

Tools of the Mind®

Terms and Conditions

These Terms and Conditions supplement the Service Agreement for programs and services provided by Tools of the Mind® for its proprietary curriculum as described in the Service Agreement. By either signing the Service Agreement or returning a purchase order, the client (“Client”) shown on the Service Agreement agrees to be bound by these Terms and Conditions (“Terms and Conditions”), which are incorporated by reference into, and form a part of, the Service Agreement, and other applicable documents referenced in the Service Agreement (collectively, the “Agreement”). The Agreement is between the Client and Tools of the Mind®. This Agreement applies to all services and programs provided by Tools to the Client. These Terms and Conditions can be downloaded, printed and saved by Client.

1. **Tools Obligations.** Tools shall provide certain services (the “Services” or “Professional Development Services”) in accordance with each Service Agreement accepted by the Client. Each Service Agreement shall contain the following: (a) a brief summary of the Services to be rendered; (b) terms of payment; (c) a period of service for performance of the Services; (d) and such other terms as may be applicable to the Services described in such Service Agreement.

2. **Client Obligations.** For each Service Agreement, unless otherwise stipulated in that Service Agreement, Client is obligated to:
 - a. Provide sufficient classroom equipment to meet basic standards of a good early childhood classroom as defined by accepted practices (e.g., State DOE guidelines, NAEYC guidance, ECERS-3).
 - b. Ensure that no Tools products or Tools activities, nor any part of the Tools curriculum, professional development program, or other Tools Property (defined below) being provided to Client under this Agreement are used in Client classrooms, or in other settings under Client’s control, by teachers or other staff who have not been trained by Tools pursuant to applicable Service Agreement(s).
 - c. Provide its applicable staff with release time to attend all applicable professional development workshops (in-person or virtual) that Tools provides hereunder.
 - Note (for Regional Conferences Only): Workshops, conferences and other plenary meetings of districts attending a Tools Professional Development Services event will be held in a location designated by Tools (e.g. typically a hotel or conference center in the region). Travel is required for staff to attend workshops. Client shall ensure district staff attending workshops understand both their professional responsibility to arrive on time and that travel will be involved. Tools shall have no responsibility for arranging or providing travel to or from workshops or other trainings or meetings.
 - d. **Data Sharing.** Unless prohibited by applicable law, Client agrees to honor all reasonable requests to share available student achievement data in aggregate, and other data that is relevant to demonstrating the impact of the Tools program. If applicable to Client’s registered program, Client agrees to be bound by additional terms regarding data sharing located within the Data Share Agreement.
 - e. **District Liaison.** Client assigns one district staff person to fill the role of Tools district liaison who shall be required to: support logistics coordination, work with the Tools Partnership Development Manager or Specialist assigned to the program/school, identify issues in implementation on an ongoing basis, shadow the Tools PDM or PDP during technical assistance visits, provide in-classroom Tools support to teachers during teacher planning meetings and implementing feedback from technical assistance visits, and address other questions as they arise.
 - f. **No substitution.** The staff member(s) who are registered to attend professional development workshops or who attend workshops specified in the Service Agreement, either virtually or in-person, must be the same person who attends all subsequent workshops. Because of the cumulative nature of the Professional Development Services provided by Tools, different district staff may not be substituted at subsequent workshops in the series, except in cases of termination or medical leave of such

individual and subject to the prior written approval from Tools. Additionally, for all virtual training options, logins may not be shared but only used by the person to whom the login credentials were issued.

- g. The attendance of supervisors is strongly recommended at all workshops (including but not limited to building principals, early childhood coordinators and coaches, etc.). Client will use their best efforts to cause all staff (including designated supervisors) who consistently support teachers implementing Tools or work with students in Tools' classrooms to attend every training and workshop. In addition, staff who have been identified as coaches or supervisors in charge of implementation are required to shadow Tools trainers during onsite Technical Assistance visits.
- h. Only registered staff member(s) may attend Tools' workshops and access Tools' resources. No substitutions are permitted without prior authorization from Tools. Missed workshops, that are not properly approved for substitution by Tools, are nonrefundable.
- i. Client shall plan regular joint planning time for teachers to coordinate regular joint planning times (once per month, preferably every two weeks) for teachers participating in the Tools professional development. These planning times are ideally supported by the Coach, who is charged with supporting high fidelity implementation of the Tools program.
- j. Cause administrators to ensure that classroom schedules include an uninterrupted block of time (of at least 60 minutes in PreK and 90 minutes in kindergarten) at some point during the day, preferably in the morning. Classroom teachers shall use this block of time to develop children's mature play skills in PreK and dramatization and literacy skills in kindergarten (as taught by Tools in Tools workshops and professional development materials, which are a critical component of the Tools approach to support the development of self-regulation as a foundation for learning.

