



Membership Copyright Acknowledgement and Terms of Service

Updated: August 2022

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1. PART OF MEMBERSHIP FORMS

1.1 Scope.

This Copyright Acknowledgment and Terms of Service Agreement ("Terms of Service") is a part of and supplements the terms and conditions of your Institutional Membership Proposal, and any/all other signed agreements or forms agreed to in purchasing and initializing your Membership ("Membership Forms"), the entire contents of which are incorporated by reference herein, and forms a binding agreement between you, the school or institution identified in Section 1 of your Membership Proposal, and Learning Ally, Inc. ("Learning Ally"). These Terms of Service govern the terms of access and use of all Learning Ally audiobooks and related products and services, including the Learning Ally website, Educator Portal (student management tool), The Learning Ally Audiobook App, and audiobooks purchased or received from Learning Ally during the Term of your membership (collectively, the "Services").

1.2 Conflicts.

If any of these Terms of Service are in conflict with a term or condition of your Membership Forms, or if these Terms of Service are silent on a term or condition that is in your Membership Forms, then the applicable term or condition from your Membership Forms shall take precedent.

1.3 Updates.

Learning Ally may revise or update these Terms of Service from time to time by notifying you of the change in writing or electronically, including without limitation, by email or by posting a notice in connection with the Services that these Terms of Service have been revised or updated. Any revisions or updates to these Terms of Service shall become effective upon renewal of your membership or execution of new Membership Forms, such that the most current version of these Terms and Conditions shall apply at the time you effectuate renewal or execute any Membership Forms. It is your responsibility to review these Terms of Service prior to renewing your membership or executing a new Membership Form and to ensure that you comply with these Terms of Service each time you access the Services.

2. COPYRIGHT ACKNOWLEDGEMENT AND LIMITED LICENSE

2.1 Services and Audiobooks Protected by Copyright Law.

The contents of all Learning Ally audiobooks and materials are protected under U.S. Copyright Law. Learning Ally strictly regulates the distribution of materials only to Eligible Persons. "Eligible Persons" are those persons who have a reading deficit as determined by an educator or other professional who has experience determining whether a student has a reading deficit, blindness, a visual impairment, or physical disability in accordance with the Marrakesh Treaty Implementation Act (Pub. L. 115-261), and other applicable copyright laws, which may include persons having a reading deficit, such as dyslexia, visual impairment, or other physical disability that limits the ability to effectively read standard print. Copying, sharing, or redistributing Learning Ally books or materials in any form to any other person is strictly prohibited by law and may be a violation and infringement of publishers' right and the terms of your membership. Violators face a permanent suspension of Learning Ally membership benefits and possible civil or criminal penalties.

2.2 Limited License.

Learning Ally grants you a non-transferable, non-exclusive, limited license to use audiobooks and materials supplied to you solely for the benefit of Eligible Persons who are enrolled in your specific program or institution identified in your Membership Forms. Eligible Persons, in accordance with these Terms of Service, will be provided access and use of audiobooks and services supplied to you by Learning Ally. You hereby agree and acknowledge, under penalty of perjury (see 18 U.S.C. § 1001 et seq.), that you understand these Terms of Service and agree to all terms and conditions of your Learning Ally membership including all terms and conditions of your Membership Forms and these Terms of Service. You agree not to copy, share or redistribute Learning Ally audiobooks or materials in any form, to any person other than Eligible Persons, and you understand that to do so may result in permanent suspension of Learning Ally membership benefits and possible civil or criminal penalties (see 17 U.S.C. §§ 501 et seq., 1201 et seq.; 18 U.S.C. § 2319).

2.3 Limited Access.

Your membership permits access to the Services only by you and Eligible Persons identified in your Membership Forms. Access to the Services through your account by anyone other than you or your Eligible Persons is prohibited. You agree to maintain as confidential and not disclose login credentials to any person other than Eligible Persons or appropriate staff within the member program or institution. You are responsible for all usage or activity on your account, including the use of your account by any third party, whether or not authorized by you. Any fraudulent, abusive, or otherwise illegal activity may be grounds for termination of your membership. You shall notify Learning Ally promptly if you become aware of any unauthorized use of your account.

