchMath may provide customized content, advertising and commercial messaging to Users from time to time, provided that such advertisements shall not be based upon Student Data relating to individually identifiable Students, unless we have received consent from the Educational Institution, Educator or Parent to have Student Data used for such purposes and to the extent such data use is permitted by applicable law.

4.8 Use of De-Identified Information.

You agree that we may collect and, both during and after the term of our agreement, use De-Identified Information for the purposes of development, research and improvement of our Service and other educational sites, services and applications or technologies or as any other member of the public would be able to use De-Identified Information pursuant to FERPA, and that we may share such De-Identified Information with our vendors or other third-parties for such purposes. “De-identified Information” refers to data from which any direct and indirect identifiers have been removed or obscured in a way that minimizes the risk of disclosure of the identity of the individual. We agree not to attempt to re-identify De-Identified Information, and to contractually prohibit any third party to whom it is disclosed from doing so.

4.9 TouchMath’s Third-Party Service Providers.

You acknowledge and agree that TouchMath may provide access to Student Data to our employees, affiliates and to certain third-party service providers which have a legitimate need to access such information in order to provide their services to us. We and our employees, affiliates, service providers or agents involved in the handling, transmittal, and processing of Student Data will be required to maintain the confidentiality of such data.

4.10 User-Requested Third-Party Access.

TouchMath may provide users the ability to use and access third-party services through the TouchMath Service, and to share data, including Student Data, with third parties through the Service. You consent to allow us to provide access to Student Data to third parties through the Service as directed by an authorized User. You acknowledge that we are not responsible for the data practices of third parties with whom you elect to share Student Data through the Service, and that, as between us, you are solely responsible for the third-party content and the consequences of providing or transmitting Student Data to such third parties, or authorizing those third parties to access Student Data through the Service.

4.11 Student Data Retention and Deletion Requests.

Educational Institutions, Educators or Parents may request that we delete or retrieve Student Data in our possession at any time by providing such a request in writing. We shall comply with such request within thirty (30) days; provided that we are not required to destroy any electronic copy of Student Data that is retained pursuant to TouchMath’s

standard electronic backup and archival procedures if (a) personnel other than information technology (“IT”) personnel do not have access to such retained copies and (b) IT personnel have access to such copies only as reasonably necessary for the performance of their IT duties (e.g., for the purposes of system recovery). We also are not required to delete data that has been de-identified such that it can no longer be used to identify an individual. A User seeking to modify, correct or delete personal information about a Student without the requisite admin privileges over the Student Data will be instructed to contact the Educational Institution, Educator or Parent (as applicable) to discuss data deletion or modification. We do not delete or de-identify any Student Data associated with an active Educational Institution contract except at the direction of the Educational Institution. The Educational Institution is responsible for maintaining current student rosters and removing Student Data which the Educational Institution no longer needs for an educational purpose through the Service itself, if applicable, or by submitting a deletion request. We will retain Student Data for a period of two years after termination of the contract to continue to provide the Educational Institution access to its records and aggregate reports, after which the Student Data will be deleted and/or de-identified, unless we receive a deletion request prior to that date.

4.12 Changes to Student Data Processing.

We will use commercially reasonable efforts to provide at least thirty (30) days’ notice of any change that may involve collecting, using, storing or sharing Student Data in a materially different way than was disclosed to you previously, so that you have sufficient time to evaluate the change in practice. If you do not choose to accept the changes, you may opt-out by deleting your account before the changes take effect.

5. Privacy

We care about the privacy of our Users. You understand that by using the Service you acknowledge that TouchMath will collect, use and disclose your personally identifiable information as set forth in our Privacy Notice.

6. Security

TouchMath cares about the integrity and security of your personal information. However, we cannot guarantee that unauthorized third parties will never be able to defeat our security

measures or use your personal information for improper purposes. You acknowledge that you provide your personal information at your own risk.

We have implemented administrative, physical and technical safeguards designed to secure the Student Data in our possession and control from unauthorized access, disclosure and use. If an unauthorized party gains access to or has been disclosed Student Data (a "Security Event"), that we have collected or received through the Service under this Agreement, we will promptly notify the Education Institution. If, due to a Security Event which is caused by the acts or omissions of TouchMath or its agents, a notification to an individual, organization or government agency is required under applicable privacy laws, the Education Institution shall be responsible for the timing, content, and method of any such legally-required notice and compliance with such laws and TouchMath shall indemnify the Education Institution for reasonable costs related to legally-required notifications. With respect to any Security Event which is not caused by the acts or omissions of TouchMath or its agents, TouchMath shall reasonably cooperate with Education Institution's investigation of the Security Event, upon request at Education Institution's reasonable expense, but TouchMath shall not indemnify an Education Institution for costs associated with the Security Event.

