

We know most people reading this are interested in what we can and cannot do with your content (e.g., essays). In short, you own your content, and it's encrypted. We will:

- Never share your content publicly without your permission;
- Never share your content with other users, other than what is required to perform the services (e.g., your Writing Coach);
- Never sell your content to other students writing essays;
- Never sell your content or contact information to third parties for the purposes of marketing to you without your permission; and
- Never provide or sell your content for use in plagiarism detection databases.

We may use your content in ways that improve our products and services. And we may provide your content to third parties if legally required (e.g., law enforcement).

For more information, [click here to hyperlink to the Your Content Ownership](#) section of the Terms of Service.

## **1. EDITATE (DBA PROMPT) TERMS OF SERVICE**

**Effective Date:** March 31, 2022

BY ACCESSING OR USING THE WEBSITE YOU ARE INDICATING THAT YOU HAVE READ AND UNDERSTAND THE TERMS, AND THAT YOU AGREE TO COMPLY WITH AND BE LEGALLY BOUND BY THE TERMS.

IF YOU DO NOT AGREE TO THE TERMS, YOU MAY NOT ACCESS OR USE THE WEBSITE OR SERVICES.

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### **1. ABOUT THE TERMS**

#### **1.1 Key Terms**

As used in these Terms of Use:

- **“Application Advisor”** refers to Prompt’s customer support personnel who assist Students with using the Services.

- **“Consultant”** refers to an individual, non-Editate entity, or organization engaged by a parent or student to assist the student in the college admissions process.
- **“Consumer”** refers to any individual (student or parent) who accesses or engages Editate for essay coaching services.
- **“Counselor”** refers to a staff member of an educational institution using Editate to assist students in the college admissions process.
- **“Editate,” “we,” or “us”** refer to Editate Inc. (dba Prompt) and our officers, directors, employees, contractors, and agents. To the extent applicable, they also refer to our affiliates, service providers and licensors, and their respective officers, directors, employees, contractors, and agents.
- **“Editor Network”** refers to a group of editors who will be assigned exclusively to work with an organization's students.
- **“Parent”** refers to a guardian of a Student.
- **“Platform”** refers to Editate’s software and online portal providing application resources and, if purchased, access to Reviews.
- **“Review”** refers to a draft of an essay or college application material that is read and commented on by Editate’s team of Reviewers.
- **“Reviewers”** refers to Writing Coaches employed by Editate.
- **“Services”** refers to the on-demand writing coaching services provided by Editate and Writing Coaches, and any and all related services and promotions.
- **“Student”** refers to someone whose essays Editate is editing or who is attending a Editate bootcamp or webinar to learn strategies for success as they write their admissions essays.
- **“Users”** refers to any and all persons that access or use the Website, including Students, Parents, Counselors and Consultants. References to “access” and/or “use” of the Website (and any variations thereof) include the acts of accessing or browsing the Website, and accessing or using the Services.
- **“User Content”** refers to videos, text, photos, information and other content captured, recorded, streamed, stored, shared or otherwise made available or caused to be made available by users on or through the Website.
- **“Website”** refers to any website owned or operated by Editate (including the website currently located at [www.prompt.com](http://www.prompt.com), [www.editate.com](http://www.editate.com) and [www.editrevise.com](http://www.editrevise.com)), through which access to the Services is available. References to the “Website” include any and all features, functionality, tools and content available on or through each such website.
- **“Writing Coach”** refers to a member of Editate’s network of employees and independent contractors engaged by Editate to perform certain aspects of the Services.
- **“You”** means the individual accessing or using the Service, or the company, or other legal entity on behalf of which such individual is accessing or using the Service, as applicable.
- **“Your Content”** refers to User content that is provided or made available or caused to be made available by you.

## 1.2 Services Rules and Supplemental Terms

Your access to and use of the Services is governed by the terms and conditions of these Terms of Use, our Privacy Policy, currently located at <https://www.editate.com/privacy/#privacy-policy> (as described in more detail below), any and all other policies and rules referenced herein, posted on the Website, or otherwise communicated to Users.

Certain of the features, functionality, tools, content and promotions available on or through the Website may be subject to additional or supplemental terms and conditions (“**Supplemental Terms**”). If you choose to access or use those features, functionality, tools or content or participate in those promotions, the applicable Supplemental Terms are also incorporated and deemed part of these Terms of Use.

If there is a conflict between these Terms of Use and the Supplemental Terms, the Supplemental Terms will govern and control with respect to the applicable features, functionality, tools, content and promotions.

PLEASE READ THESE TERMS OF USE, OUR PRIVACY POLICY, AND ALL APPLICABLE SUPPLEMENTAL TERMS (COLLECTIVELY, THE “**TERMS**”) CAREFULLY, AS THEY CONTAIN TERMS AND CONDITIONS THAT IMPACT YOUR RIGHTS, OBLIGATIONS AND REMEDIES IN CONNECTION WITH YOUR USE OF THE WEBSITE AND SERVICES. FOR EXAMPLE, THE TERMS INCLUDE:

- YOUR OBLIGATION TO COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS;
- LIMITATIONS OF OUR LIABILITY TO YOU; AND
- A REQUIREMENT THAT YOU PURSUE CLAIMS OR SEEK RELIEF AGAINST US THROUGH ARBITRATION ONLY (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) AND ON AN INDIVIDUAL BASIS, RATHER THAN AS A PARTICIPANT IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING.

YOUR ACCESS TO AND USE OF THE WEBSITE AND SERVICES IS CONDITIONED ON YOUR ACCEPTANCE OF AND COMPLIANCE WITH THESE TERMS.

### **1.3 Amendment of Terms**

Editate reserves the right, in its sole discretion, to amend the Terms, at any time and without prior notice, including to change, modify, add to, update or remove terms and conditions (collectively “amend” or “update”). If we choose to amend the Terms, we will update the Effective Date at the top of the Terms and post the updated version. We may also, at our option, choose to notify you by e-mail or another means. By continuing to use the Website or Services after we have posted an updated version of the Terms or otherwise notified you of an update, you are affirming that you agree to be bound by the amended Terms. This provision is subject to a few limitations in the “Dispute Resolution” section below. If the amended Terms are not acceptable to you, your only recourse is to stop all use of the Website and Services.

No other modification, amendment, supplement of or to the Terms will be binding on Editate unless it is in writing and signed by an authorized representative of Editate.

### **1.4 Consequences of Non-Compliance**

Your failure to comply with the Terms may result in the suspension or termination of your account and/or access to the Services, and may subject you to civil and criminal penalties.

## **2. YOUR CONTENT AND INTELLECTUAL PROPERTY OWNERSHIP**

### **2.1 Your Content**

Your Content may be viewed by the Users you designate (i.e. if you are a student User, your assigned Reviewer will see Your Content; if you are a student User working with a Counselor or Consultant, they may see Your Content; Editate staff may see Your Content.) Thus, you should only upload, share or store information and other content that you are comfortable sharing. Student Users understand that Counselors and Consultants have access to content submitted by the Student. A Counselor’s or Consultant’s school or organization may have their own rules around Content, and these supersede the Content rules in this agreement.

Your Content is encrypted. Editate will not sell Your Content to individuals who are writing essays. Editate will not submit Your Content to plagiarism detection services.

1. By uploading, sharing or storing Your Content, you hereby grant Editate a worldwide, non-exclusive, transferable, sublicensable, royalty-free right and license to use, copy, reproduce,

process, adapt, modify, distribute, and display Your Content on the Website to the Users you select as necessary to provide the Services to you, including customer support services, and otherwise operate the Website and Services, including for product development and de-bugging purposes.