2.4 Unlawful Use Prohibited.

You agree not to use the Services for any unlawful purpose. Learning Ally reserves the right to terminate your membership or restrict your access to the Services if your use of the Services is found to violate any law, regulation, or ruling; infringe upon another person's rights including the copyrights of publishers; or violate these Terms of Service.

3. TERM AND TERMINATION; CANCELLATIONS AND REFUNDS

3.1 Effective Date and Term.

Your membership is valid as of the execution date of the Membership Proposal and extends for the length provided in the Membership Proposal ("Term"). Your membership may be renewed for subsequent terms by executing a new Membership Proposal prior to expiration of the current Term. These Terms of Service are effective immediately upon execution of your Membership Proposal and upon any renewal of your membership ("Effective Date").

3.2 Termination.

Your membership and these Terms of Service may be terminated, without notice, if, in Learning Ally's sole discretion, you fail to comply

with any term or condition of your Membership Forms or these Terms of Service. Upon termination you must return or immediately destroy all books or materials furnished by Learning Ally.

3.3 Cancellation and Refunds.

For both single-year and multi-year memberships, your membership can be canceled within the first thirty (30) days of your Effective Date. You may cancel your membership by contacting Customer Care at 1-800-221-4792 or CustomerCare@learningally.org. Upon cancellation, you will no longer have access to any of the Services, and you must immediately return or destroy all Learning Ally audiobooks and materials in your possession or the possession of any of your Eligible Persons. Learning Ally will provide you with a refund of your membership fee, including any fees for undelivered Professional Learning Services if included, only when canceling your membership within thirty (30) days of your Effective Date.

Cancellations that are requested after the first 30 days of your Effective Date, will not receive a refund and the remaining membership fee, as determined by the original sales amount minus payments to date, will be due upon termination.

3.4 Return of Materials.

You shall promptly delete all Learning Ally audiobooks and materials from devices that are in the possession of educators and Eligible Persons upon termination of your membership for any reason, including but not limited to termination by Learning Ally, cancellation by you, or your choice to not renew your membership upon expiration of a Term.

3.5 Suspension of Service for Overdue Payments

If there are Overdue Payments outstanding for more than ninety (90) days, Learning Ally reserves the right to suspend Users' access to Services until such amounts are paid in full.

4. REPRESENTATIONS AND WARRANTIES

4.1 Eligibility.

You hereby certify that all Eligible Persons to whom you may provide access to the Services presently have exhibited the characteristics of an eligible disability under the Marrakesh Treaty Implementation Act, by an educator or other professional who has experience determining whether an individual has a reading deficit, blindness, a visual impairment, or physical disability, and are entitled to access and use Learning Ally's audiobooks and materials.

A category designation within the Educator Portal system is limited to the exemptions created under the Marrakesh Treaty Implementation Act (Pub. L. 115-261) and does not imply or qualify any individual for services under Section 504 of the Rehabilitation Act, 29 U.S.C. § 701, or special education under the Individuals with Disabilities Act, 20 USC §1400 et seq. Designations, such as possessing an IEP or 504 Plan, do not automatically make an individual eligible, nor are they required to receive Learning Ally services. The eligibility types within the Educator Portal system are:

Reading Deficit

A reading deficit is determined by a student's need for a reading accommodation due to an impairment in decoding, fluency and/or comprehension that does not allow a student to keep up with content at the same level as students without an impairment. An IEP or 504 is not required.

Specific Learning Disability

Students who have a specific learning disability, meaning a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. It includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Students in this category often have SLD on their IEP or have a diagnosed learning disability.

Blind or Visually Impaired

Persons who are blind, whose visual acuity is 20/200 or less in the better eye with correcting glasses, or whose wide diameter of visual field subtends an angular distance no greater than 20 degrees. A person with a visual impairment has a visual deficit with correction that prevents or inhibits him/her from reading standard printed material.

Other Physical Disability

Students who have a physical impairment that prevents them from reading standard print, such as those who are unable to hold a book, turn the pages of a book, etc. Students with Cerebral Palsy, Multiple Sclerosis, or Muscular Dystrophy are examples of individuals who may be eligible under this category.

Appropriate educators or other professionals may differ from disability to disability. If you have any questions about who can determine eligibility, please contact Customer Care at 1-800-221-4792 or customer care@learningally.org.