7. Third-Party Links and Information

The Service may contain links to third-party materials that are not owned or controlled by TouchMath. TouchMath does not endorse or assume any responsibility for any such third-party sites, information, materials, products or services. If you access a third-party website or service from the Service or share your User Content on or through any third-party website or service, you do so at your own risk, and you understand that this Agreement and TouchMath's Privacy Notice do not apply to your use of such sites. You expressly relieve TouchMath from any and all liability arising from your use of any third-party website, service or content, including without limitation User Content submitted by other Users. Additionally, your dealings with or participation in promotions of advertisers found on the Service, including payment and delivery of goods, and any other terms (such as warranties) are solely between you and such advertisers. You agree that TouchMath shall not be responsible for any loss or damage of any sort relating to your dealings with such advertisers.

8. Indemnity

You agree to defend, indemnify and hold harmless TouchMath and its subsidiaries, agents, licensors, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Service, including any data or content transmitted or received by you; (ii) your violation of any term of this Agreement, including without limitation your breach of any of the representations and warranties above; (iii) your violation of any third-party right, including without limitation any right of privacy or Intellectual Property Rights; (iv) your violation of any applicable law, rule or regulation; (v) User Content or any content that is submitted via your User Account including without limitation misleading, false or inaccurate information; (vi) your willful misconduct; or (vii) any other party's access and use of the Service with your unique username, password or other appropriate security code.

9. No Warranty

THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. USE OF THE SERVICE IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM TOUCHMATH OR THROUGH THE SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE FOREGOING, TOUCHMATH, ITS SUBSIDIARIES, ITS AFFILIATES AND ITS LICENSORS DO NOT WARRANT THAT THE CONTENT IS ACCURATE, RELIABLE OR CORRECT; THAT THE SERVICE WILL MEET YOUR REQUIREMENTS; THAT THE SERVICE WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY CONTENT OBTAINED THROUGH THE USE OF THE SERVICE IS OBTAINED AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR MOBILE DEVICE OR LOSS OF DATA THAT RESULTS FROM USE OF THE SERVICE.

FURTHER, TOUCHMATH DOES NOT WARRANT, ENDORSE, GUARANTEE OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY

THROUGH THE SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE, AND TOUCHMATH WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

FEDERAL LAW, SOME STATES, PROVINCES AND OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION AND LIMITATIONS OF CERTAIN IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. THE DISCLAIMERS AND EXCLUSIONS UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

10. Limitation of Liability

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL TOUCHMATH, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, ARISING OUT OF OR RELATING TO THE USE OF, OR INABILITY TO USE, THE SERVICE. UNDER NO CIRCUMSTANCES WILL TOUCHMATH BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TOUCHMATH ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES OR INACCURACIES OF CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF OUR SERVICE; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE; (V) ANY BUGS, VIRUSES, TROJAN HORSES OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH OUR SERVICE BY ANY THIRD PARTY; (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE; AND/OR (VII) USER CONTENT OR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF ANY THIRD PARTY. IN NO EVENT SHALL TOUCHMATH, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES,

SUPPLIERS OR LICENSORS BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNT YOU PAID TO TOUCHMATH IN THE TWELVE (12) MONTHS PRECEDING THE EVENT WHICH FIRST GAVE RISE TO LIABILITY OR \$100.00, WHICHEVER IS GREATER.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER BASIS, EVEN IF TOUCHMATH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. THE DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

11. Governing Law

You agree that: (i) the Service shall be deemed solely based in Colorado; and (ii) the Service shall be deemed a passive one that does not give rise to personal jurisdiction over us, either specific or general, in jurisdictions other than Colorado. This Agreement shall be governed by the internal substantive laws of Colorado, without respect to its conflict of laws principles. The parties acknowledge that this Agreement evidences a transaction involving interstate commerce.

12. Additional Terms for Mobile Applications

12.1 Mobile Applications.

We may make available software to access the Service via a mobile device ("Mobile Applications"). To use any Mobile Applications, you must have a mobile device that is compatible with the Mobile Applications. TouchMath does not warrant that the Mobile Applications will be compatible with your mobile device. You may use mobile data in connection with the Mobile Applications and may incur additional charges from your wireless provider for these services. You agree that you are solely responsible for any such charges. TouchMath hereby grants you a non-exclusive, non-transferable, revocable license