3. **Accuracy of Information.**

Tools will rely on the accuracy of the information provided by Client. Any changes in the description of Services will require an adjustment in payment due.

4. **Payment Schedule.** Client shall pay Tools pursuant to the applicable Service Agreement. Additionally, timely payments must be made to ensure proper delivery of and participation in professional development workshops and technical assistance. Failure to pay timely may result in Tools failing to deliver training, declining entrance to teachers not properly registered or failing to deliver Technical Assistance.

5. **Refunds.** A full refund in the amount paid by Client may be granted if Client requests to cancel its registration in writing no fewer than 45 days prior to the first event in a series of events or the start of a Professional Development Services event (the "Event") for which it is registered. If Client requests to cancel its registration between 15 and 44 days prior to a registered Event, then Client may be refunded 50% of the total amount paid. No refunds will be paid for cancellations made 14 or fewer days before a registered Event. No refunds will be paid for not attending a registered Event. No refunds will be paid after the initial workshop in a series. If specific participants are registered for an Event, Client may replace a registered participant in the Event with another participant for no additional fee if and only if Client makes a request to Tools in writing and Tools approves said request. No refund will be paid if the Event is cancelled at no fault of Tools and the parties are unable to timely reschedule the workshop. Except as specifically provided for in this Section, no other refunds will be provided for any reason.

6. **Ownership of Tools Property.** Tools has developed and may develop program-related plans, products, instructional materials, kits, manuals, classroom sets, individual sets, procedures, policies, methods of operation, educational strategies, management systems, technical data, and other materials and processes relating to the Tools of the Mind® model and its implementation, including, but not limited to, all information which in any way relates to the functions, descriptions, or operation of Tools products or technology, including, without limitation, data, designs, processes, specifications, drawings, schematics, software in both source and object code, and trade secrets, together with non-public information such as that relating to suppliers, manufacturing techniques, service information, know-how, product program schedules, project plans, financial projections, business correspondence, third-party contacts, and other similar non-public information transmitted by any means, which are proprietary to Tools and which may be used by Tools in

connection with the performance of its services under this Agreement (collectively "Tools Property"). In addition, Tools Property shall include any and all improvements, modifications, materials and processes derived, in whole or in part, on, from, or with reference to or use of Tools Property, whether previously developed or developed under this Agreement, including all copyrightable materials, trademarks, trade secrets, patentable subject matter, and know-how. All Tools Property shall be and remain the property of Tools. To the extent any right, title or interest in or to such Tools Property, or any part thereof, may not, upon creation or otherwise, by operation of law vest in Tools, then the Client hereby irrevocably assigns to Tools all Tools Property and any and all related patents, copyrights, trademarks, trade names, and other industrial and intellectual property rights and applications therefor, in the United States and elsewhere and appoints any officer or director of the Client as the Client's duly authorized attorney to execute, file, prosecute and protect the same before any government agency, court or authority.

- 7. Use of Tools Property.** Client acknowledges that Tools retains all rights in its proprietary curriculum and training materials and agrees that no unauthorized use shall be allowed without prior approval of Tools. Additional compensation may be required for any unauthorized use. Use of Tools Property by individuals, classrooms or locations (and, with respect to classrooms and locations, their respective personnel) not provided for under this Agreement or a separate agreement entered into between Tools and Client is prohibited. Use of Tools Property, including all kits (whether purchased from Lakeshore Custom Solutions, Inc. or otherwise), is permitted only for individuals who have satisfactorily completed, as determined by Tools, or are in the process of completing all required Core Professional Development Workshop Series provided by Tools.

Upon successful completion of professional development, Client's personnel who have satisfactorily completed such professional development shall be permitted to continue to use Tools Property (including the kits) in classrooms taught by, and only by, classroom staff having completed the full Core Professional Development Workshop Series with Tools.

