



TERMS & CONDITIONS

NOTICE:

By registering a user account, you are entering into a legally binding agreement with DF Institute, LLC, doing business as Kaplan Professional (we, us and our). In consideration of your access to and/or use of KITE, you agree to be bound by and abide by the terms and conditions of this User Agreement (“Agreement”). Acceptance will bind you and all of your employees to this Agreement.

This Agreement is in addition and in supplement to the terms and conditions set forth in the KITE Master Services Agreement and incorporated by reference our privacy notice available at:
[takekite.com/pdf/KITE Privacy Notice v1.pdf](https://takekite.com/pdf/KITE%20Privacy%20Notice%20v1.pdf)

1. Overview of KITE

- 1.1 KITE is an English language proficiency assessment system designed to measure English language ability and track learning progress over time.

2. Registration of user account

- 2.1 Your user account will need to be created by your institution and you will need to complete registration in order to:
 - (a) access KITE and complete one or more assessments;
 - (b) access the results of your assessments, including reports setting out those results (**Results**); and
 - (c) access the results of assessments within your institution
- 2.2 By registering a user account, you consent to us and our contracted service providers sending you emails regarding your use of KITE.
- 2.3 You acknowledge and agree that you are solely responsible for all activities that occur on your user account (including, as applicable, for all communications made, and information and documentation submitted, to KITE on your user account).
- 2.4 You must change your password regularly and keep it confidential, and must notify us if the confidentiality of your password is compromised.

3. Your use of Results

- 3.1 We take due care to ensure that all Results are as accurate as possible and reflect up-to-date research. The available information regarding testing for English language and the meaning of results on such tests may change as a result of new research in the area.
- 3.2 The Results are provided for informational purposes only. It is your responsibility to evaluate the Results and any suggestions for future steps included in the Results, and determine whether they are suitable for you and your needs. If you have any questions or concerns about the Results, you should raise these with your institutional administrator or with another appropriate trained professional.
- 3.3 Use of KITE and your Results is not intended to replace personal advice provided by trained professionals. It is provided as part of your own personal development and should only be used in conjunction with the other information provided in conjunction with your Results.

4. Privacy

We will only use the information you provide on KITE in accordance with our Privacy Notice.

5. Intellectual property rights

- 5.1 You grant us an irrevocable, perpetual, non-exclusive, worldwide, royalty-free, sub-licensable licence to use, reproduce, adapt, modify, communicate and publish all content that you submit to KITE. You warrant to us that you have the necessary rights to grant this licence.
- 5.2 Subject to section 5.1, and unless otherwise indicated, we (and/or our third party licensors) own the copyright and other intellectual property rights in the text, graphics, information, designs, data and other content on KITE, including, for the avoidance of doubt, any Results. We may use generic, aggregated and de-identified data (including but not limited to, any data that you submitted through KITE and any data contained in the Results) for any purpose, including for research purposes of our own or in collaboration with Program partners or Program professionals engaged by Kaplan to assist with the Program.
- 5.3 While you may browse or print the content of KITE (including any Results) for non-commercial, personal use, you must obtain our prior written permission if you would like to use, copy or reproduce any part of KITE (including any Results) for any other purpose.
- 5.4 All trademarks appearing on KITE belong to their respective owners. You may not use our trade marks in the United States or internationally without our prior written consent, except to legitimately identify our products or services.

6. Restrictions on use

- 6.1 You must not:
- (a) use KITE, any content and/or services provided or made available through KITE or any Results for any purpose other than as permitted by this Agreement;
 - (b) remove or tamper with any copyright notices on KITE;
 - (c) disassemble, decompile, reverse engineer, or create derivative works or functionally equivalent software from KITE;
 - (d) copy or download, in a systematic manner, any text, graphics, information, designs, data or other content from KITE, or communicate or otherwise distribute such systematically obtained text, graphics, information, designs, data or other content; or
 - (e) breach or circumvent or attempt to breach or circumvent the security of KITE (including by hacking) or engage in any other malicious, illegal or damaging behaviour in relation to KITE.
- 6.2 You must not, directly or indirectly, introduce or permit the introduction of, any virus, worm, trojan or other malicious code into KITE, or in any other manner whatsoever corrupt, degrade or disrupt KITE.
- 6.3 You must not (nor permit a third party to) upload or submit any data or information to or via KITE (or provide us with any data or information in connection with KITE), nor otherwise use KITE:
- (a) to engage in any activity which breaches any law, infringes a third party's rights, or in a manner which interferes with the rights of any other person;
 - (b) to infringe the intellectual property rights (including trademarks and copyright) of us or any third party;
 - (c) in any way that is defamatory, obscene, misleading or deceptive or otherwise illegal; or
 - (d) in any way that constitutes misuse, or resale or other commercial use, of KITE (or any content and/or services provided or made available through KITE).