2. You further grant us the right to use, copy, distribute, post, and display your name, city, and/or state and other information to the applicable Users in connection with Your Content as described herein or elsewhere on the Website, subject to any applicable data protection laws.
3. Editate does not claim any ownership rights in Your Content and nothing in the Terms will be deemed to restrict any rights that you may have to use and exploit any such content, subject only to the licenses granted to Editate under these Terms.
4. Editate may use Your Content for training, research, product improvement, or other non-public purposes.
5. You understand that Editate may collect and analyze data based on Your Content in aggregated, anonymized form. This data may be used non-publicly by Editate or third parties. Editate may sell data about Your Content to third parties, with your name and other identifying information removed.
6. You acknowledge and agree that you are solely responsible for Your Content, and for any consequences thereof, including the use of Your Content by other users and our third-party partners.
7. You represent and warrant that you have all the rights, power and authority necessary to grant the rights granted herein to Your Content, and that neither Your Content, nor Editate's use of Your Content (or any portion thereof) on or through the Website or in connection with the Services will infringe, misappropriate or violate the rights of any person or entity, including patent, copyright, trademark, trade secret, moral rights, industrial rights, database rights or other proprietary or intellectual property rights, rights of publicity or privacy or data protection or contractual rights, or result in the violation of any applicable law or regulation.

## 2.2 The Website

The Website, including the Services, and all features, functionality, tools and content thereof, is protected by copyright, trademark, patent and other laws of the United States and foreign countries. You acknowledge and agree that the Website and Services, and all intellectual property rights therein are the exclusive property of Editate and its licensors. You will not remove, alter or obscure any copyright, trademark, service mark, patent marking, or other proprietary rights notices incorporated in or accompanying the Website or Services.

Without limiting the foregoing, you acknowledge and agree that the trade names, logos, and other trademarks and service marks associated with Editate (the "**Editate Marks**") are the property of Editate, and that you are not permitted to use the Editate Marks without our prior written consent.

You may not use, copy, reproduce, distribute, license, sell, transfer, publish, post, publicly display, publicly perform, transmit, broadcast, adapt, modify, prepare derivative works based upon, or otherwise exploit any features, functionality, tools or content of the Website or Services in any form or by any means, or sublicense the rights granted in the Terms, except as expressly permitted herein, without the prior written permission of Editate or the intellectual property owner, as applicable.

This foregoing license is subject to modification or revocation at any time at Editate's sole discretion.

No licenses or rights are granted to you by implication or otherwise under any intellectual property rights owned or controlled by Editate or its licensors, except for the licenses and rights expressly granted in the Terms. All rights not expressly granted to you by the Terms are hereby reserved.

## 2.3 Feedback

We welcome and encourage you to provide feedback, comments, ideas and suggestions for improvements, enhancements and modifications to the Website or Services (“**Feedback**”). You may submit Feedback by emailing us, at [support@prompt.com](mailto:support@prompt.com). You acknowledge and agree that all Feedback you give us (i) will be treated as non-confidential, and (ii) will be the sole and exclusive property of Editate. Without limiting the foregoing, you acknowledge that your Feedback may be disseminated or used by Editate or its affiliates for any purpose whatsoever, including developing, improving and marketing products. You hereby irrevocably transfer and assign to Editate all of your right, title, and interest in and to all Feedback, including all worldwide patent, copyright, trade secret, moral and other proprietary or intellectual property rights therein, and waive any moral rights you may have in such Feedback.

You agree to sign and deliver such documents, and otherwise provide such assistance, as may reasonably be required from time to time to perfect Editate’s rights in such improvements, enhancements and modifications.

**2.**

### **3. ABOUT THE WEBSITE AND SERVICES**

#### **3.1 License to Use**

If you are a Consumer: Subject to your compliance with the Terms, Editate grants you a limited non-exclusive, non-transferable, non-assignable and non-sublicensable license to access and use the Website and Services for your own personal use only, and not for use for any business purpose or commercial activity.

If you are a Counselor or Consultant: Subject to your compliance with the Terms, Editate grants you a limited non-exclusive, non-transferable, non-assignable and non-sublicensable license to access and use the Website and Services to enroll and work with the Students you enroll with Editate. This license is granted for the sole purpose of enabling you to use and enjoy the benefit of the Services as provided by Editate, in the manner permitted by the Terms.

#### **3.2 Acknowledgements**

YOU AFFIRM THAT YOU HAVE READ THE FOREGOING AND ACKNOWLEDGE THAT:

- EDITATE DOES NOT AND CANNOT GUARANTEE THAT THE WEBSITE OR SERVICES WILL BE CONTINUOUS OR ERROR-FREE.
- IF YOUR MOBILE OR DATA PLAN SERVICES OR ACCESS TO THE INTERNET OR OUR WEBSITE IS/ARE SUSPENDED, CANCELED OR TERMINATED (E.G., AS A RESULT OF BILLING ISSUES OR OTHER BREACH), YOU MAY NOT BE ABLE TO USE SOME OR ALL OF THE WEBSITE.
- YOU ARE EXCLUSIVELY RESPONSIBLE FOR YOUR USE OF THE WEBSITE AND THE SERVICES AND YOUR CONTENT. ABUSE OF THE SERVICES MAY SUBJECT YOU TO CIVIL AND CRIMINAL FINES AND PENALTIES.

#### **3.3 Modifications and Updates to the Website and Services**

Editate reserves the right, in its sole discretion, to modify or discontinue offering the Website and/or Services, in whole or in part, or any features, functionality, tools or content thereof, at any time, for any reason or no reason, with or without notice to you.

You agree that Editate has no obligation to provide any updates or to continue to provide or enable any particular features, functionality, tools or content, and will not be liable with respect to any such modifications, discontinuance or deletions.

#### **3.4 International Users**

The Website and Services are controlled and operated within the United States. You are hereby prohibited from accessing or using the Website and Services from any territory where the Website or any of the features, functionality, tools, content thereof, are illegal. If you choose to access the Website from a location outside the United States, you do so at your own risk and you are solely responsible for compliance with applicable laws, rules and regulations, including export laws and any regulations and local laws regarding online conduct and content.

## **4. ACCOUNTS**

### **4.1 Account Registration**

While certain areas of the Website are publicly available, you must register for a User account before you are able to use any of the Services. You may register to create an account directly via the Website.

If you are a Consumer, you may not register for an account on behalf of any person (other than yourself or your child).

If you are a Consultant or Counselor, a designated administrator may set up a primary account, and designate the individuals who are eligible to sign up for subaccounts. Administrators for each client will have access to manage and view activities associated with the subaccounts registered to that client. (For simplicity, both accounts and subaccounts will be referred to hereafter as “accounts”).

### **4.2 Account Set-Up**

Your account and account profile page will be created based upon the information you provide to us.

You agree to provide complete, accurate and up-to-date information during the registration process and to update such information as necessary to ensure that it remains complete, accurate and up-to-date. Please note that the name and contact information that you submit when you register will be shared in accordance with your selections in your account settings when you share Your Content.

When you create your account, you will be asked to create a password, which you will be solely responsible for safeguarding. We encourage you to use “strong” passwords (passwords that use a combination of upper and lower case letters, numbers and symbols) with your Editate account or any other account that you may connect to your Editate account. You agree not to disclose your password to any third party, and you agree to immediately notify Editate of any unauthorized use of your account. You further acknowledge and agree that you will be solely responsible for any activities or actions on or through your account, whether or not you have authorized such activities or actions. Editate cannot and will not be liable for any loss or damage arising from your failure to comply with the above requirements.

### **4.3 Account Suspension and Cancellation**

You may cancel your account at any time.

We may, in our discretion, without liability to you and without limiting our other remedies, with or without prior notice and at any time, decide to (i) limit, suspend, deactivate or cancel your account and take technical and legal steps to prevent you from using our Website and Services at any time for any reason, and (ii) screen or delay the posting or delivery of Your Content.

