

# GRAMMAR GALLERY LICENSE AGREEMENT

## 1. Acceptance of Terms.

- a. By (i) using this web site or any other web sites (each, a “Site”) or other online service of SG Consulting, Inc., its affiliates, agents, and subsidiaries (“**Teacher Writing Center**”) with links to these Terms of Use (the “**General Terms**”) (collectively, the “**Services**”) in any way, including using, transmitting, downloading or uploading any Materials made available or enabled via the Services of the Teacher Writing Center or, you, or other users of the Service (“**Users**”), or (ii) merely browsing the Services, you agree that you have read, understand and agree to these General Terms and the Teacher Writing Center Online Privacy Policy at <http://www.grammargallery.org/license.html>, which is incorporated herein by reference. “**Materials**” means any content made available or enabled by Teacher Writing Center, you or other users of the Services utilize and includes, without limitation, any work sheets, reference sheets, other information, data, documents, images, photographs, graphics, audio, videos, or webcasts. “**Teacher Writing Center Materials**” means those Materials that are made available through the Services of the Teacher Writing Center or its licensors.
- b. You may not use the Services unless you are fully able and competent to enter into the conditions, obligations, representations, and other terms of these General Terms and are of legal age to form a binding contract with Teacher Writing Center.
- c. The Teacher Writing Center makes certain Services and Materials available only if you have paid a fee or have provided Teacher Writing Center Registration Information and/or created an Teacher Writing Center ID and password or other log-in ID and password (collectively, “**Account Information**”). Some Services may also be subject to a subscription or other agreement, posted guidelines, rules, or terms of service (“**Additional Terms**”). If there is any conflict between the General Terms and the Additional Terms, the Additional Terms take precedence in relation to that Service. The General Terms and any applicable Additional Terms and all other documents incorporated by reference in these General Terms are referred to herein as the “**Terms.**”
- d. The Teacher Writing Center may change the Terms from time to time at its sole discretion, including by imposing a charge for access to or use of a Service. If such changes are made, the Teacher Writing Center will make a new copy of the General Terms available at <http://www.grammargallery.org/license.html>, with any new Additional Terms made available to you from within or through the affected Service. The Teacher Writing Center may require you to provide consent to the updated Terms in a specified manner before further use of the Services is permitted. Otherwise, your continued use of any affected Service constitutes your acceptance of the changes. **Your use of the Services is subject to the most current version of the Terms posted on or through the affected Service at the time of such use. Please regularly check <http://www.grammargallery.org/license.html> to view the then-current General Terms and Additional Terms.**

## 2. Use of Services and Materials.

- a. You agree to adhere to all limitations on dissemination, use, and reproduction of any Materials that you download or access from the Services.
- b. You agree that your Account Information will always be complete, accurate, and up-to-date. It is your responsibility to keep your Account Information confidential at all times and you are solely responsible for all activity that occurs to your Account Information when you are logged in to

your account. If you become aware of any unauthorized use of your account or Account Information, or any other breach of security, you agree to notify the Teacher Writing Center immediately. You may not use another person's Account Information. The Teacher Writing Center may require that you change your Account Information or certain parts of your Account Information at any time for any reason.

- c. You agree to use the Services and the Materials only for purposes that are permitted by the Terms and any applicable law, regulation, or generally accepted practices or guidelines in any applicable jurisdiction (including any laws regarding the export of data or software to and from the United States or other applicable countries) ("**Law**").
- d. You agree not to access or attempt to access the Services by any means other than the interface provided by the Teacher Writing Center or circumvent any access or use restrictions put into place to prevent certain uses of the Services.

### 3. Ownership.

- a. The Services and Teacher Writing Center Materials, and their selection and arrangement, are protected by copyright, trademark, trade dress, patent, trade secret, unfair competition, and other intellectual and proprietary rights (the "**Intellectual Property Rights**"). Except as expressly provided in the Terms, the Teacher Writing Center and its suppliers do not grant any express or implied rights to use the Services and Materials.
- b. The trademarks, logos, and service marks displayed on the Services (the "**Marks**") are the property of the Teacher Writing Center or third parties. You are not permitted to use the Marks without the prior consent of the Teacher Writing Center or the third party that may own the Marks. The Teacher Writing Center and the Grammar Gallery logos are trademarks of SG Consulting, Inc.

