

TEXAS CONSTRUCTION CAREERS
TERMS OF USE
Effective as of September 1, 2014

Welcome to <http://www.texasconstructioncareers.org> (the “Site”) the online presence of Texas Construction Careers (“TCC”, “we”, or “us”).

THE FOLLOWING TERMS OF USE (THE “TERMS”) GOVERN YOUR USE OF THE SITE VIA THE INTERNET, THE WORLD WIDE WEB, MOBILE NETWORKS, OR ANY OTHER COMMUNICATION METHODS NOW KNOWN OR IN THE FUTURE DEVELOPED. IN CONSIDERATION FOR ACCESS TO AND/OR USE OF THE SITE, YOU (“YOU”, “YOUR”, “USER”, OR, COLLECTIVELY, “USERS”) AGREE TO READ THE TERMS CAREFULLY BEFORE ACCESSING OR USING THE SITE, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD THE TERMS, AND YOU AGREE TO BE BOUND BY THE TERMS. THE TERMS ARE A LEGAL CONTRACT BETWEEN YOU AND TCC, AND GOVERN YOUR ACCESS TO AND USE OF THE SITE. IF YOU DO NOT AGREE WITH ANY OF THE TERMS, CLOSE THE SITE DOWN IMMEDIATELY AND DO NOT ACCESS OR OTHERWISE USE WWW.TEXASCONSTRUCTIONCAREERS.ORG OR ANY INFORMATION CONTAINED ON THE SITE.

I. Definitions.

a. “**Affiliate**” means any business entity with which TCC has a business or contractual relationship, including, but not limited to, agents, partners, associates, and parent or subsidiary entities.

b. “**Affiliate Content**” means Content Shared by an Affiliate.

c. “**Content**” means any intellectual property, data, or communications Shared via the Site by TCC, an Affiliate, or a User, including, but not limited to, articles, audio, blog postings, comments, documents, editorial content, featured site profiles, files, images, listings, logos, messages, music, photos, postings, questions and answers, ratings, recommendations, reviews, sounds, site profiles, tags, text, trademarks, or videos.

d. “**TCC Content**” means Content Shared by TCC.

e. “**TCC IP**” means the past, present, and future intellectual property comprising the Site, including, but not limited to, all software, code processes, algorithms, user interfaces, know-how, techniques, organization, designs, text, images, photographs, illustrations, audio or video material, artwork, graphic material, podcasts, advertising copy, databases, proprietary information, all copyrightable or otherwise legally protectable elements of the Site and all other tangible or intangible materials related to, displayed, performed, or distributed on the Site and the Site itself, including, but not limited to, the selection, sequence, “look and feel”, and arrangement of items on the Site, and all TCC trademarks, domain names, patents, and other intellectual property.

f. “**Share**” means upload, submit, post, distribute, disseminate, or otherwise make available Content.

g. “**User**” means an individual who accesses and/or uses the Site.

- h. **“User Content”** means any Content Shared by Users.
- i. **“User Data”** means personally identifiable information provided by or collected from a User in order to Share Content.
- j. **“Your Content”** means any Content you Share via the Site.

II. ELIGIBILITY. THE SITE IS NOT INTENDED FOR CHILDREN. YOU MUST BE AT LEAST EIGHTEEN (18) YEARS OLD TO ACCESS AND/OR USE THE SITE. IF YOU ARE UNDER 18 YEARS OF AGE, THEN YOU MAY NOT ACCESS OR USE THE SITE AT ANY TIME OR IN ANY MANNER WITHOUT YOUR LEGAL GUARDIAN’S CONSENT. BY USING OR ACCESSING THE SITE YOU REPRESENT AND WARRANT THAT YOU ARE AT LEAST EIGHTEEN (18) YEARS OF AGE AND HAVE REACHED THE AGE OF MAJORITY IN YOUR LEGAL JURISDICTION OR HAVE THE PERMISSION OF YOUR LEGAL GUARDIAN AND HAVE NOT BEEN PREVIOUSLY SUSPENDED OR REMOVED FROM THE SITE.

III. Change of Terms of Use. TCC or an Affiliate may modify, alter, or otherwise update the Terms at any time. Such modifications shall be effective immediately upon posting. You are responsible for regularly reviewing the Terms. Your continued access to or use of the Site constitutes your agreement to all such modifications.

IV. Privacy. TCC respects Your privacy and is committed to protecting the personally-identifiable information we collect from all Users as You access and/or use the Site via the internet, the world wide web, mobile networks, or any other communication methods now known or in the future developed. Your use of the Site is governed by our [PRIVACY POLICY](#), which is hereby incorporated into the Terms of Use by reference. Please read this notice carefully for information related to TCC’s collection, use, and disclosure of Your personal information.

V. TCC Content. Unless otherwise noted, all Content on the Site is TCC Content and is owned, controlled, or licensed by TCC and is protected by copyright, as a trademark, and/or by other intellectual property rights. You agree that you shall acquire no rights in TCC Content or TCC IP unless otherwise noted in writing by TCC. You may not copy, reproduce, frame, republish, download, upload, post, transmit, distribute, hyperlink, or exploit TCC Content or TCC IP for commercial use in any way beyond what is permitted by these Terms without the prior written consent of TCC. You may not take any of the following actions or encourage others to take the following actions: 1) use the Site to increase traffic to Your website for commercial reasons, such as advertising or sales; 2) take any action that imposes an unreasonable or disproportionately large load on the Site’s infrastructure; 3) “scrape” the Site, or use any bot, spider, scraper, data miner, or automated agent to access and/or use the Site or gain access to and/or use any Content on the Site; 4) take Content from the Site and reformat and display said Content, or mirror and/or frame any pages of the Site on any other website; or 5) attempt to decipher, decompile, disassemble, or reverse engineer any Content.

a. *License to Access and Use.* TCC grants you a limited, personal, non-exclusive, non-transferable, freely revocable license to access and use TCC Content and TCC IP via the Site for the purposes of informing yourself about TCC, TCC’s services, and TCC Content. You acknowledge and agree that with exception to this limited license you have no right to modify,

edit, copy, reproduce, create derivative works, or reverse engineer, alter, enhance, or in any way exploit any of the TCC Content or TCC IP in any manner unless otherwise noted in writing by TCC. This limited license terminates automatically, without notice to you, if you breach any of the Terms.

b. *License to Share.* TCC hereby grants you a limited, personal, non-exclusive, non-transferable, freely revocable license to access and use TCC IP and the Site to Share your content with TCC and other Users. This limited license terminates automatically, without notice to you, if you breach any of the Terms.

c. *Reservation of Rights.* TCC reserves all rights not expressly granted in the Terms unless otherwise noted in writing by TCC.

d. *Prevention of Unauthorized Use.* TCC reserves the right to exercise whatever lawful means TCC deems necessary to prevent unauthorized use of the Site, TCC Content, and TCC IP, including, but not limited to, technological barriers, IP mapping, and directly contacting your Internet Service Provider regarding such unauthorized use.

e. *Liquidated Damages.* You acknowledge that if you violate this provision of the Terms, in addition to all other remedies available to TCC, TCC will be entitled to liquidated damages in the amount of TEN THOUSAND U.S. DOLLARS (\$10,000). You agree and acknowledge that these liquidated damages are a fair and accurate estimate of TCC's actual damages resulting from a breach of this provision and shall not be construed as penalty or punitive damages against you.

VI. User Content. TCC allows Users to share information to TCC and other Users via TCC IP and the Site.

a. *Retention of Ownership.* TCC does not claim any ownership rights in your Content. By simply Sharing your Content via TCC IP and the Site, you continue to retain ownership of your Content and continue to have the right to use and license your Content in any way you choose unless otherwise stated herein. However, any of your Content shared via TCC IP and the Site must comply with the Terms

b. *License Grant to TCC.* By Sharing your Content via TCC IP and the Site, you thereby grant TCC a limited worldwide perpetual sub-licensable paid in full right and license to use, display, perform, distribute, modify, adapt, abridge, exploit, and promote your Content in any way and in any commercial or non-commercial medium or form without further compensation.

c. *User Content Representations and Warranties.* You are solely responsible for your Content and all the consequences of Sharing your Content. By Sharing your Content, You affirm, represent, and warrant that: (i) you are the creator and owner of or have the necessary licenses, rights, consents, releases, and permissions to use and for TCC to use your Content as necessary to exercise the licenses granted by you in this section and in the manner contemplated by TCC and the Terms; (ii) your Content does not and will not slander, defame, or libel any other person; (iii) the use of your Content as permitted herein does not and will not infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual

property or proprietary right; (iv) your Content does not contain any viruses, adware, spyware, worms, or other malicious code; and (v) your Content is free of any digital rights management, including any software designed to limit the number of times your Content may be copied or played. Violators of the Terms may be subject to criminal and civil liability. TCC reserves all rights and remedies against any Users who violate the Terms.

VII. Unsolicited Suggestions. TCC welcomes your feedback and is open to any and all suggestions and communication made by Users. By submitting any such unsolicited suggestions, you agree that TCC may, but shall have no obligation to, use, modify, distribute, copy, and otherwise exploit such suggestions in any manner, as TCC sees fit, without restriction or limitation of any kind, and you grant to TCC a paid-in-full, worldwide perpetual, irrevocable, royalty-free license to do so and to allow others to do so, and agree not to permit or prosecute any action or lawsuit on the ground that TCC's use or alleged use of a suggestion infringes any of your rights.