Editate reserves the right to suspend or terminate your account or your access to the Services if you create more than one account, or if any information provided during the registration process or thereafter is determined to be incomplete, inaccurate, out-dated, deceptive or fraudulent.

We reserve the right to cancel unconfirmed accounts or accounts that have been inactive for a prolonged period of time. We also reserve the right to cancel accounts of Users who fail to comply with the Terms, including the terms and conditions regarding User conduct, as set forth in the “User Conduct Guidelines” section below and elsewhere in the Terms.

If your account is deactivated or canceled, Editate will have the right, but not the obligation to delete Your Content.

If Editate has suspended your account due to your actual or suspected breach of the Terms, such suspension will continue until the suspected breach is cured or otherwise resolved to Editate’s reasonable satisfaction.

## **5. PURCHASES, FEES, AND PAYMENT TERMS**

### **5.1 Consumer Purchases**

- (i) **Individual Reviews.** You may purchase Reviews for yourself or as a gift to someone else. The Reviews are automatically deducted from your account when you use the Services. The Reviews

are virtual currency for Editate and Editate’s affiliates, and you are not able to remove the Reviews from the Services. Reviews purchased do not expire; however, if the user does not log in within a 12-month period, the Review credits will be placed in a “holding” state and the customer will need to request the reactivation of the Reviews by emailing support@editate.com. Reviews may not be transferred or sold to other users.

a. **Cancellation and Refunds.** Users may request a refund for unused Reviews and Editate will provide a refund to all requests, except for Reviews previously placed in a “holding” state, which are not eligible to be refunded.

(ii) **Small Group Bootcamp.** Bootcamp sessions are scheduled in advance, and you may purchase a seat to participate. Editate will assign the User work and assignments to be conducted prior to bootcamp sessions. Paid bootcamp seats may come with Reviews for the User to use during the duration of the bootcamp. These Reviews do not expire; however, if the user does not log in within a 12-month period, the Review credits will be placed in a “holding” state and the customer will need to request the reactivation of the Reviews by emailing support@editate.com. Reviews may not be transferred or sold to other users.

a. **Cancellation and Refunds.** You may cancel or reschedule your bootcamp seat up to 72 hours before the first bootcamp session. Refunds are only provided to those who cancel with 72 hours or more notice to Editate. Reviews obtained through purchases of Small Group Bootcamps are not eligible to be refunded.

(iii) **One-on-One Packages.** You may purchase packages for yourself or as a gift to someone else. The packages are paid for upfront when you activate the Services. Editate may provide a payment plan for the Services. Editate may automatically charge credit cards on file for payment of Services. If payments do not go through, Editate can choose to suspend the Services. Editate will not issue any refunds for payments already made except in the circumstances outlined in “Refund” below. Packages are not eligible to be transferred or sold to other users.

a. **Timeline.** Editate will use best efforts to motivate the User to complete their essays and applications on the agreed-upon timeline by monitoring the User’s progress and communicating with the User as needed. The User and Editate may agree to adjust the Timeline as needed. However, the User is solely responsible for meeting any and all college application deadlines.

b. **Expiration.** Editate’s services will end upon the completion of the Timeline for the Package or April 1 of the following year after purchase, whichever is earlier.

c. **Cancellation and Refunds.** User can cancel the services at any time. Refunds are only provided in the two situations described below.

i. Users who purchase a Package may request a refund prior to the start of the program or within 48 hours of their first call with their Writing Coach (e.g., if the User does not believe Editate is a fit). Editate will issue a full refund.

ii. User may request a refund due to dissatisfaction with the Services. Editate may at its sole discretion decide to issue a partial refund based on an applicable reason for the dissatisfaction (see Quality Guarantee below).

d. **Unlimited services.** Packages include services for achieving an agreed-upon goal (e.g., Common Application Essay completion, applications for 3 colleges, applications for all colleges). Editate defines a standard quantity of calls and reviews for each package. The User’s Application Advisor or Writing Coach may choose to add calls and reviews as they determine it is needed to achieve the agreed-upon goal. The User may request additional calls and reviews, but Editate, in its sole determination, will decide whether to grant requested calls and reviews. Editate will not do any calls or reviews for services that in Editate’s determination are not related to achieving the agreed-upon goal.

e. **Completion of services.** Editate will send a Completion Notice after Editate determines a User is likely done with the services. The User will confirm that their Package is complete via email or in the software. If User does not confirm completion or respond that they are not complete within 72 hours of receiving a Completion Notice, Editate in its sole discretion may deem the Package to be complete and will no longer be responsible for performing any remaining services as part of the Package fee, although User may purchase additional services. User may request reactivating the Package by emailing [support@editate.com](mailto:support@editate.com) with a reason; however, it is in Editate's sole discretion whether to reinstate the Package.

- (iv) **Payment.** YOU ARE RESPONSIBLE FOR PROVIDING EDITATE WITH VALID CREDIT CARD OR PAYMENT ACCOUNT DETAILS AND FOR THE TIMELY PAYMENT OF ALL FEES. Please note that the payment information, including name and contact information, that you submit when you register may be used and shared with our payment processing services provider and otherwise used in accordance with our Privacy Policy.
- (v) **Quality Guarantee:** If you are not pleased with the Services, please send an email to [support@editate.com](mailto:support@editate.com) explaining your case. Editate will review your email and the Services rendered. Editate, at its sole discretion, will determine if the Services were conducted appropriately and may choose to issue a full or partial refund as Editate deems appropriate. Please note that any refunds beyond the policies described above are at Editate's sole discretion and will never be provided for the following reasons:
- a. **Unused services due to college acceptances.** Many Users may be admitted to a top choice college and choose not to continue completing other college applications. The User obtained the result they sought (admission to a college of their choice) and therefore will not receive a refund.
  - b. **Unused services due to User neglect.** While Editate uses best efforts to keep Users engaged, the use of the Services is ultimately the User's responsibility.
  - c. **Unethical requests.** Editate does not write essays for Users or facilitate plagiarism. Any User comments Editate interprets as a request to write all or parts of any essays or do heavy-handed editing (e.g., rewriting parts of essays) may result in the termination of services by Editate without a refund. If Editate judges all or part of an essay may have been written by someone other than the Student, including by a Parent, Counselor, Consultant, or artificial intelligence tool, Editate may refuse to edit the essay and may terminate services without a refund.
  - d. **Non-acceptance.** Editate is not responsible for college list selection or acceptances. Not being accepted to a college of choice is not an accepted reason for a refund.
- (vi) **One Prompt, One Upload:** Submissions to Editate's Reviewers should consist of a single prompt. If you submit more than one essay under a single prompt, Editate will delete your submission and ask you to upload a single essay. If you have purchased a package, Editate's Application Advisors can make the adjustment for you.

## 5.2 Consultant Purchases

Consultants can pay for access to Editate's web-based Platform for managing and calendaring User Content, providing feedback on and editing User Content, and accessing Editate's global network of Reviewers. You may also provide access to this software and Editate's services to other members of your organization and your Clients under your brand. All Services provided in this manner are subject to these Terms. For all paid Services, Consultants must submit a prepayment that reflects (to their best estimation) their planned Editate usage for the upcoming year. Editate may offer various prepayment discounts at their discretion.