### 4. Use of Teacher Writing Center Materials, User Content, and Shared Group Content.

- a. Except as expressly indicated to the contrary in any applicable Additional Terms, the Teacher Writing Center hereby grants you a nonexclusive, freely revocable (upon notice from Teacher Writing Center), nontransferable, license to view, download, and print Teacher Writing Center Materials, subject to the following conditions:
  - i. You may access and use the Teacher Writing Center Materials solely for educational and non-commercial purposes, in accordance with the Terms;
  - ii. The Grammar Gallery license allows both teachers and students to use the program at school. Teachers may also use the program at home and students may use it at home under the guidance of a teacher.
  - iii. You may not modify or alter the Teacher Writing Center Materials;
  - iv. You may not distribute or sell, rent, lease, license or otherwise make the Teacher Writing Center Materials available to others; and
  - v. You may not remove or extract any text, images, copyright, or other proprietary notices contained in the Teacher Writing Center Materials.
- b. The rights granted to you in the Teacher Writing Center Materials as specified above are not applicable to the design, layout, or look and feel of the of any Services. Such elements of the

Services are protected by Intellectual Property Rights and may not be copied or imitated in whole or in part. No Teacher Writing Center Materials may be copied or retransmitted unless expressly permitted by the Teacher Writing Center.

## **5. Modifications to Services and Materials.**

The Teacher Writing Center may at any time and from time to time modify or discontinue, temporarily or permanently, the Services or Materials, or any portion thereof, with or without notice. You agree that the Teacher Writing Center shall not be liable to you or any third party for any modification, suspension, or discontinuance of the Services or Materials.

## **6. Termination.**

- a. The Terms will continue to apply until the license expires or until it is terminated by either you or the Teacher Writing Center as set forth below.
- b. If you want to terminate your agreement with Teacher Writing Center before the expiration of your license, you may do so by (i) notifying Teacher Writing Center at any time and (ii) closing your accounts for all of the Services or Materials that you use, where the Teacher Writing Center has made this option available to you. Your notice should be sent, in writing, to the Teacher Writing Center's address set forth below. The Teacher Writing Center will not refund any portion of the license fee unless the Teacher Writing Center deems there is "just cause" for the termination.
- c. Upon expiration or termination of the Terms, you shall promptly discontinue use of the Services and Materials.

## **7. DISCLAIMER OF WARRANTIES.**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW:

- a. THE SITE, SERVICES, AND MATERIALS ARE PROVIDED BY THE TEACHER WRITING CENTER "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, THE TEACHER WRITING CENTER MAKES NO WARRANTY THAT (I) THE SITE, SERVICES, OR MATERIALS WILL MEET YOUR REQUIREMENTS OR WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (II) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SITE, SERVICES, OR MATERIALS WILL BE EFFECTIVE, ACCURATE, OR RELIABLE; (III) THE QUALITY OF THE SITE, SERVICES, OR MATERIALS WILL MEET YOUR EXPECTATIONS; OR THAT (IV) ANY ERRORS OR DEFECTS IN THE SITE, SERVICES, OR MATERIALS WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE TEACHER WRITING CENTER OR THROUGH OR FROM USE OF THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS.
- b. THE TEACHER WRITING CENTER SPECIFICALLY DISCLAIMS ANY LIABILITY WITH REGARD TO ANY ACTIONS RESULTING FROM YOUR USE OF ANY SERVICES AND YOUR USE OF MATERIALS. ANY MATERIALS DOWNLOADED OR OTHERWISE OBTAINED THROUGH USE OF THE SERVICES IS

ACCESSED AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. THE TEACHER WRITING CENTER ASSUMES NO LIABILITY FOR ANY COMPUTER VIRUS OR SIMILAR CODE THAT IS DOWNLOADED TO YOUR COMPUTER FROM ANY OF THE SERVICES.

- c. THE TEACHER WRITING CENTER WILL NOT BE LIABLE FOR ANY LOSS THAT YOU MAY INCUR AS A RESULT OF SOMEONE ELSE USING YOUR PASSWORD OR ACCOUNT OR ACCOUNT INFORMATION IN CONNECTION WITH THE SITE OR ANY SERVICES OR MATERIALS, EITHER WITH OR WITHOUT YOUR KNOWLEDGE.
- d. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, THE LIMITATION OR EXCLUSION OF IMPLIED WARRANTIES, OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

#### **8. International Users.**

- a. The Services can be accessed from countries around the world and may contain references to Services and Materials that are not available in all countries. These references do not imply that the Teacher Writing Center intends to announce such Services or Materials in these counties.
- b. These Services are controlled, operated, and administered by SG Consulting, Inc. from its offices in the United States of America. The Teacher Writing Center makes no representation that the Services or Materials are appropriate or available for use at other locations outside the United States, and access to the Services from jurisdictions where the Services or Materials are illegal is prohibited. The Teacher Writing Center reserves the right to block access to the Services or Materials by certain international users. If you access the Services from a location outside the United States, you are responsible for compliance with all local Laws.

#### **9. Limitation of Liability.**

- a. IN NO EVENT SHALL THE TEACHER WRITING CENTER, ITS OFFICERS, DIRECTORS, EMPLOYEES, PARTNERS, OR SUPPLIERS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING THOSE RESULTING FROM LOSS OF USE OR DATA, WHETHER OR NOT FORESEEABLE OR IF THE TEACHER WRITING CENTER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR BASED ON ANY THEORY OF LIABILITY, INCLUDING BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORTIOUS ACTION, OR ANY OTHER CLAIM ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF OR ACCESS TO THE SITE, SERVICES, OR MATERIALS. NOTHING IN THE TERMS SHALL LIMIT OR EXCLUDE THE TEACHER WRITING CENTER'S LIABILITY FOR GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE TEACHER WRITING CENTER OR ITS EMPLOYEES.
- b. THE TEACHER WRITING CENTER'S AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO ONE HUNDRED UNITED STATES DOLLARS (\$100) OR THE AGGREGATE AMOUNT PAID BY YOU FOR ACCESS TO THE SERVICE, WHICHEVER IS SMALLER. THIS LIMITATION WILL APPLY EVEN IF THE TEACHER WRITING CENTER HAS BEEN ADVISED OF THE

POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

#### **10. Notification of Copyright Infringement.**

- a. The Teacher Writing Center respects the Intellectual Property Rights of others and expects its users to do the same. The Teacher Writing Center will respond to clear notices of copyright infringement consistent with the Digital Millennium Copyright Act, Title 17, United States Code, Section 512(c)(2) (“DMCA”).
- b. If you believe that your work has been used or copied in a way that constitutes copyright infringement and such infringement is hosted on the Services or from the Services, or in connection with the Services or Materials, please provide, pursuant to the DMCA, written notification via regular mail or via fax (not via e-mail or phone) of claimed copyright infringement to the Teacher Writing Center, which must contain all of the following elements:
  - i. A physical or electronic signature of the person authorized to act on behalf of the owner of the copyright interest that is alleged to have been infringed;
  - ii. A description of the copyrighted work(s) that you claim have been infringed and identification of what content in such work(s) is claimed to be infringing and which you request to be removed or access to which is to be disabled;
  - iii. A description of where the content that you claim is infringing is located on the Services;
  - iv. Information sufficient to permit Teacher Writing Center to contact you, such as your physical address, telephone number and e-mail address;
  - v. A statement by you that you have a good faith belief that the use of the content identified in your notice in the manner complained of is not authorized by the copyright owner, its agent or the law; and
  - vi. A statement by you that the information in your notice is accurate and, under penalty of perjury, that you are the copyright owner or are authorized to act on the copyright owner’s behalf.

Before you file such a notification, please carefully consider whether or not the use of copyrighted material at issue is protected by the “fair use” doctrine, as you could be liable for costs and attorneys’ fees should you file a takedown notice where there is no infringing use. If you are unsure whether a use of your copyrighted material constitutes infringement, please contact an attorney. In addition, you may wish to consult publicly available reference materials such as those found at [www.chillingeffects.org](http://www.chillingeffects.org).

