

TRS PORTAL COMPLIANCE TOOLS TERMS OF USE AGREEMENT

By visiting, using, downloading content from and/or submitting information via the TRS Portal Compliance Tools Section, User is accepting this Terms of Use Agreement.

This Terms of Use Agreement (“Agreement”) is made by and between Management Performance Associates, a Missouri corporation (“MPA”), Trinity Risk Solutions (“TRS”) and User, and applies to User’s access and use of the MPA Compliance Tools on the TRS Portal. This Agreement is effective the date User accepts these terms.

Recitals

WHEREAS, MPA has developed MPA Compliance Tools to be used on the TRS Portal, and wishes to make these available to TRS members;

WHEREAS, User is a TRS member who wishes to access the MPA Compliance Tools through the TRS Portal; and

WHEREAS, it is acknowledged and understood by all parties that TRS shall act purely as an intermediary in making the Compliance Tools developed by MPA available to TRS members through the TRS Portal, and that TRS assumes no responsibility or liability for said Compliance Tools or any claims by any person or entity arising from accessing said Compliance Tools through the TRS Portal.

Promises and Covenants

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of such consideration being hereby acknowledged by MPA and User, by execution of this agreement, MPA, TRS and User agree as follows:

Article 1: Incorporation of Recitals.

1.01 Incorporation of Recitals. The above recitals of this Agreement are hereby incorporated into and made a part of this Agreement.

Article 2: Definitions and Construction.

2.01. Certain Definitions. The defined terms parenthetically set forth in this Agreement shall be associated with the phrase or name immediately preceding. As used in this Agreement “Person” shall mean an individual natural person, corporation, partnership, limited liability company, limited liability partnership, trust, unincorporated association, joint venture, joint stock company, governmental entity or any political subdivision thereof, or any other legally recognized entity or association.

2.02. MPA Compliance Tools. “MPA Compliance Tools” means the policy forms, audit tools/auditing and monitoring handbook, compliance training and culture tool kit, compliance committee/board reporting tool kit, HIPAA tool kit, social media compliance tool kit, newsletter, updates, and other MPA tools posted to the TRS Portal or otherwise provided to User.

2.03. User. “User” shall mean any authorized party to this Agreement, other than MPA, who makes use of or otherwise uses the MPA Compliance Tools and the TRS Portal.

2.04. Construction. The following principles of language construction shall apply to this Agreement unless the context clearly requires otherwise. Except where the context reveals the contrary, references to the plural include the singular, and the singular includes the plural. The word “may” is permissive, and the word “shall” is mandatory. The term “or” means the inclusive disjunction, as represented by the phrase “and/or.” The words “hereof,” “herein,” “hereunder,” and similar terms refer to this Agreement as a whole and not to any particular provision of this Agreement. Headings and titles are for reference purposes only and shall not control or affect the construction of this Agreement. Paragraph and exhibit references are to this Agreement unless otherwise specified.

Article 3: Scope of Services

3.01 MPA agrees to provide MPA Compliance Tools for User’s use in User’s own internal compliance operations.

3.02 The MPA Compliance Tools are intended for instructional and consulting purposes only. The ultimate responsibility for compliance and responding to any and all audits, compliance reviews or regulatory requirements is borne by the User. User accepts responsibility for ongoing compliance with all government standards required for compliance. The Compliance Tools do not constitute legal advice.

Article 4: MPA's Intellectual Property Rights

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Article 4: MPA's Intellectual Property Rights

4.01 The names "Management Performance Associates" and "MPA" and the MPA trademarks, logos and graphics are trademarks of MPA, and may not be used by User without MPA's prior express written permission.

4.02 The MPA Compliance Tools, along with any other documents provided by MPA pursuant to this Agreement (the "Proprietary Items") are proprietary, shall be and remain the property of MPA, and shall not at any time be utilized, distributed, copied, or otherwise used by User except for in connection with User's own internal compliance operations. MPA is the owner of all rights, title and interest in and to the Proprietary Items.

4.03 MPA grants a non-exclusive, non-transferable, non-sublicenseable, revocable license to User to use the MPA Compliance Tools subject to this Agreement, plus any terms and conditions included on any MPA Compliance Tools. User will not (i) sell, license, use or otherwise provide, directly or indirectly, any of the MPA Compliance Tools or any portion thereof to any third party; (ii) copy or reproduce, in whole or in part, any MPA Compliance Tools, whether in the form of computer media, print or any other form, except as permitted by MPA; (iii) make any alteration, change or modification to any MPA Compliance Tools or create any databases or derivative works using all or part of the MPA Compliance Tools (except for customization for User's internal use); or (iv) remove or modify any markings, identification, copyright or other proprietary notices from the MPA Compliance Tools.

4.04 User, and not TRS, will be solely liable for any breach of MPA's Intellectual Property Rights by User. User specifically agrees that money damages would not be a sufficient remedy for a breach of MPA's Intellectual Property Rights, and that MPA shall be entitled to specific performance as a remedy for any such breach. Therefore, in the event of a breach of MPA's Intellectual Property Rights, MPA shall be entitled to seek injunctive relief from any court of competent jurisdiction, without the necessity of posting a bond, cash or otherwise. Specific performance or other injunctive relief shall not be the exclusive remedy for any breach of MPA's Intellectual Property Rights, but shall be in addition to all other remedies provided by this Agreement, or by law or equity. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right.

4.05 User agrees that, except as required by law or with the prior written consent of MPA, User will not and User will direct User's employees not to disclose to any person, the MPA Compliance Tools.

4.06 The parties agree that the terms of this Intellectual Property Rights section shall survive termination of this Agreement.

Article 5: Warranty

User agrees that the MPA Compliance Tools are provided on an "as is" basis, and, except as otherwise stated in this Agreement, all other warranties, express or implied, including warranties of merchantability and fitness for a particular purposes, are disclaimed by MPA and TRS. Use of these services or products does not in any way guarantee User's compliance with any and all applicable federal, state, or local laws, rules, regulations, or standards.

Article 6: Amendments of the Terms of Use Agreement

MPA and TRS reserve the right to amend this Agreement at any time in their discretion and without notice. User's right to use the MPA Compliance Tools is subject to the most current Terms of Use Agreement which may be set forth on the TRS Portal. Changes, revisions or deletions with regard to this Agreement shall be effective immediately upon their inclusion in, or deletion from, this Terms of Use Agreement, and 1) the posting of the same in this Agreement on the TRS Portal or MPA or TRS providing the revised Terms of Use Agreement to User, and 2) User's acceptance of the same.

Article 7: Benefit/Assignment

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors, and assigns, provided, however, that no party shall assign this Agreement or any or all of its rights or obligations hereunder (except by operation of law) without the prior written consent of the other party.

Article 8: Waiver of Breach

The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.

Article 9: Severability

In the event any provision of this Agreement is held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall in no event affect, prejudice, or disturb the validity of the remainder of this Agreement.

Article 10: Entire Agreement/Amendment

This Agreement, together with any external documents expressly referenced herein or incorporated herein by reference and/or hyperlink constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written communications with respect hereto, all of which are merged herein.

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Article 11: ACKNOWLEDGEMENT

BY ACCESSING OR USING THE MPA COMPLIANCE TOOLS, USER ACKNOWLEDGES THAT USER HAS READ THESE TERMS AND AGREES TO BE BOUND BY IT.