- (i) **Using Our Platform.**
- a. **Client Activation.** There is a one-time fee for each Client activated in the software Platform. The fee covers the Client's use of the platform through June of the Student's graduation year. When you activate a Client in the Platform, you will be charged for that seat on



your next month's invoice. Clients are defined as individuals who are in the process of writing essays as part of an application to an undergraduate or graduate degree (e.g. high school seniors). If you exceed the amount of Clients that you have prepaid for, Editate will automatically track the number of Clients you add and bill you on a monthly basis for any additional incurred charges.

i. **Active Client Criteria.** Editate only charges for Clients who are marked "Active" under the Students tab or who meet our minimum usage criteria regardless of whether they are marked "active." These criteria are:

- (a) that a Client has three or more confirmed schools,
- (b) that a Client has three or more submitted assignments, or
- (c) that a Client has used our content strategy.

Editate will issue Consultants a credit at the end of the year for Clients whose activation fee has been paid but whose accounts do not meet the above criteria.

b. **Reviews.** You may purchase Reviews for Clients to receive feedback from Editate's Reviewers. The Reviews are automatically deducted from any prepayment credit or credit on your account from previous years when you use the Services.

i. Pricing is based on essay length and draft number, as listed at [consultant.prompt.com](http://consultant.prompt.com) or in separate agreements.

ii. Pricing Notifications: When you choose to manually send a document to Editate, you will be notified of the price for the document. If you have the Platform set to automatically send a document to Editate, then you will be charged the price that Editate calculates for the document. You are able to see all charges associated with each document on your Invoicing and Accounting Dashboards.

iii. Reviews Timeline. Editate will use best efforts to return Reviews submitted to its Network of Reviewers within a 48-hour time span. If Editate foresees any delays in our ability to return your Review within this time frame, we will communicate this with the User as needed.

iv. One Prompt, One Upload: Submissions to Editate's Reviewers should consist of a single prompt. There are exceptions to this rule surrounding the submission of a group of supplemental essays where each response is under 250 words or utilizing the essay grouping feature for essays over 250 words. If Editate deems multiple prompts to have been submitted, then Editate has the right to amend the charge by creating additional documents for each of the additional Reviews. Please note that if you choose to utilize the grouping feature, you will still be charged for each individual essay contained in the grouping.

v. Downgrades and Upgrades: You may change a request for Services as long as Services performed on the material have not begun.

c. **Editor Portal.** Editate offers a separate portal for your team of internal editors that allows you to assign them essays to review. Editors will only have the ability to see the essays in their queue that require feedback and won't be able to see your entire student list. You can toggle on an editor's ability to view activities lists, essay lists, and content strategy for the students whose essays that they are working on. You have the ability to approve the work of your editors or return it straight to the student. We also provide you with metrics that you can utilize to gauge your team's productivity. Pricing for use of the Editor Portal is available from Editate.

(ii) **Membership Types.**

a. **Platform-Only Membership:** Consultants who wish to use Editate's Platform and not access Reviews may opt for Editate's Platform-Only Membership. Consultants on a Platform-only Membership are not able to access reviews.

b. **Basic Review Membership:** Basic Review Membership allows Consultants to access a limited number of Reviews per week according to the amount the Consultant has

prepaid. Review limits apply across the entire Organization and Consultants may not exceed the weekly Review limits that they have selected. Consultants are not required to submit the full number of Reviews allotted to them in any given week, and Reviews do not accumulate. Review limits are in effect from March 1st of the current year (beginning of the application cycle) to March 31st of the next year (end of the application cycle). Review limits will reset every Monday.

i. **Increasing Review Limits.** If you discover you need a higher Review limit, you may request to upgrade to a higher limit for the rest of the season and pay the associated charge. Editate reserves the right to grant or withhold upgrades based on capacity and demand. You may also request temporary Review limit increases, without charge, in certain weeks that are not in October or near an application deadline, which Editate will grant if we have capacity.

ii. **Platform Fee.** Consultants wishing to use a Basic Review Membership must also pay the one-time Platform fee for each Client using Editate.

iii. **Editor Network Fee.** If Consultants want Clients to have the same Reviewer across all Reviews for said Client, they can add the Editor Network feature for that Client for an additional per-Client fee.

c. **Premium Membership:** Premium Membership allows Consultants to utilize Editate’s network of Reviewers without the constraint of essay Review limits and prioritizes one Reviewer working with one Client. Premium Members must add their Clients to the Platform for a one-time per-Client Platform fee and must pay an additional Editor Network fee for at least 10 of their Clients. The Editor Network allows the bulk of a Client’s essays to be reviewed by the same Reviewer. Editate does not guarantee that all Reviews will be completed by the same Reviewer, as circumstances may emerge that cause the assigned Reviewer to be unavailable or unable to return a Review within an acceptable timeframe. Premium Members receive discounts on Derivative Essays, Final Checks, and coaching calls.

i. A Derivative Essay is an essay that uses another essay that Editate has provided feedback on as a foundation for beginning a new essay (e.g. using a Common App personal statement to begin a UC PIQ). Essays must be marked as “Derivative” in the Platform prior to submission to Editate in order for the discount to apply. A Derivative Essay must be within 300 words of the source essay, Editate must have reviewed the source essay, and the source essay must be complete. Editate in its sole discretion may determine whether an essay is Derivative.

ii. Final Checks are the last Review of an essay to check for any typos or glaring errors. Editate in its sole discretion may determine whether a Review qualifies as a Final Check.

iii. Coaching calls are video calls between a Writing Coach and a Student to create an application plan, outline or review an essay, or prepare for an interview.

d. **Review-Only.** Editate allows Consultants to use Review-Only plans on a case-by-case basis. Consultants who have a Review-Only plan may designate Students as Review-Only if they would like the Student’s essays to be reviewed by Editate’s Reviewers but do not want to grant the Student access to the Editate Platform. If you are working with a Review-Only Student, you must upload essays on behalf of the Student and send them their feedback outside of the Editate platform. The only essay types you are able to submit to Prompt for Review-Only Students are The Common Application (including activities list, additional info, COVID19, and change high schools), Coalition App, The University of California Personal Insight Questions or UC PIQs (including activities list), Apply Texas, and The Universities and College Admission Services or UCAS essays.

(iii) **How prepayment works:** To allow Editate to make the appropriate hiring decisions and adequately plan for the Review capacity of an upcoming season, Consultants are required to submit a prepayment indicating their planned Editate usage for the upcoming season. Editate will offer prepayment discounts at their discretion and make any necessary adjustments to the prepayment process to ensure that it is as functional and efficient as possible. At the time of

prepayment, Consultants must elect either Platform-Only Membership, Basic Review Membership, or Premium Membership. Membership types cannot be combined (i.e. Consultants cannot have some students on a Basic plan while others are Premium), and Editate cannot guarantee that a Consultant will be able to change their plan type after initial selections are made.

a. Prepayment may be made at the time of purchase or in installments. If you opt to pay in installments, Editate will charge your first payment of the series at the time of purchase. Subsequent charges will be initiated the first week of each month.

b. Prepayments will be applied towards the number of platform licenses; Reviews; and Editor Network fees, if relevant, that you have indicated in your plan selection. If you exceed what you have prepaid for, we will bill you the difference at the beginning of each month based on the previous month's account activations and Review and call usage. If you have pre-paid for more than what you use, the remaining prepayment credit will roll over to the next application season. In order for your purchase to continue to roll over past the first year, you must make an additional purchase. Once you have paid the first installment of your prepayment (or if you opted out of installments and paid in full) you are able to begin adding Students and utilizing the Services.