to use a compiled code copy of the Mobile Applications for one User Account on one mobile device owned or leased solely by you, for your personal use. You may not: (i) modify, disassemble, decompile or reverse engineer the Mobile Applications, except to the extent that such restriction is expressly prohibited by law; (ii) rent, lease, loan, resell, sublicense, distribute or otherwise transfer the Mobile Applications to any third party or use the Mobile Applications to provide time sharing or similar services for any third party; (iii) make any copies of the Mobile Applications; (iv) remove, circumvent, disable, damage or otherwise interfere with security-related features of the Mobile Applications, features that prevent or restrict use or copying of any content accessible through the Mobile Applications or features that enforce limitations on use of the Mobile Applications; or (v) delete the copyright and other proprietary rights notices on the Mobile Applications. You acknowledge that TouchMath may from time to time issue upgraded versions of the Mobile Applications, and may automatically electronically upgrade the version of the Mobile Applications that you are using on your mobile device. You consent to such automatic upgrading on your mobile device, and agree that the terms and conditions of this Agreement will apply to all such upgrades. Any third-party code that may be incorporated in the Mobile Applications is covered by the applicable open source or third-party license EULA, if any, authorizing use of such code. The foregoing license grant is not a sale of the Mobile Applications or any copy thereof, and TouchMath or its third-party partners or suppliers retain all right, title and interest in the Mobile Applications (and any copy thereof). Any attempt by you to transfer any of the rights, duties or obligations hereunder, except as expressly provided for in this Agreement, is void. TouchMath reserves all rights not expressly granted under this Agreement. If the Mobile Applications are being acquired on behalf of the United States Government, then the following provision applies. The Mobile Applications will be deemed to be “commercial computer software” and “commercial computer software documentation,” respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, reproduction, release, performance, display or disclosure of the Service and any accompanying documentation by the U.S. Government will be governed solely by this Agreement and is prohibited except to the extent expressly permitted by this Agreement. The Mobile Applications originates in the United States, and is subject to United States export laws and regulations. The Mobile Applications may not be exported or re-exported to certain countries or those persons or entities prohibited from receiving exports from the United States. In addition, the Mobile

Applications may be subject to the import and export laws of other countries. You agree to comply with all United States and foreign laws related to use of the Mobile Applications and the Service.

12.2 Mobile Applications from Apple App Store.

The following applies to any Mobile Applications you acquire from the Apple App Store (“Apple-Sourced Software”): You acknowledge and agree that this Agreement is solely between you and TouchMath, not Apple, Inc. (“Apple”) and that Apple has no responsibility for the Apple-Sourced Software or content thereof. Your use of the Apple-Sourced Software must comply with the App Store Terms of Service. You acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Apple-Sourced Software. In the event of any failure of the Apple-Sourced Software to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Apple-Sourced Software to you; to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Apple-Sourced Software, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be solely governed by this Agreement and any law applicable to TouchMath as provider of the software. You acknowledge that Apple is not responsible for addressing any claims of you or any third party relating to the Apple-Sourced Software or your possession and/or use of the Apple-Sourced Software, including, but not limited to: (i) product liability claims; (ii) any claim that the Apple-Sourced Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation; and all such claims are governed solely by this Agreement and any law applicable to TouchMath as provider of the software. You acknowledge that, in the event of any third-party claim that the Apple-Sourced Software or your possession and use of that Apple-Sourced Software infringes that third party’s intellectual property rights, TouchMath, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by this Agreement. You and TouchMath acknowledge and agree that Apple, and Apple’s subsidiaries, are third-party beneficiaries of this Agreement as relates to your license of the Apple-Sourced Software, and that, upon your acceptance of the terms and conditions of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement

as relates to your license of the Apple-Sourced Software against you as a third-party beneficiary thereof.

13. General

13.1 Assignment.

This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by TouchMath without restriction. Any attempted transfer or assignment in violation hereof shall be null and void.

13.2 Notification Procedures and Changes to the Agreement.

TouchMath may provide notifications, whether such notifications are required by law or are for marketing or other business-related purposes, to you via email notice, written or hard copy notice or through posting of such notice on our website, as determined by TouchMath in our sole discretion. TouchMath reserves the right to determine the form and means of providing notifications to our Users, provided that you may opt out of certain means of notification as described in this Agreement. TouchMath is not responsible for any automatic filtering you or your network provider may apply to email notifications we send to the email address you provide us. TouchMath may, in its sole discretion, modify or update this Agreement from time to time, and so you should review this page periodically. When we change the Agreement in a material manner, we will update the “last updated” date at the top of this page and notify you that material changes have been made to the Agreement. Your continued use of the Service after any such change constitutes your acceptance of the new Agreement. If you do not agree to any of this Agreement or any future Agreement, do not use or access (or continue to access) the Service.

13.3 No Waiver.

No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and TouchMath’s failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision.

13.4 Electronic Communications.

By downloading, accessing or using the Service, you consent to receiving electronic communications and notices from TouchMath. You agree that any notice, agreement, disclosure or other communications that we sent to you electronically will satisfy any

applicable legal communication requirements, including, without limitation, that such communications be in writing.

13.5 Contact.

TouchMath is located at 2 N Nevada Ave, Ste 1200, Colorado Springs, CO 80903. Please contact us at customerservice@touchmath.com with any questions regarding this Agreement. If you are a California resident, in accordance with Cal. Civ. Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210 or (916) 445-1254.

13.6 Entire Agreement/Severability.

This Agreement, together with any amendments and any additional agreements you may enter into with TouchMath in connection with the Service, shall constitute the entire agreement between you and TouchMath concerning the Service.

If any provision of this agreement is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect.