

DATED AUGUST 1ST, 2016

-----CalcMonitor Mobile App-----

END-USER LICENSE AGREEMENT

between

END-USER

and

CALCMONITOR, A DIVISION OF TYUSHUN CONSULTING LLC

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THIS AGREEMENT is dated August 1st, 2016

PLEASE READ CAREFULLY BEFORE DOWNLOADING OR STREAMING THE APP FROM THIS WEBSITE.

This end-user license agreement (**EULA**) is a legal agreement between you (**End-user** or **you**) and CalcMonitor, a product of Tyushun Consulting LLC, Norman, Oklahoma, USA (**Licensor, us** or **we**) for:

- **CalcMonitor** mobile application software (**App**); and
- online documents (**Documents**).

We license use of the App and Documents to you on the basis of this EULA and subject to any rules or policies applied by the Google Android application store from whose site, located at <https://play.google.com/store/apps> (**Appstore**), the End-user download the App (**Appstore Rules**). We do not sell the App or Documents to you. We and/or the owners of the App and Documents remain the owners of the App and Documents at all times.

Operating system requirements This App requires an Android device with a minimum of 30 Megabytes of free memory, internet access and the Android 4.4 (KitKat) operating system or greater.

Important notice:

- By downloading the App from this website or clicking on the "Accept" button below you agree to the terms of the license which will bind you. The terms of the license include, in particular, limitations on liability in condition 7.
- If you do not agree to the terms of this license, we will not license the App and Documents to you and you must stop the downloading or streaming process (as applicable) now by clicking on the "Cancel" button below. In this case the downloading or streaming process will terminate.

You should print or store a copy of this EULA for future reference.

AGREED TERMS

1. ACKNOWLEDGEMENTS

- 1.1 The terms of this EULA apply to the App or any of the services accessible through the App (**Services**), including any updates or supplements to the App or any Service, unless they come with separate terms, in which case those terms apply. If any open-source software is included in the App or any Service, the terms of an open-source license may override some of the terms of this EULA.
- 1.2 We may change these terms at any time by sending you an SMS with details of the change or notifying you of a change when you next start the App. The new terms may

be displayed on-screen and you may be required to read and accept them to continue your use of the Services.

- 1.3 From time to time updates to the App may be issued through the Appstore. Depending on the update, you may not be able to use the Services until you have downloaded or streamed the latest version of the App and accepted any new terms.
- 1.4 You will be assumed to have obtained permission from the owners of the mobile telephone or handheld devices that are controlled, but not owned, by you and described in condition 2.2(a) (**Devices**) and to download or stream a copy of the App onto the Devices. You and they may be charged by your and their service providers for internet access on the Devices. You accept responsibility in accordance with the terms of this EULA for the use of the App or any Service on or in relation to any Device, whether or not it is owned by you.
- 1.5 By using the App or any of the Services, you consent to us collecting and using technical information about the Devices and related software, hardware and peripherals for Services that are internet-based or wireless to improve our products and to provide any Services to you.
- 1.6 The App or any Service may contain links to other independent third-party websites (**Third-party Sites**). Third-party Sites are not under our control, and we are not responsible for and do not endorse their content or their privacy policies (if any). You will need to make your own independent judgement regarding your interaction with any Third-party Sites, including the purchase and use of any products or services accessible through them.
- 1.7 Any words following the terms **including, include, in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

2. GRANT AND SCOPE OF LICENSE

- 2.1 In consideration of you agreeing to abide by the terms of this EULA, we grant you a non-transferable, non-exclusive license to use the App on the Devices, subject to these terms, the Privacy Policy and the Appstore Rules, incorporated into this EULA by reference. We reserve all other rights.
- 2.2 You may:
 - (a) download or stream a copy of the App onto an Android device and to view, use and display the App on the Devices for your personal purposes only; and
 - (b) use the Documents for your personal purposes only.

3. LICENSE RESTRICTIONS

Except as expressly set out in this EULA or as permitted by any local law, you agree:

- (a) not to copy the App or Documents except where such copying is incidental to normal use of the App, or where it is necessary for the purpose of back-up or operational security;
- (b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the App or Documents;
- (c) not to make alterations to, or modifications of, the whole or any part of the App, or permit the App or any part of it to be combined with, or become incorporated in, any other programs;
- (d) not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the App or attempt to do any such thing except to the extent that such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the App with another software program, and provided that the information obtained by you during such activities:
 - (i) is used only for the purpose of achieving inter-operability of the App with another software program;
 - (ii) is not unnecessarily disclosed or communicated without our prior written consent to any third party; and
 - (iii) is not used to create any software that is substantially similar to the App;
- (e) to keep all copies of the App secure and to maintain accurate and up-to-date records of the number and locations of all copies of the App;
- (f) to include our copyright notice on all entire and partial copies you make of the App on any medium;
- (g) not to provide or otherwise make available the App in whole or in part (including object and source code), in any form to any person without prior written consent from us; and
- (h) to comply with all technology control or export laws and regulations that apply to the technology used or supported by the App or any Service (**Technology**),

together **License Restrictions**.

4. ACCEPTABLE USE RESTRICTIONS

You must:

- (a) not use the App or any Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this EULA, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code,

including viruses, or harmful data, into the App, any Service or any operating system;

- (b) not infringe our intellectual property rights or those of any third party in relation to your use of the App or any Service (to the extent that such use is not licensed by this EULA);
- (c) not transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the App or any Service;
- (d) not use the App or any Service in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users; and
- (e) not collect or harvest any information or data from any Service or our systems or attempt to decipher any transmissions to or from the servers running any Service.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 You acknowledge that all intellectual property rights in the App, the Documents and the Technology anywhere in the world belong to us or our licensors, that rights in the App are licensed (not sold) to you, and that you have no rights in, or to, the App, the Documents or the Technology other than the right to use each of them in accordance with the terms of this EULA.
- 5.2 You acknowledge that you have no right to have access to the App in source-code form.

6. NO WARRANTY OR SUPPORT

- 6.1 You expressly acknowledge and agree that use of the App and any Documents and Services provided is at your sole risk and that the entire risk as to satisfactory quality, performance, accuracy and effort is with you.
- 6.2 To the maximum extent permitted by applicable law, the App and Documents and Services are provided "as is" and "as available", with all faults and without warranty of any kind, and we hereby disclaim all warranties and conditions with respect to the App, Documents and Services, either express, implied or statutory, including, but not limited to, any implied warranties and/or conditions of merchantability, of satisfactory quality, of fitness for a particular purpose, of accuracy, of quiet enjoyment, and non-infringement of third party rights. We do not warrant against interference with your enjoyment of the App or Documents, that the functions contained in the App or Services will meet your requirements, that the operation of the App or Services will be uninterrupted or error-free, or that defects in the App or Services will be corrected. No oral or written information or advice given by us or our authorized representative shall create a warranty. Should the App or Services prove defective, you assume the entire cost of all necessary servicing, repair or correction.

7. LIMITATION OF LIABILITY

- 7.1 You acknowledge that the App has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the App as described in the Documents meet your requirements.
- 7.2 We only supply the App and Documents for domestic and private use. You agree not to use the App and Documents for any commercial, business or resale purposes, and we have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- 7.3 Our maximum aggregate liability under or in connection with this EULA (including your use of any Services) whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to U.S.\$10. This does not apply to the types of loss set out in condition 7.47.4.
- 7.4 Nothing in this EULA shall limit or exclude our liability for:
- (a) death or personal injury resulting from our negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) any other liability that cannot be excluded or limited by United States law.

8. TERMINATION

- 8.1 We may terminate this EULA immediately by written notice to you:
- (a) if you commit a material or persistent breach of this EULA which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so;
 - (b) if you breach any of the License Restrictions or the Acceptable Use Restrictions; and
 - (c) on thirty days notice.
- 8.2 On termination for any reason:
- (a) all rights granted to you under this EULA shall cease;
 - (b) you must immediately cease all activities authorised by this EULA;
 - (c) you must immediately delete or remove the App from all Devices, and immediately destroy all copies of the App and Documents then in your possession, custody or control and certify to us that you have done so.

9. COMMUNICATION BETWEEN US

- 9.1 If you wish to contact us in writing, or if any condition in this EULA requires you to give us notice in writing, you can send notice to us by e-mail at

support@calcmonitor.com. We will confirm receipt of this by contacting you in writing, normally by e-mail.

- 9.2 If we have to contact you or give you notice in writing, we will do so by e-mail to the email address you provide to us in your request for the App.

10. EVENTS OUTSIDE OUR CONTROL

- 10.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this EULA that is caused by any act or event beyond our reasonable control, including failure of public or private telecommunications networks (**Event Outside Our Control**).

- 10.2 If an Event Outside Our Control takes place that affects the performance of our obligations under this EULA:

- (a) our obligations under this EULA will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control; and
- (b) we will use our reasonable endeavours to find a solution by which our obligations under this EULA may be performed despite the Event Outside Our Control.

11. OTHER IMPORTANT TERMS

- 11.1 We may transfer our rights and obligations under this EULA to another organisation, but this will not affect your rights or our obligations under this EULA.

- 11.2 You may only transfer your rights or obligations under this EULA to another person if we agree in writing.

- 11.3 If we fail to insist that you perform any of your obligations under this EULA, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.

- 11.4 Each of the conditions of this EULA operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.

- 11.5 Please note that this EULA, its subject matter and its formation, are governed by United States law. You and we both agree that the courts of the United States will have non-exclusive jurisdiction.

- 11.6 The app includes the graphing, scientific calculator by GeoGebra as well as the proctoring and reporting service. While the calculator is available to you on the device on which the app was downloaded for as long as you own and operate said device, the proctoring and monitoring feature is limited. Assuming our continued ability to maintain contracts with cloud services like Amazon S3, we can provide unlimited proctoring and monitoring services for at least 2 years from your date of purchase of the app on the same device on which the app was downloaded. After 2 years you will be required to purchase the app again if you wish to continue use of the proctoring and reporting services.
- 11.7 The main purpose of the app is to allow use of the smartphone in class by providing a proctoring and monitoring service. As such the app keeps track of user behaviour in Exam Mode: exam start time, exam end time, whether the user attempted to exit Exam Mode at any time. A report of these activities is prepared and then sent in the background to the designated proctor once Wi-fi or cellular access is available. The user acknowledges that such a report is necessarily sent from their device without any further interference from them. The user also understands that the only information that is collected and sent to the proctors are: user name, exam start time, exam end time, app exit time, proctor name. No other information is collected. We do maintain an archive of this information on our servers for a period of 2 years for backup purposes.

12. GENERAL DISCLAIMERS:

- 12.1 CalcMonitor is a monitoring App for a smartphone calculator that is designed to (i) allow student use of smartphone calculators; (ii) prevent student misuse of the smartphone by monitoring usage of the app. Thus it is designed to assist teacher and proctors in ensuring legitimate smartphone use in a classroom or exam setting. It is not meant to replace a teacher or proctor.
- 12.2 CalcMonitor is a proctoring aid but it is not fool proof. Since the student/user has physical control of the smartphone or device, it may be possible to modify it to defeat CalcMonitor's enforcement measures. No system can protect against all possible attacks, but it can prevent casual misuse by most students. CalcMonitor is to be used in concert with routine proctoring.
- 12.3 We wait a reasonable amount of time for data from students to filter in before packaging them as a report to be delivered to the designated proctor. However, occasionally there are "stragglers" i.e., students who do not connect to the Internet for some time and whose information comes in late. Thus, it sometimes happens that the spreadsheet is split across two or more emails.
- 12.4 Our goal is full and accurate delivery of all information. We use Amazon S3 to store reports which advertises 99.99999999% durability or up-time (as of May 2016). We have a strict anti-spam policy that ensures our messages are accepted by Amazon's

service. However, we do not assume any responsibility for any errors due to server outages, network failures, e-mail deliver issues or other technical difficulties.

- 12.5 CalcMonitor's proctoring feature is built on top of the GeoGebra smartphone app. While every effort has been made to integrate the two apps seamlessly we cannot be responsible for any errors or technical difficulties stemming from this integration. It follows that we cannot be responsible for any technical errors that might crop up from using GeoGebra.

This agreement has been entered into on the date stated at the beginning of it.