(iv) **Payment.** Editate only accepts credit card, bank (ACH) transfers, or wire transfers as payment. YOU ARE RESPONSIBLE FOR PROVIDING EDITATE WITH VALID CREDIT CARD OR PAYMENT ACCOUNT DETAILS AND FOR THE TIMELY PAYMENT OF ALL FEES. Please note that the payment information, including name and contact information, that you submit when you register may be used and shared with our payment processing services provider and otherwise used in accordance with our Privacy Policy.

a. If you choose to pay by ACH transfer, Editate will invoice you.

b. All credit card transactions exceeding \$500 will incur a 3% processing fee.

c. Editate will issue an invoice at the beginning of a month for Services performed in the previous month. Two business days following the creation of the invoice, we will automatically charge the credit card or payment account associated with your account. Invoices and charges will recur automatically at monthly intervals until you change or terminate your account. If you wish to designate a different credit card or payment account, or if there is a change in your credit card or payment account status, you must change your information in your account. This may temporarily disrupt your access to your account while Editate verifies your new payment information. Any change in the chosen payment method will go into effect for the next billing period. Please note that the payment information, including name and contact information that you submit when you register may be used and shared with our payment processing services provider and otherwise used in accordance with our Privacy Policy.

d. We may contact you via email regarding your account, for example, in connection with a problem with your credit card or payment account.

(v) **Late Payment Penalties and Termination.** Payment of invoices is due within thirty (30) days, and outstanding amounts will accrue interest at the lesser of 2% per month and the maximum rate permitted by law. Editate reserves the right to terminate Service in the event of late payments. If Editate terminates Service for nonpayment, Students who are fully paid and active on the Platform are able to continue using the Platform, but the Consultant's Students may no longer access Reviews.

(vi) **Refunds.** Refunds are only provided in the situation described below.

a. User requests a refund due to dissatisfaction with the Services. Editate may at its sole discretion decide to issue a partial refund based on an applicable reason for the dissatisfaction.

Refunds are not provided for any other reasons, including:

- Unused services due to User neglect.

- Unethical requests. Editate does not write essays for Users or facilitate plagiarism. Any User comments Editate interprets as a request to write all or parts of any essays or do heavy-handed editing (e.g., rewriting parts of essays) may result in the termination of services by Editate without a refund. If Editate judges all or part of an essay may have been written by someone other than the Student, including by a Parent, Counselor, Consultant, or artificial intelligence tool, Editate may refuse to edit the essay and may terminate services without a refund.
  - Non-acceptance. Editate is not responsible for college list selection or acceptances. Not being accepted to a college of choice is not an accepted reason for a refund.
  - Failure to return Reviews within 48 hours of document submission.
- (vii) **Revisions:** Editate has sole discretion as to what is considered a revision of a document. A document is typically defined as a single prompt. If the content is similar, but the prompt is different, then it must be treated as a separate document and should not be uploaded as a revision to a previous document. Should Editate deem it to be a unique document, then Editate has the right to amend the charge by removing the discount.
- (viii) **Quality Guarantee:** If you are not pleased with the Services, please send an email to [support@editate.com](mailto:support@editate.com) explaining your case. Editate will review your email and the Services rendered. Editate, at its sole discretion, will determine if the Services were conducted appropriately and may choose to issue a full or partial refund as Editate deems appropriate.
- (ix) **Membership Timeline.** Membership plans begin March 1st of the year of the current application cycle and terminate March 31st of the following year.
- (x) **Termination:** Though we'd much rather you stay, you can stop using our Services at any time. To terminate use of the Services, email [support@editate.com](mailto:support@editate.com). Editate reserves the right to suspend or terminate your use for any reasons. Reasons for suspension or termination could include non-payment, failure to comply with these Terms, or use of the Services in any way that would cause Editate legal liability or disrupt others' use of the Services. If we suspend or terminate your use, we will try to let you know in advance and help you retrieve data, though there may be some cases (for example, repeatedly or flagrantly violating these Terms, a court order, or danger to other Users) where we may suspend your access immediately.

### 5.3 School Purchases

School Counselors can pay for access to Editate's web-based Platform for managing and calendaring User Content and assignments, providing feedback on and editing User Content, and accessing Editate's global network of Reviewers. All services provided in this manner are subject to these Terms. Counselors can also purchase bootcamps and Reviews from Editate.

- (i) **Individual Reviews.** You may purchase Reviews for your Students. The Reviews are automatically deducted from your account when you use the Services. The Reviews are virtual currency for Editate and Editate's affiliates and you are not able to remove the Reviews from the Services. Reviews purchased expire on July 1 of the following year after purchase. Reviews are not eligible for refunds and may not be sold to other Users. Reviews cannot be transferred from one Student to another.
- (ii) **Bootcamps.** You may purchase bootcamps for your Students. An Editate team member will communicate with the Counselor on the logistics and other details for bootcamps. Bootcamps must be scheduled at least 30 days in advance.

a. The Standard Bootcamp program is three hours in length and includes 20 free Reviews from our team that you can distribute to your students as you see fit. The Bootcamp can be on the personal statement, the UC PIQs, or supplemental essays and will be catered to your student population. The 20 Reviews expire on July 1 of the following year after purchase. Reviews cannot be transferred from one Student to another.

b. The Bootcamp+ (Plus) program provides bootcamp programming and two Reviews for each Student participant to use during the duration of the bootcamp. These Reviews expire after one month following the last bootcamp session. Reviews cannot be transferred to other Students or sold to other Users.

c. **Rescheduling or Canceling Bootcamps:** If you need to reschedule your BootCamp, you may do so up to 3 weeks in advance. At 3 weeks prior to your originally scheduled date, Editate will be unable to accommodate any changes. Bootcamps are non-refundable but may be rescheduled in accordance with the above terms and conditions. Bootcamp purchases do not roll over and must be used during the application season in which they were purchased.

(iii) **Webinars.** Editate may offer a free 30-minute educational webinar for your families. This webinar includes information to help families get started with the college essay process and also provides an introduction to Editate. If you accept our offer to provide this webinar, you grant us permission to market our services to your students in a way that is mutually agreed upon prior to the session. You may also purchase a more intensive 1-hour version of this webinar (Webinar+) where our team members will take your students through some introductory brainstorming exercises. If you need to reschedule your webinar, you may do so within 2 weeks of your originally scheduled date and time. If you need to make changes with less than 2 weeks notice, we can't guarantee we will be able to accommodate your requests.

(iv) **Payment.** Editate only accepts credit card and bank (ACH) transfers as payment. YOU ARE RESPONSIBLE FOR PROVIDING EDITATE WITH VALID CREDIT CARD OR PAYMENT ACCOUNT DETAILS AND FOR THE TIMELY PAYMENT OF ALL FEES. Please note that the payment information, including name and contact information, that you submit when you register may be used and shared with our payment processing services provider and otherwise used in accordance with our Privacy Policy.

i. Editate will send you an invoice for your purchase. Please note that the payment information, including name and contact information that you submit may be used and shared with our payment processing services provider and otherwise used in accordance with our Privacy Policy.

ii. We may contact you via email regarding your account, for example, in connection with a problem with your credit card or payment account.

(v) **Late Payment Penalties and Termination.** Payment of invoices is due within thirty (30) days, and outstanding amounts will accrue interest at the lesser of 2% per month and the maximum rate permitted by law. Editate reserves the right to terminate Service in the event of late payments.

(vi) **Refunds.** We do not provide refunds for Counselor purchases.

## 6. USER CONDUCT GUIDELINES

Any time you access or use the Services, you are required to comply with our User conduct guidelines, as set forth below.

You agree that you will access and use the Website and Services for your personal use only, unless you are a Consultant or Counselor.

You agree that you will not access or use the Website or Services to upload, share or store any information, or otherwise act in any manner, that:

- is intended to perpetrate a hoax or otherwise defraud, mislead or deceive any person or entity;
- violates, breaches or circumvents any local, state, federal or other law, rule or regulation, including any ruling or order of a court or administrative body;
- violates, breaches or circumvents the rights of any person or entity, including infringing or misappropriating such party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy;
- is defamatory, obscene, pornographic, vulgar, lewd, offensive or unlawful;
- promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group;
- is inflammatory, abusive, violent or threatening or promotes violence or actions that are threatening to any other person;
- promotes illegal or harmful activities or substances;
- is harmful to children.