4.2 Downtime.

"Downtime" shall mean a malfunction in a core component of the Services, the loss of a material function of the Services, or any other action that prevents your access to or use of the Services, which malfunction or loss was caused solely by a failure of the Services, Learning Ally, or Learning Ally's agent, exclusive of (i) any failures caused by or attributable in whole or in part to you or your service provider or other vendor providing services to you, (ii) events beyond the reasonable control of Learning Ally, including circumstances and events constituting impossibility of performance as described in section 4.4 below, or (iii) cessation of use due to anticipated or scheduled maintenance of the Services. If you notify Learning Ally in writing of any Downtime, Learning Ally shall use commercially reasonable efforts to restore the use of the Services as promptly and practicable under the circumstances. Learning Ally shall not be financially responsible for any Downtime, but only will be responsible for remedying such Downtime. Additionally, Learning Ally shall not be responsible for delivering or otherwise providing access to any Services that during such Downtime.

4.3 Remedy and Warranty Waiver.

Except as expressly provided in these Terms of Service, Learning Ally makes no warranty of any kind, express or implied, including, without limitation, warranties of merchantability or fitness for a particular purpose. Learning Ally shall not be liable for any lost profits or special, direct, indirect, or consequential damages. You hereby agree to defend and hold Learning Ally harmless from any and all claims that might arise from your use, or your Eligible Persons' use, of audiobooks and materials furnished by Learning Ally if said use is outside the scope of the license provided in these Terms of Service or your Membership Forms. Learning Ally shall not be liable, jointly or severally, to you or any other person as a result of your access or use of the Services for indirect, consequential, special, incidental, punitive, or exemplary damages, including, without limitation, lost profits, lost savings, and lost revenues, whether or not characterized in negligence, tort, contract, or other theory of liability, and irrespective of any failure of an essential purpose of a limited remedy.

4.4 Impossibility of Performance.

Learning Ally shall not be liable in damages for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to, Acts of God, government restrictions, war, insurrections, strikes, fires, floods, work stoppages and/or lack of materials.

5. MISCELLANEOUS

5.1 Severability.

Should any part or provision of these Terms of Service be held unenforceable or in conflict with the law of any jurisdiction, the validity of the remaining parts of provisions shall not be affected by such holding.

5.2 Limitation of Effect of Waiver.

A waiver of any breach of any provision of these Terms of Service shall not be construed as a continuing waiver of other breaches of the same or other provisions of these Terms of Service.

5.3 Negation of Agency and Similar Relationships.

Nothing contained herein shall be deemed to create an agency, joint venture or partnership relationship between the parties hereto.

5.4 Entire Agreement; Modifications to be in Writing.

These Terms of Service together with your Membership Forms constitute the entire Agreement and understanding between you and Learning Ally and supersedes all prior agreements and understandings, whether written or oral, with respect to the subject matter of these Terms of Service and your Membership Forms. No modification or claimed waiver of any of the provisions hereof shall be valid unless in writing and signed by an authorized representative of Learning Ally.

5.5 No Assignment.

Neither your Membership Forms, these Terms of Service, your Membership, nor any interest in the foregoing may be assigned, in whole or in part, by you without the prior written consent of Learning Ally.

5.6 Governing Law and Dispute Resolution.

The validity and interpretation of these Terms of Service shall be governed by the laws of the State of New Jersey. The Federal or State Courts located in the State of New Jersey shall have jurisdiction to hear any dispute arising under or related to these Terms of Service, and you agree to submit to the jurisdiction of such Courts.

5.7 General Assurances.

The parties hereto agree to execute, acknowledge, and deliver all such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the intent and purposes of the Membership Forms and these Terms of Service.

5.8 Gender.

As used herein, each of the masculine, feminine or neuter genders shall include the other genders, the singular shall include the plural, and the plural shall include the singular, whenever appropriate to the context.

5.9 Captions.

Section titles or captions contained in these Terms of Service are inserted only as a matter of convenience and as reference and in no way define, limit, extend or describe the scope of these Terms of Service or the intent of any of the provisions hereof.

5.10 Notices.

Notices required under these Terms of Service or your Membership Forms shall be in writing and shall for all purposes be deemed to be fully given and received if sent by registered or certified mail, postage prepaid, to the respective parties at the addresses found in your Membership Forms, or if sent by other written means if receipt is confirmed or acknowledged by the party to whom the notice was sent.

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