7. Links to other sites

We may, from time to time, publish links to third party websites on KITE. These links are provided for your convenience only and by accessing these third party sites, you agree to any terms of access or use imposed by those sites. We take due care to provide you with useful links, but do not endorse any material on third party sites and do not provide any warranty, or assume any responsibility, regarding the quality, accuracy, source, merchantability, fitness for purpose or any other aspect of the material on those sites, nor do we warrant that material on other sites does not infringe the intellectual property rights of any other person.

8. Disclaimers

- 8.1 KITE, and all content and/or services provided or made available through KITE, are made available to you on an 'as is' and 'as available' basis.
- 8.2 You acknowledge and agree that to the extent permitted under law, and subject to section 9, we make no representations, warranties or guarantees in relation to the availability, suitability continuity, reliability, accuracy, currency or security of KITE. We will not be liable if KITE (or any content submitted to, provided on or made available through it) is incomplete, corrupted, inaccurate, outdated or incorrect, or if KITE (or any services provided or made available through it) are unavailable for any reason.
- 8.3 You also acknowledge and agree that to the extent permitted under law, and subject to section 9, we do not represent, warrant or guarantee that KITE is free from computer viruses or any other defect or error which may affect your software or systems. You should protect your software and systems by installing and implementing your own security and system checks.

9. Consumer guarantees

To the extent permitted by law, any conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied or conferred by statute, custom or the general law that impose any liability or obligation on us are excluded under this Agreement. However, if a supply under these The Agreement is a supply of goods or services to a consumer within the meaning of the United States Consumer Law, nothing contained in this Agreement either excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under United States Consumer Law, provided that, to the extent that the United States Consumer Law permits us to limit our liability, then our liability is limited to:

- (a) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
- (b) in the case of software or other goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.

10. Exclusion of liability

Subject to Section 9 and to the extent permitted by law, we exclude liability for all direct, indirect or consequential liabilities, losses, damages, costs and expenses (including, without limitation, loss of revenue, loss of goodwill, downtime costs, loss of profit, loss of or damage to reputation, loss under or in relation to any other contract, loss of data, loss of use of data or loss of anticipated savings or benefits), whether arising in contract, tort (including negligence) or otherwise, suffered or incurred by any person:

- (a) in connection with or in any way relating to KITE (including, without limitation, the assessment and any Results) or any content and/or services provided or made available through KITE, including:
 - (i) in connection with any disruption to or unavailability or failure of KITE or interference with or damage to computer systems or other electronic devices;
 - (ii) in connection with errors, omissions or inaccuracies contained in any information published on or available via KITE;
 - (iii) as a result of any fraudulent use, misuse or misappropriation of any user account; or
 - (iv) as a result of any act committed by another person in connection with your use of KITE or any content and/or services provided or made available through KITE;
- (b) arising from any circumstance beyond our control; or
- (c) otherwise under or in connection with the terms of this Agreement.

11. Variation, suspension and termination

11.1 Without prejudice to any other rights or remedies that we may have against you under the terms of this Agreement or at law, if you breach any provision of the Agreement, we may, by giving you written notice, terminate the Agreement and disable your access to KITE, without any liability to you. This will include termination of your user account.

11.2 We may:

- (a) remove or suspend access to KITE for any reason, including where there is a fault, harmful code, unauthorised access or other malicious attack on KITE or our systems or for the purposes of upgrading or maintenance of KITE, without having to give you notice;
- (b) change all or part of KITE (including the availability of any feature or content, as applicable) at any time for any reason, without having to give you notice;
- (c) impose limits on certain features or restrict your access to all or part of KITE, without having to give you notice; or
- (d) terminate your access to and use of KITE (including your user account) without cause by giving you 14 days prior written notice.

12. General

- 12.1 We may change the Agreement from time to time. If we reasonably consider that the change is likely to:
- (a) benefit you or have a neutral or minor detrimental impact on you, we may change the Agreement by making such changes immediately without notifying you except by publishing the Agreement as amended on KITE; or
 - (b) have a significant detrimental impact on you, we will make such changes to the Agreement no sooner than 10 days after we have notified you of those changes in writing to the email you provided when you registered for the Program.

If you do not accept a change made by us to the Agreement, you must immediately cease using KITE.

- 12.2 You must not assign, sublicense or otherwise deal in any other way with any of your rights under the Agreement.
- 12.3 If a provision of the Agreement is invalid or unenforceable, it may be severed from the Agreement and the remaining provisions of the Agreement continue in force.
- 12.4 This Agreement shall be governed and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of New York. Any legal suit, action or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted exclusively in the courts within the State of New York, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or forum non convenienc.
- 12.5 This Agreement is the entire agreement between us on its subject matter and supersedes any previous arrangements, agreements, representations, understandings or statements (whether verbal, in writing or in some other format).