In the event Your Content contains any of the foregoing prohibited material, or if Editate deems it necessary in its sole discretion, Editate may elect (but is not obligated to except as set forth in applicable law) to report Your Content to the appropriate legal authorities, and, if applicable, your designated Consultant or Counselor. For Consumer clients, Editate may also report cases of self-harm; child, domestic, or sexual abuse; or other concerning or illegal activities to the Parent, if the Parent is not involved in the abuse or activity.

You are not authorized to access or use the Website or Services:

- to impersonate any person or entity, or falsify or otherwise misrepresent your identity, credentials, affiliations or intentions;
- to collect, store or use any information from or about another User, other than to provide aid to such User or as otherwise authorized and intended by such User;
- to "stalk" or harass any other User;
- to distribute unsolicited commercial or bulk electronic communications (or, "spam"), chain letters or "pyramid" schemes;
- for political campaigning, recruiting votes or soliciting donations or other support for legislative or other initiatives;
- to systematically retrieve information or content to create or compile, directly or indirectly, in single or multiple downloads, a collection, compilation, database, directory or the like, whether by manual methods, through the use of bots, crawlers, or spiders, or otherwise;
- if you are a person barred from receiving services under the laws of the United States or other applicable jurisdiction; or
- for any other purposes that are not expressly permitted by the Terms.

Further, you may not:

- access, copy, distribute, share, publish, use or store any User Content, including any information from or about any other User, for purposes that are inconsistent with these Terms or our Privacy Policy, or otherwise violate the privacy rights or any other rights of other Users or any other third party, including by

disclosing, selling, renting, distributing or exposing any User Content to a third party, using it for marketing purposes, or otherwise using it for any purposes unrelated to the Services;

- access, copy, distribute, share, publish, use or store, or prepare derivative works from any Website content or User Content that belongs to Editate, another User or to a third party, including works covered by any copyrights, trademark, patent, or other intellectual property right, except with prior express permission of the person or entity party holding the rights to license such use;
- share your login credentials or transfer your account to another party without our consent;
- circumvent our systems, policies, determinations as to your account status, including by attempting to access or use the Website if your account has been suspended or canceled or you have otherwise been temporarily or permanently prohibited or blocked from using the Services;
- access, search, collect information from, or otherwise interact with the Services by “scraping,” “crawling” or “spidering” the Services, by the use of any software, device, script or robot, or by any other means (automated or otherwise) other than through the currently available, published interfaces that are provided by Editate, unless you have been specifically authorized to do so in a separate agreement with Editate;
- use, display, mirror or frame the Website, or any feature, functionality, tool or content of the Website, Editate’s name, any Editate trademark, logo or other proprietary information, without Editate’s express written consent;
- interfere with, disrupt, damage or compromise the Website or our systems or the access of any User, host or network in any way, including through the use of viruses, cancel bots, Trojan horses, harmful code, flood pings, denial-of-service attacks, backdoors, packet or IP spoofing, forged routing or electronic mail address information or similar methods or technology or by overloading, flooding, spamming, mail-bombing the Website or otherwise imposing an unreasonable or disproportionately large load on the Website;
- access, tamper with or use non-public areas of any of the Website, Editate’s computer systems, or the technical delivery systems of Editate’s providers;
- probe, scan, or test the vulnerability of any system or network of Editate or its providers, or breach or circumvent any security or authentication measures of such system or network;
- avoid, bypass, remove, deactivate, impair, descramble, or otherwise circumvent any technological measure implemented by Editate or any of Editate’s providers or any other third party to protect the Website;
- forge any TCP/IP packet header or any part of the header information in any e-mail or posting, or in any way use the Website to send altered, deceptive or false source-identifying information;
- attempt to decipher, decompile, disassemble or reverse engineer any of the code or software used to provide the Website;
- export or re-export the Website or Services, except in compliance with the export control laws and regulations of any relevant jurisdictions;
- otherwise abuse the Website or Services, or breach the Terms; or
- attempt to do any of the foregoing, or advocate, encourage or assist any third party in doing any of the foregoing.

## **6.1 Responsibility for User Content**

1. All User Content is the sole responsibility of the User who originated such content. We do not endorse, support, represent or guarantee the completeness, truthfulness, accuracy, or reliability of any User Content or endorse any opinions expressed in such User Content. You understand that by using the Services, you may be exposed to User Content that is offensive, harmful, inaccurate, misleading, fraudulent or otherwise inappropriate. Under no circumstances will Editate be liable in any way for any User Content, including, but not limited to, any errors or omissions in any User Content, or any loss or damage of any kind incurred as a result of any User Content.

2. We may, but are not required to monitor or control the User Content captured, recorded, uploaded, streamed, shared or stored on or through the Services, and we cannot take responsibility for such User Content. Any use or reliance on any User Content is at your own risk.

## **6.2 Reporting Misconduct**

If you feel that another User has violated the Terms, abused the Services or otherwise acted inappropriately, you may report the User to Editate at [support@prompt.com](mailto:support@prompt.com). Editate reserves the right, but assumes no obligation, to investigate and take appropriate action in response to such reports. Regardless of its action or inaction, in no event will Editate be liable for the acts or omissions of any User or any third party.

If you are a California resident, you may also 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 400 R Street, Sacramento, CA 95814, or by telephone at (800) 952-5210. See the "California Residents" subsection below for the full information required under California Civil Code §1789.3.

## **6.3 Investigations**

Editate reserves the right to investigate any and all reports, complaints and claims and prosecute violations of the law or otherwise suspected misconduct to the fullest extent of the law.

Without limiting the foregoing, you acknowledge that Editate has the right, but not the obligation, at any time and without prior notice, to monitor access to or use of the Website or Services by any User, to access, review, preserve and disclose any User Content, or to remove or disable access to any User Content, if we believe in good faith that it is reasonably necessary (i) to comply with any law or regulation or satisfy any legal process or governmental request (for example, a subpoena, warrant, order or other requirement of a court, administrative agency or other governmental body), (ii) to respond to claims asserted against Editate, (iii) to enforce and to ensure a User's compliance with the Terms, including the investigation of potential violations, (iv) to conduct risk assessments, and prevent, detect and investigate incidents of fraud, security and technical issues, (v) to protect the rights, property or safety of Editate, its Users or members of the public, and (vi) for the purpose of operating and improving the Website and Services (including for customer support purposes).

## **6.4 User Cooperation**

You agree to cooperate with and assist Editate or its representative in good faith, in any such investigations, including by providing us with such information as we may reasonably request.

## **6.5 Policy Enforcement**

When an issue arises, we reserve the right to consider such User's performance history and the specific circumstances in applying our policies, and to determine how strictly to enforce such policies in an effort to achieve a fair outcome for all parties involved.

## **6.6 Non-Solicitation**

You understand and acknowledge that Editate has expended and continues to expend significant time and expense in recruiting and training its contractors and employees and that the loss of such contractors and employees would cause significant and irreparable harm to Editate. You agree and covenant not to directly or indirectly solicit, hire, or recruit, or attempt to solicit, hire, or recruit, any contractor or employee of Editate or any contractor or employee of Editate in the six (6) months before the termination of this Agreement (collectively, "Covered Person"), during the Term and for a period of one year beginning on the date of termination of this Agreement. Consumers are not permitted to contact or hire their Writing Coaches/Reviewers outside of the Editate Platform.