- 8. Confidentiality/Non-Exclusivity.** Tools and Client will be privy to each other's confidential and proprietary information. Neither will, without the prior written consent of the other, use the other's information for any purpose other than in carrying out their obligations set forth in this Agreement. Client acknowledges that Tools performs services for other clients. Nothing in this agreement precludes Tools from performing services for competitors of Client as long as Client's confidential information is not disclosed.
- 9. Term.** This Agreement shall commence on the date first shown on the Service Agreement. In the event Tools reasonably determines that Client is failing to implement the Tools approach and curriculum or attend and participate fully to their best ability in Tools professional development at an acceptable level of quality, or otherwise is failing to fulfill Client's obligations as set forth in this Agreement, Tools may suspend or terminate this Agreement and/or Services being provided to Client until the quality or other problems have been addressed to Tools' satisfaction. In the event Tools suspends Services, Client's sole remedy will be to cure the breach of this Agreement or increase its compliance with the Tools curriculum such that Tools determines to recommence the Services. Tools shall have no liability for suspension or termination of this Agreement.
- 10. Termination.** This Agreement may be terminated at any time by mutual written consent of the Parties. In the event of such mutual termination, Tools shall be entitled to receive just and equitable compensation for expenses incurred in performing obligations under Agreement up until the date of termination.

Either party may terminate this Agreement if non-terminating party is notified of material breach, and such breach is not corrected within thirty (30) days of receipt of notice. Should such uncured breach by Client result in termination of this Agreement, Tools shall retain all payments made by Client as of the termination date, and be entitled to receive any additional just and equitable compensation for expenses incurred or services provided up until the date of termination. In addition, the breaching party shall not be relieved of liability to the other party for damages sustained by virtue of any breach of the Agreement. If termination occurs after receiving materials but prior to the commencement of Year 1 Core Workshops, client shall be responsible to have their refund amount reduced by \$175.00 per manual set received by Client.

For Regional Training Conference (RTC) engagements only, Client understands and agrees that the obligations of Tools under this Agreement, and the pricing for Tools' Professional Development Services set forth in this Agreement, is contingent on sufficient registrations in the RTC, including those classrooms for which Client will seek Tools' services hereunder; engaging Tools to provide the Professional Development Services pursuant to this Agreement, and should enrollment for the RTC not reach that number, or the RTC otherwise prove unsatisfactory to Tools in its sole judgment, Tools reserves the right to cancel the engagement and shall return any payments made by Client for amounts above and beyond Tools' expenses incurred related to this Agreement as of cancellation date.

11. **Independent Contractors.** The parties agree that Tools shall act as an independent contractor during the term of this Agreement. Under no circumstances shall either party be deemed the agent, joint venture, partner or employee of the other for any purpose. In addition, under no circumstances shall any employee of Tools be deemed the agent, joint venture, partner or employee of Client for any purpose. The fee for the Services provided by Tools excludes any and all present and future Federal, state, county, municipal or other jurisdiction's sales, use, excise or other taxes that may apply to Client's purchase of the Services. Client shall be responsible for all such taxes and shall pay to Tools any such taxes that Tools is obligated by law to collect from Client for the Services accepted and purchased by Client. Client shall reimburse Tools for any interest or penalties actually paid by Tools as a result of Client's exercise of its right to contest the imposition of any taxes.
12. **Indemnification.** To the extent permissible by applicable law, Client shall indemnify, defend and hold harmless Tools against all losses, claims, damages, liabilities, costs, and expenses in connection with Services rendered by Tools. This shall not apply in the case of illegal activity, willful misconduct, or gross negligence on the part of the Tools.
13. **Insurance.** The parties are independent entities who are separately insured for liability and other claims and each party will provide a current certificate of insurance, if requested, at any time during the term of this Agreement.
14. **No Warranties.** The Professional Development Services are provided on an "as is" and "as available" basis. Client obtains the Services at Client's own risk. To the maximum extent permitted by applicable law, the Professional Development Services (including all Tools property furnished hereunder) are provided without warranties of any kind, whether express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, or non-infringement. No advice or information, whether oral or written, obtained by Client from Tools or through the Professional Development Services (including in Tools' property) will create any warranty not expressly stated herein. Without limiting the foregoing, Tools and Tools' subsidiaries, affiliates, agents, directors, and employees, do not warrant that the Professional Development Services or their content (including any Tools property) will be accurate, reliable, correct; that the Professional Development Services (including any Tools property furnished to Client) will meet Client's requirements; that the Professional Development Services (including any Tools property) will be available at any particular time or location; that the Client's capabilities will match that which is required by Tools property (including but not limited to the latest iOS software and well-functioning Wi-Fi); that any defects or errors in the Professional Development Services or their content (including any Tools property) will be corrected; or that the Professional Development Services and Tools property, to the extent provided as software, are free of viruses or other harmful components.
15. **Limitation of Liability.** To the maximum extent permitted by applicable law, in no event shall Tools, its suppliers, or its licensors (or their respective affiliates, agents, directors, and employees) be liable for any direct, indirect, punitive, incidental, special, consequential, or exemplary damages, including without limitation damages for loss of profits, goodwill, use, data, or other intangible losses, that result from the use of, inability to use, or unavailability of the Professional Development Services.