The Teacher Writing Center **will not remove content from the Services in response to phone or email notifications regarding allegedly infringing content, since a valid DMCA notice must be signed, under penalty of perjury, by the copyright owner or by a person authorized to act on his or her behalf. Please submit such notifications by fax or ordinary mail only. The Teacher Writing Center should be contacted only if you believe that your work has been used or copied in a way that constitutes copyright infringement and that such infringement is occurring on the Services or in connection with the Services or Materials.**

#### **11. Indemnity and Liability.**

You agree to indemnify and hold the Teacher Writing Center and its subsidiaries, affiliates, officers, agents, employees, or other partners harmless from any claim or demand, including reasonable attorneys' fees, due to or arising out of your use of the Services or Materials, your connection to the Services or Materials, your violation of the Terms, or your violation of any rights of another, including any Intellectual Property Rights.

## 12. Resolution of Disputes.

- a. All matters relating to your access to, or use of, the Services or Materials shall be governed by the Laws of the State of New Mexico, United States of America without regard to conflict of law principles thereof. You agree that any claim or dispute you may have against the Teacher Writing Center must be resolved by a court located in Dona Ana County, New Mexico, United States of America except as otherwise agreed by the parties, or as set forth in section (b) below. You agree to submit to the personal jurisdiction of the courts located in Dona Ana County, New Mexico, United States of America for the purpose of litigating such claims or disputes. The parties specifically disclaim the U.N. Convention on Contracts for the International Sale of Goods.
- b. For any claim (excluding claims for injunctive or other equitable relief) for less than \$10,000, the party requesting relief may elect to resolve the dispute in a cost-effective manner through binding non-appearance-based arbitration. In the event a party elects arbitration, it shall initiate such arbitration through an established alternative dispute resolution (“ADR”) provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: (i) the arbitration shall be conducted by telephone, online, and/or be based solely on written submissions, the specific manner shall be chosen by the party initiating the arbitration; (ii) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (iii) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.
- c. All claims you bring against the Teacher Writing Center must be resolved in accordance with this section. All claims filed or brought contrary to this section shall be considered improperly filed. Should you file a claim contrary to this section, the Teacher Writing Center may recover attorneys' fees and costs up to U.S. \$1,000, provided that the Teacher Writing Center has notified you in writing of the improperly filed claim and you have failed to properly withdraw the claim.
- d. Notwithstanding the foregoing, in the event of your or others' unauthorized access to or use of the Services or Materials in violation of the Terms you agree that the Teacher Writing Center shall be entitled to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

## 13. General.

- a. Any notice provided to the Teacher Writing Center pursuant to the Terms should be sent to P.O. Box 2262, Mesilla Park, New Mexico 88047, Attention: General Counsel.
- b. It is the express wish of the parties that the Terms, any Additional Terms and all related documents have been drawn up in English. C'est la volonté expresse des parties que la présente

convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

- c. The Teacher Writing Center may provide you with notices, including those regarding changes to the Terms, by email, regular mail, text message, postings on or within the Services, or other reasonable means now known or hereafter developed.
- d. The Terms constitute the entire agreement between the Teacher Writing Center and you with respect to your access to or use of the Services and Materials and supersede any prior agreements between you and Teacher Writing Center on such subject matter.
- e. You may not assign or otherwise transfer the Terms, or any right granted hereunder, without the Teacher Writing Center's written consent. The Teacher Writing Center's rights under the Terms are freely transferable by the Teacher Writing Center.
- f. If for any reason a court of competent jurisdiction finds any provision of the Terms, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to affect the intent of the parties as reflected by that provision, and the remainder of the Terms shall continue in full force and effect.
- g. Any failure by the Teacher Writing Center to enforce or exercise any provision of the Terms, or any related right, shall not constitute a waiver of that provision or right.
- h. Please report any violations of the Terms via the report abuse mechanism offered in conjunction with the specific Service in which the alleged violation occurs.

\*Last updated October 7, 2020. Replaces any earlier version in its entirety.