## **7. NO ENDORSEMENTS**

### **7.1 Reviewers**

You understand and agree that Editate: (i) is not responsible or liable in any manner for the performance or conduct of any Reviewers online or offline; (ii) makes no representations or warranties about the quality of the services



provided by any Reviewers or about your interactions or dealings with any Reviewers; and (iii) conducts background checks of Writing Coaches who provide video coaching calls but does not make any representations about the results of these background checks or any Reviewer credentials. Editate shall not be liable for any information not included in the background check or any errors or omissions in the processing of the background checks. Regardless of any background checks conducted by Editate, you should exercise caution and perform your own due diligence before engaging any Reviewer through our Platform. Editate expressly disclaims, and you hereby expressly release Editate from, any and all liability whatsoever for any controversies, claims, suits, injuries, loss, harm or damages arising from or related to our Services or your interactions or dealings with Reviewers, including any acts or omissions of Reviewers online or offline. All use of our Website is at your sole and exclusive risk. **YOU SHOULD ALSO CAREFULLY REVIEW SECTION 8 THAT STATES THE WARRANTIES, DISCLAIMERS, LIMITATION OF LIABILITY AND INDEMNIFICATION PROVISIONS.**

## **7.2 Links to Third-Party Websites and Services**

The Website may also provide links to third-party websites, resources or services. You acknowledge and agree that Editate is not responsible or liable for (i) the availability, terms or practices of such websites, resources or services, or (ii) the content, products or services available on or through such websites, resources or services, including that any information provided is complete, accurate or up-to-date. Links to such websites, resources or services do not imply any endorsement by Editate of such websites, resources or services or the content, products or services available on or through such websites, resources or services. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites, resources or services or the content, products or services available on or through such websites or services.

We will not be responsible or liable for any damage or harm resulting from your interactions with such websites or services, or the content, products or services available on or through such websites or services.

## **8. WARRANTIES, DISCLAIMERS, LIMITATION OF LIABILITY & INDEMNIFICATION**

### **8.1 Warranties by Users**

You represent and warrant to Editate that:

- (i) you have the power and authority to accept and agree to the Terms;
- (ii) you own or control all of the rights necessary to grant the rights and licenses granted herein;
- (iii) you will not violate any federal, state or local laws, rules or regulations or infringe the rights of any third party, including, any intellectual property, privacy or publicity-related rights, in connection with Your Content or otherwise in connection with your access to or use of the Website and Services;
- (iv) the exercise by Editate of the rights granted by you hereunder will not cause Editate to violate any applicable laws, rules or regulations, to infringe the rights of any third party; and
- (v) all account information provided by you will be complete, accurate and up-to-date when provided, and updated as necessary to ensure that it remains complete, accurate and up-to-date.

### **8.2 Disclaimers**

EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE WEBSITE AND SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW, EDITATE EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR TITLE OR RIGHTFUL CLAIM, WARRANTIES AS TO THE RELIABILITY OR AVAILABILITY OF THE WEBSITE OR SERVICES, OR THAT USE OF THE WEBSITE OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, WARRANTIES AS TO THE COMPLETENESS, ACCURACY OR TIMELINESS OF ANY WEBSITE CONTENT.

### **8.3 Limitation of Liability**

YOU ACKNOWLEDGE AND AGREE THAT, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW:

- THE ENTIRE RISK ARISING OUT OF OR RELATING TO YOUR OR YOUR STUDENTS' USE OF THE WEBSITE AND SERVICES IS AND REMAINS WITH YOU.
- WITHOUT LIMITING THE FOREGOING, EDITATE DISCLAIMS ANY AND ALL LIABILITY RELATED TO (I) YOUR USE OF OR INABILITY TO USE THE WEBSITE OR SERVICES, (II) THE ACTS OR OMISSIONS OF ANY OTHER USER OR ANY OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SERVICES, AND (III) ANY USER CONTENT ACCESSED, VIEWED OR DOWNLOADED IN CONNECTION WITH THE USE OF THE SERVICES.
- YOU ACKNOWLEDGE AND AGREE THAT BY ACCESSING AND USING THE WEBSITE, SUBMITTING AND TRANSMITTING YOUR CONTENT, COMMUNICATING OR INTERACTING WITH OTHER USERS AND ACCESSING, VIEWING OR DOWNLOADING THE USER CONTENT OF OTHER USERS ARE DONE AT YOUR OWN DISCRETION AND RISK, AND YOU AND HEREBY RELEASE EDITATE AND WAIVE ANY AND ALL CLAIMS AND CAUSES OF ACTION WITH RESPECT TO ANY DAMAGES CAUSED BY ANY OF THE FOREGOING.
- IN NO EVENT WILL EDITATE BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR DAMAGES FOR LOST REVENUES OR PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE, OR FOR ANY DAMAGES FOR PERSONAL OR BODILY INJURY OR EMOTIONAL DISTRESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED IN WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT EDITATE HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.
- CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSIVE OR LIMITATION OF CERTAIN DAMAGES AS SET FORTH IN THIS SECTION, SO THESE LIMITATIONS AND EXCLUSIONS APPLY TO YOU ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW. IN THE EVENT THAT THE FOREGOING LIMITATION OF LIABILITY IS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE UNENFORCEABLE, EDITATE'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO ONE HUNDRED U.S. DOLLARS (US\$100).
- IN NO EVENT WILL EDITATE BE LIABLE FOR DAMAGES RESULTING FROM THE USE AND MISUSE OF DATA OF EDITATE'S WEBSITE AND PLATFORM, REGARDLESS OF WHETHER IT IS HOSTED FROM EDITATE OR A THIRD PARTY INTEGRATION. EDITATE WILL ENSURE THAT THE DATA ON THE WEBSITE AND PLATFORM ARE ACCURATE TO THE BEST OF EDITATE'S ABILITY.

#### **8.4 Basis of the Bargain**

YOU ACKNOWLEDGE AND AGREE THAT THE WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH ABOVE ARE ESSENTIAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN EDITATE AND YOU, AND WILL SURVIVE AND APPLY EVEN IF YOUR REMEDIES ARE FOUND OR ALLEGED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

#### **8.5 Exclusions**

NOTHING IN THE TERMS FURTHER IS INTENDED TO EXCLUDE OR LIMIT ANY CONDITION, WARRANTY, RIGHT OR LIABILITY WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT OR BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE FROM DEATH OR PERSONAL INJURY. ACCORDINGLY, ONLY THE ABOVE LIMITATIONS IN THIS SECTION THAT ARE LAWFUL IN YOUR JURISDICTION WILL APPLY TO YOU, AND OUR LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT REQUIRED BY LAW.

#### **8.6 Indemnification**

To the maximum extent not prohibited by applicable law, you agree to release, defend, indemnify, and hold Editate, its parent, subsidiaries, affiliates, licensors and service providers, and its and their officers, directors, shareholders, agents, contractors, employees and representatives, harmless (collectively "indemnify" or any variation thereof)

from and against any claims, liabilities, damages, losses, costs and expenses, including, any bodily injury, illness, death or damage to any real or personal property, or any other injuries, losses, or damages (whether compensatory, direct, incidental, consequential or otherwise) of any kind, and including reasonable legal fees and litigation expenses and costs, arising out of or relating to or in any way connected with (i) your access to or use of the Website and Services, including any and all features, functionality, tools, content and promotions available on and through the Website, (ii) Your Content; (iii) any interactions with any other User, (iv) your breach of the Terms, including any violation of national, federal, state or local or other applicable laws, rules or regulations or any infringement or misappropriation of the rights of any third party, and (v) your gross negligence or willful misconduct.

#### **8.7 Obligation to Defend.**

You agree that, at Editate's option, you will conduct the defense of any such claim or action; provided that, notwithstanding our election that you conduct the defense, (i) Editate may nevertheless participate in such defense or settlement negotiations and pay its own costs associated therewith, and (ii) you will not enter into any settlement or other compromise without the prior written approval of Editate (which approval shall not be unreasonably withheld), unless such settlement or other compromise includes a full and unconditional release of the relevant parties from all liabilities and other obligations in respect of such claim or action.