To the maximum extent permitted by applicable law, Tools, its suppliers, and its licensors (and their respective affiliates, agents, directors, and employees) assume no liability or responsibility for any (i) errors, mistakes, or inaccuracies in the Professional Development Services or any Tools property; (ii) personal injury or property damage, of any nature whatsoever, resulting from Client's access to or use of the Professional Development Services; (iii) any unauthorized access to or use of Tools' servers and/or any and all personal information stored therein; (iv) any interruption or cessation of the Professional Development Services; (v) to the extent applicable, any bugs, viruses, trojan horses, or the like that may be transmitted to or through the Professional Development Services or Tools property by any third party; (vi) any errors or omissions in the Professional Development Services or Tools property; and/or (vii) the defamatory, offensive, or illegal conduct of any third party. In no event shall Tools, its agents, suppliers, or licensors (or their respective affiliates, agents, directors, and employees) be liable to Client for any claims, proceedings, liabilities, obligations, damages, losses or costs in an amount exceeding the lesser of (a) the amount of fees actually paid to Tools by Client within the twelve (12) month period immediately preceding the event giving rise to the claim for liability, or (b) \$25,000.

The limitation of liability set forth herein applies whether the alleged liability is based on contract, tort, negligence, strict liability, or any other basis, even if Tools has been advised of the possibility of such damage. The foregoing limitation of liability shall apply to the fullest extent permitted by law in the applicable jurisdiction.

16. **Force Majeure.** Neither party shall be liable to the other for any delay or failure of performance that is caused by "force majeure," including acts of God, acts of governmental entities or unusually severe weather. Similarly, if school is cancelled in the region after a Tools representative has already arrived in the district, Tools cannot guaranty a future trip at no additional cost to the school.
17. **Entire Understanding.** These Terms and Conditions and the related Service Agreement, and all attachments referenced in the Service Agreement constitute the entire agreement of the parties, and any modifications must be in writing and signed by both parties.
18. **Conflicts with Other Agreements.** If there is an ambiguity amongst the terms between these Terms and Conditions and any other document, including a Service Agreement, these Terms and Conditions shall control.
19. **Dispute Resolution.** In the event of a dispute, the parties agree to use friendly mediation to resolve it. If mediation is unsuccessful, the parties agree to binding arbitration to be conducted under the rules of the American Arbitration Association and to share the expense of such proceedings which will be conducted in the Commonwealth of Massachusetts, USA.
20. **Legal Authority.** The person signing the Service Agreement or causing Client to generate a purchase order warrants and guarantees that he/she has been fully authorized by such party to legally bind the Client to all terms, performances and provisions set forth herein. This Agreement shall be considered fully executed upon the occurrence of one or both of the following: 1) Client's signature on the Service Agreement, or 2) the transmission of a standard purchase order from Client to Tools for the Services and amount shown on the Service Agreement.
21. **Advertising.** Notwithstanding the Twitter teacher(s) of the month or any advertisement in place prior to the execution of this Agreement, neither party shall use the name or logo of the other party in any advertising, marketing, or promotional materials regarding the subject of these Terms and Conditions without the express written consent of the other party.

22. **Governing Law.** The laws of the Commonwealth of Massachusetts and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this Agreement without regard to principles of conflicts of law. The parties submit to the exclusive jurisdiction and venue of any court having subject matter jurisdiction located in the Commonwealth of Massachusetts, in the event of any litigation concerning this Agreement and regardless of where Services are provided.
23. **Assignment.** The rights and obligations of Client under these Terms and Conditions may not be assigned except with the prior written consent of Tools.
24. **Survival.** The obligations set forth in Sections 2, 4, 5, 6, 7, 8, 12, 14, 15, 17, 19, 21, 22, 24, and 25 of this Agreement shall survive any expiration or termination of this Agreement.
25. **Waiver.** No waiver of any term or condition of this Agreement shall be deemed to be a subsequent waiver of any other term or condition. No delay or failure of a party to exercise a right under this Agreement shall constitute a waiver or abandonment of that right. To be effective and binding on a party, a waiver must be in writing and signed by that party.