

## LinguaFolio Online Terms and Conditions of Use

These Terms and Conditions of Use (“Terms of Use”) apply to the University of Oregon’s (“UO”) LinguaFolio Online network and assessment tool website located at <https://linguafolio.uoregon.edu> (“LinguaFolio Online”). BY USING LinguaFolio Online, YOU AGREE TO THESE TERMS OF USE.

### 1. Background

1.1. LinguaFolio Online is a portfolio assessment tool offered by the UO’s Center for Applied Second Language Studies (“CASLS”) that allows students to collect evidence demonstrating their communicative abilities to themselves and others. Students gain Access to LinguaFolio Online through their respective organizations.

1.2. LinguaFolio Online is provided by CASLS and includes contributions from the National Council of State Supervisors for Languages (“NCSSFL”). NCSSFL holds the federally registered LinguaFolio trademark and all rights therein and provides content for the “CanDo” statements associated with the LinguaFolio mark.

1.3. You are an organization that is a school or not for profit educational entity and that desires its students, teachers and administrators to use LinguaFolio Online to assess second language proficiency in classes that you offer (“Organization”).

1.4 Students may gain Access in two ways: (1) their teacher may create individual class lists and individual user names and passwords for students using LinguaFolio Online; or (2) students of your Organization with individual email addresses may register using the registration code provided to the Organization by LinguaFolio Online and CASLS.

### 2. Definitions

2.1. “Access” means method of gaining password controlled access to LinguaFolio Online. Permission to Access the LinguaFolio Online can only be provided by Organization to its student and teacher users as authorized in conformance with the terms of these Terms of Use.

2.2. “Authorized Users” means solely Organization’s participating teachers and students who are provided Access by Organization.

### 3. Grant

3.1. Provided that Organization and its Authorized Users conform to these Terms of Use, UO hereby grants Organization a limited, non-exclusive, license to provide Access and use of LinguaFolio Online to its Authorized Users.

3.2. Organization and its Authorized Users shall not distribute, publish, sell, import or otherwise transfer or allow to be transferred any part of LinguaFolio Online or copies thereof, in whole or in part, to third parties without the prior written permission of UO.

3.3. All materials displayed or performed on LinguaFolio Online (including, but not limited to text, graphics, articles, photographs, images, illustrations, sound clips, videos (the “Content”) may be protected by copyright and other intellectual property laws. Organization and Authorized Users shall abide by all copyright notices, trademark rules, information, and restrictions contained in any Content accessed through LinguaFolio Online.

#### 4. Organization’s Obligations

4.1 Organization represents and warrants that it is solely responsible for obtaining permission from its Authorized Users to meet these Terms of Use, compliance with student privacy laws, including but not limited to the Family Educational Rights and Privacy Act of 1996 (FERPA), compliance with all state and government regulations applicable to Organization and its Authorized Users, and for complying with the Child Online Privacy Protection Act (“COPPA”), which requires parental consent for online collection of personal information from children under 13.

4.2. Organization must obtain advance written consent (“Consent”) from all parents whose children will be accessing LinguaFolio Online either by providing parents a copy of these Terms of Use or by providing a URL where these Terms of Use can be read and then obtaining a signed written consent form these Terms of Use. UO makes these Terms of Use available at the following URL: <https://linguafolio.uoregon.edu> . When obtaining Consent, Organization must inform parents that in participating in LinguaFolio Online , their child may be sharing personally identifiable information online. Organization must keep proof of Consents on file and provide them to UO upon UO’s request. If a Parent does not provide consent, Organization and/or the student’s teacher must provide an alternative activity for their student. For more information on COPPA, please see [www.ftc.gov/privacy](http://www.ftc.gov/privacy).

4.3. LinguaFolio Online is part of a research study at the UO involving human subjects. The research protocol (IRB Protocol Number 02152013.018) has been reviewed by the UO Institutional Review Board and UO Research Compliance Services. This is a minimal risk research protocol that qualifies for an exemption from IRB review under 45 CFR 46.101(b)(1) for research conducted in established or commonly accepted educational settings, involving normal educational practices, such as research on regular or special education instructional strategies or research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

4.4. Following grant of access codes to Organization by CASLS, Organization will only grant access codes to teachers and staff members who are Organization’s current employees and only to its current students. Upon termination of teacher or staff member’s

employment, Organization will require such individual to return and cease using all access codes he or she has in her possession.

4.5. Organization is solely responsible for background checks for its teachers and administrators it chooses to be Authorized Users.

## 5. Support

5.1. UO may provide Organization with updates of LinguaFolio Online components as such updates have been made generally available and as UO determines them to be necessary. UO will provide Organization with technical assistance on the use of all LinguaFolio Online components, on an “as available” basis.

5.2. For technical assistance contact the LinguaFolio Coordinator at [lfolio@uoregon.edu](mailto:lfolio@uoregon.edu).

## 6. Delivery

6.1. To gain Access to LinguaFolio Online, Organization must register for a LinguaFolio Online Account and complete payment as required during the registration process. To do so Organization must contact CASLS by visiting <http://casls.uoregon.edu/pages/tools/linguafolio.php> and completing registration for LinguaFolio Online.

6.2 Following registration and payment, Organization will be provided with access codes allowing Authorized Users (including administrators, teachers, and students) to Access LinguaFolio Online and create user profiles.