#### **8.8 No Implied Indemnity.**

No person or entity shall be entitled to any form of equitable or implied indemnification at any time, except as provided by the Terms.

### **9. GOVERNING LAW & DISPUTE RESOLUTION**

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR RIGHTS AND WILL HAVE A SUBSTANTIAL IMPACT ON HOW CLAIMS YOU AND EDITATE HAVE AGAINST EACH OTHER ARE RESOLVED.

#### **9.1 Governing Law**

The Terms shall be governed by and interpreted in accordance with the laws of New Jersey without regard to conflict of law principles.

#### **9.2 Arbitration**

Notwithstanding any contrary provision of these Terms, all disputes, claims, controversies and matters relating to or in connection with these Terms (or the breach thereof) or any transactions hereunder shall be settled by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules ("**AAA Rules**"), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall take place in the State of New York before a single neutral arbitrator appointed in accordance with the AAA Rules and shall be conducted in the English language. All arbitrations shall be conducted and resolved on an individual basis and not a class-wide, multiple plaintiff or similar basis. No arbitration shall be consolidated with any other arbitration proceeding involving any other person or entity.

#### **9.3 Jurisdiction and Venue**

Subject to the above arbitration provisions, you and Editate agree that any and all disputes, claims and actions, at law or in equity, arising out of or relating to or in connection with the Terms or the breach, termination, enforcement, interpretation or validity thereof, or to the use of the Services, including the Website (collectively, "**Disputes**") in the federal or state courts located in the State of New Jersey and each of us agrees that such courts shall have exclusive jurisdiction and venue for any such actions, except that Editate retains the right to submit a Dispute to any court of competent jurisdiction. Editate also may seek injunctive or other equitable relief for breach of these Terms in any court of competent jurisdiction wherever located. You consent to the jurisdiction of and venue in such courts and waive any objection as to inconvenient forum. The prevailing party in any suit, action or proceeding, including any arbitration proceeding, will be entitled to recover its reasonable legal fees and costs and expenses from the other party.

#### **9.4 Prohibition of Class and Representative Actions and Non-Individualized Relief**

YOU AGREE THAT YOU MAY BRING CLAIMS AGAINST EDITATE ONLY ON AN INDIVIDUAL BASIS AND HEREBY WAIVE THE RIGHT TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING, TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW. FURTHER, UNLESS BOTH YOU AND EDITATE OTHERWISE AGREE IN WRITING, THE COURT MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING.

#### **9.5 Future Amendments to this Section**

Both of us agree that if we make any amendment to this **Dispute Resolution** section (other than an amendment to any notice address or site link provided herein) in the future, that amendment will not apply to any claim that was filed in a legal proceeding against us prior to the effective date of the amendment. However, the amendment will apply to all other disputes or claims governed by this section that have arisen or may arise between you and Editate. We will notify you of amendments to this section by posting the amended Terms on [www.editate.com](http://www.editate.com). If you do not agree to the amended terms, you may close your account within 30 days and you will not be bound by the amended dispute resolution terms. If you do not have an account (or once you have closed your account, if applicable), you must cease using the Website immediately. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and Editate in accordance with the provisions of this "Dispute Resolution" section as of the date you first accepted the Terms (or accepted any subsequent changes to the Terms).

### **10. MISCELLANEOUS**

#### **10.1 Privacy**

Our collection and use of information about Users is governed by our Privacy Policy. By accessing and using the Website and Services, you consent to the collection and use of this information, including the transfer of this information outside the United States and/or other countries, for storage, processing and use by Editate. As part of providing you the Services, we may need to provide you with certain communications, such as service announcements and administrative messages. These communications are considered part of the Services, which you may not be able to opt-out from receiving.

#### **10.2 Entire Agreement**

These Terms of Use, our Privacy Policy, and the applicable Supplemental Terms constitute the entire and exclusive understanding and agreement between you and Editate regarding your access to and use of the Services, including the Website, and supersede and replace any and all prior or contemporaneous oral or written understandings or agreements between you and Editate and regarding the subject matter hereof. In addition to the foregoing, Writing Coaches are also bound by the terms of their respective Writing Coach Agreement.

#### **10.3 Assignment**

You may not assign, transfer, delegate or sublicense any of your rights or obligations under the Terms, including by operation of law or merger or consolidation, without our express prior written consent, which may be granted or withheld in our sole discretion. Any attempted assignment, transfer, delegation or sublicense without the foregoing consent will be null and void. Editate may assign, transfer, delegate and/or sublicense our rights and obligations under the Terms, in whole or in part, in its sole discretion, without restriction.

Subject to the foregoing, the Terms will bind and inure to the benefit of the parties, their successors and assigns.

#### **10.4 No Agency**

Except as otherwise expressly set forth herein, no agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by the Terms.

#### **10.5 Survival of Terms**

Any provisions of the Terms that contemplate performance or observance subsequent to the expiration or termination of these Terms of Service shall survive such expiration or termination.

#### **10.6 Notices**

Any notices or other communications permitted or required hereunder, including those regarding modifications to the Terms, will be in writing and given by Editate (i) via e-mail (in each case to the address that you provide), or (ii) by posting to the Website. For notices made by e-mail, the date on which such notice is transmitted will be deemed the date of receipt.

#### **10.7 Waiver**

Our failure to exercise any right or enforce any obligation under these Terms of Use or to take action with respect to a breach by you or others will not constitute a waiver of such right, obligation or breach. The waiver of any right, obligation or breach will be effective only if in writing and signed by a duly authorized representative of Editate. In addition, no waiver granted in any instance shall constitute a waiver in any other instance.

#### **10.8 Remedies**

Except as expressly set forth in the Terms, the exercise by either party of any of its remedies under the Terms will be without prejudice to its other remedies available under contract, at law, in equity or otherwise.

#### **10.9 Severability**

Except as otherwise provided in the Terms, if an arbitrator or a court of competent jurisdiction finds any provision of the Terms to be invalid, void or unenforceable, in whole or in part, for any reason, the offending provision will be enforced to the maximum extent permissible and will not affect the validity or enforceability of the remaining provisions, which will remain in full force and effect.

#### **10.10 Headings**

The headings in the Terms are for reference purposes only and do not limit or otherwise affect the meaning or interpretation of any of the provisions hereof.

#### **10.11 Third-Party Beneficiaries**

Except as otherwise expressly set forth herein, the Terms do not and are not intended to confer any rights or remedies upon any person other than the parties hereto.

#### **10.12 Construction**

In the Terms, unless the context requires otherwise: (i) "herein," "hereof," "hereunder," "hereto," and similar terms refer to the Terms collectively and as a whole, and not merely to the specific section, paragraph or clause in which the term appears; (ii) "or" connotes any combination of all or any of the items listed; and (iii) "including" (and any of its derivative forms) means "including but not limited to."

#### **10.13 Contact Us**

If you have any questions or concerns, please contact Editate at [support@prompt.com](mailto:support@prompt.com).

#### **10.14 California Residents**

Pursuant to California Civil Code §1789.3, California residents are also entitled to the following specific consumer rights notice:

Complaints regarding the Website or Services or requests to receive further information regarding use of the Website or Services may be sent to the above address or to [support@prompt.com](mailto:support@prompt.com).

The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Boulevard, Suite N112, Sacramento, CA 95834 or by telephone at (916) 445-1245 or (800) 952-5210. Hearing impaired persons may call TDD (800)-326-2297 or TDD (916)-928-1227, see [www.dca.ca.gov](http://www.dca.ca.gov) for additional information.

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