## 7. Term

7.1. Organization and your Authorized User’s term of use for LinguaFolio Online will commence upon registration, payment and conformance with these Terms of Use and will terminate at the end of the last academic year Organization has made payment for.

## 8. Payment

8.1. Organization must make payment to the UO as outlined during the LinguaFolio Online registration process.

8.2. If UO does not receive payment within the period outlined during the registration process, Organization’s license of and Access to LinguaFolio Online is revoked.

## 9. Termination

9.1. Organization may terminate its license of and Access to LinguaFolio Online at any time upon written notice via email to UO’s technical contact.

9.2. UO may immediately terminate Organization's license of and Access to LinguaFolio Online or any and all of Organization's Authorized User Accounts at its discretion, upon written notice to Organization via email, if Organization or its Authorized Users are in breach of these Terms of Use. UO's right to terminate under this clause is in addition to any and all other legal remedies which UO may have for the enforcement of any and all terms thereof, and do not in any way limit any other legal remedy UO may have.

9.3 UO reserves the right to remove any Content from, or to cease providing, LinguaFolio Online at any time and for any reason (including, but not limited to Content that in any manner (i) infringes or violates the intellectual property rights or proprietary rights, rights of publicity or privacy, or other rights of any third party; (ii) violates any controlling law, statute, ordinance or regulation; (iii) is harmful, fraudulent, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, or otherwise objectionable; or (iv) jeopardizes the security of Authorized User's account in any way) or for no reason at all.

9.4. For assistance with termination of LinguaFolio Online contact the LinguaFolio Coordinator at [lfolio@uoregon.edu](mailto:lfolio@uoregon.edu).

## 10. Disclaimers

10.1. LinguaFolio Online was developed as part of research conducted at the University of Oregon. LinguaFolio is experimental in nature and is available "AS IS," without obligation by UO to provide Organization services or support except as specified in these Terms of Use. The entire risk as to the quality and performance of LinguaFolio Online is with Organization.

10.2. ORGANIZATION EXPRESSLY AGREES THAT LINGUAFOLIO ONLINE IS PROVIDED ON AN 'AS IS' BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NONINFRINGEMENT OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION OR MODIFICATION UNDER APPLICABLE LAW.

10.3. IN NO EVENT SHALL UO BE LIABLE TO ORGANIZATION OR ANY OTHER PERSON FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS OR PROFITS, DATA, OR USE OF LINGUAFOLIO OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OF, OR INABILITY TO USE LINGUAFOLIO, EVEN IF ORGANIZATION WAS PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY OTHER CLAIM BY ORGANIZATION OR ANY OTHER PERSON.

## 11. Indemnification

11.1. To the extent allowed by controlling law, Organization shall indemnify and hold harmless UO and its officers, faculty, employees, students and agents, against any and all third party claims, suits, losses, damages, costs, fees and expenses resulting from Organization's use of LinguaFolio Online, including but not limited to any damages, losses or liabilities whatsoever with respect to death or injury to any person and damage to any property. This indemnification clause shall survive Organization terminating their use of LinguaFolio Online.

11.2. Except to the extent arising from materials provided to Organization by UO, which materials are utilized by Organization in their unaltered form and without limiting the generality of the indemnification clause referenced above, Organization expressly agrees to indemnify and hold harmless UO and its directors, officers, employees, and agents from and against any and all claims, suits, actions, losses, liabilities, costs, expenses, and damages arising out of or related to any claims that content provided by Organization infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party.

11.3. In accordance with these Terms of Use, UO is acting as an Internet Service Provider as defined in the Digital Millennium Copyright Act (DMCA). For more information on the DMCA visit <http://www.copyright.gov/legislation/dmca.pdf>. Upon identification of material infringing an owner's copyright, and notification to UO by the copyright owner, content will be removed per DMCA procedures.

## 12. General

12.1. These Terms of Use will be construed in accordance with, and governed by, the laws of the State of Oregon, without regard to principles of conflicts of law. Any suit, action, or proceeding arising out of or relating to these Terms of Use shall be brought and conducted solely and exclusively within the Circuit Court of Lane County for the State of Oregon, U.S.A.; provided, however, that if a claim must be brought in a federal forum, then it shall be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of its sovereign immunity. ORGANIZATION, BY ACCEPTANCE OF THESE TERMS OF USE, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURT(S). The United Nations International Conventions on the Sale of Goods (CISG) of 1980 shall not apply.

12.2. If any provision of these Terms of Use shall be held to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions will not be in any way affected or impaired thereby.

12.3. The relationship between Organization and UO under these Terms of Use is that of independent contractors. Nothing in these Terms of Use shall be deemed to constitute a partnership, agency, joint venture or contract of employment between Organization and UO. Neither Party will have any power or authority to bind the other Party in any transaction with a third party.

12.4. Organization or Authorized Users may also agree to the LinguaFolio Application Agreement and other agreements with the UO in order to use different tools to enhance their LinguaFolio Online experience. Any additional agreements offered by UO to Authorized Users are supplemental to these Terms of Use and Organization or Authorized User's breach of any other agreements with UO will terminate their license under these Terms of Use. These Terms of Use supersede all other agreements or terms and conditions for the use of LinguaFolio Online.