VIII. Digital Millennium Copyright Act Policy. TCC takes intellectual property rights very seriously and demands the same from all Users. TCC will respond to allegations of copyright violations in accordance with the Digital Millennium Copyright Act (the "**DMCA**") (see 17 U.S.C. 512). The DMCA provides a process for a copyright owner to give notification to TCC concerning alleged copyright infringement. When a valid DMCA notification is received, TCC responds under this process by taking down the offending Content. On taking down Content under the DMCA, TCC will take reasonable steps to contact the owner of the removed Content so that a counter-notification may be filed. On receiving a valid counter-notification, TCC will generally restore the Content in question, unless TCC receive notice from the notification provider that a legal action has been filed seeking a court order to restrain the alleged infringer from engaging in the infringing activity.

PLEASE NOTE THAT THESE NOTIFICATIONS AND COUNTER-NOTIFICATIONS ARE REAL-WORLD LEGAL NOTICES PROVIDED OUTSIDE THE SITE. TCC MAY PROVIDE COPIES OF SUCH NOTICES TO THE PARTICIPANTS IN THE DISPUTE OR THIRD PARTIES, AT TCC'S DISCRETION AND AS REQUIRED BY LAW; THE [PRIVACY POLICY](#) DOES NOT PROTECT INFORMATION PROVIDED IN THESE NOTICES.

a. Notice of Infringement. If you are a copyright owner and have a good faith belief that any Content posted on or transferred through the Site infringes your copyright(s), you may send TCC's "**Designated Copyright Agent**" a written notification pursuant to the DMCA. The "**Notice of Infringement**" must contain the information specified below in the following format:

(i) identify in sufficient detail the copyrighted work claimed to have been infringed; if multiple copyrighted works are covered by a single notice of infringement letter, provide a representative list of such works;

(ii) identify in sufficient detail the material that is claimed to be infringing and information reasonably sufficient to permit TCC to locate the material on the Site or Affiliate site (e.g., provide the Uniform Resource Locator, "URL," of the material claimed to be infringing);

(iii) provide information reasonably sufficient to permit TCC to contact you (e.g., a street address, telephone number, and email address if available);

(iv) provide a statement that you have a good faith belief that the use of the copyrighted material in the manner described in the notice letter is not authorized by the copyright owner, its agent, or the law;

(v) provide a statement, made under penalty of perjury, that the information provided in the notice letter is accurate, and that you are the copyright owner or are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; and

(vi) provide the physical or electronic signature of the copyright owner or someone authorized to act on the owner's behalf.

The Notice of Infringement must be submitted to TCC's Designated Copyright Agent by mail, fax, or email as set forth below:

The San Antonio Chapter of AGC
Texas Construction Careers
Attn: Designated Copyright Agent
10806 Gulfdale
San Antonio, Texas 78216
Email: mcmurry@sanantonioagc.org
Phone: +1 (210) 349-4921

Be advised that failure to comply with all of the above requirements may invalidate Your Notice of Infringement under the DMCA. TCC's response to a proper Notice of Infringement will be to remove or disable access to the Content claimed to be infringing and notify the alleged infringer of your claim so he or she can submit a Counter Notice, as defined hereinafter, to TCC.

b. Counter Notice. If your Content was removed or access was blocked and you have a good faith belief that it is not infringing on any copyrighted material, you may send TCC a written, "**Counter Notice**" pursuant to Section 512 of the DMCA. The Counter Notice must contain the information specified below in the following format:

(i) identify in sufficient detail the Content that TCC has removed or to which TCC has disabled access and the location of the material (e.g., the URL) before it was removed/disabled;

(ii) provide Your name, address, telephone number, and email address;

(iii) a statement that You consent to the jurisdiction of the federal district court in which your address is located, and a statement that You will accept service of process from the person who provided notification of the alleged infringing activity;

(iv) provide a statement, made under penalty of perjury, that You have a good faith belief that the material was removed/disabled as a mistake or misidentification of the material; and

(v) provide Your physical or electronic signature.

The Counter Notice must be submitted to TCC's Designated Copyright Agent by mail, fax, or email as set forth below:

The San Antonio Chapter of AGC
Texas Construction Careers
Attn: Designated Copyright Agent
10806 Gulfdale
San Antonio, Texas 78216
Email: mcmurry@sanantonioagc.org
Phone: +1 (210) 349-4921

Be advised that failure to comply with all of the above requirements may invalidate your Counter Notice under the DMCA. If the Designated Copyright Agent receives your valid Counter Notice, TCC may restore Your removed Content or cease disabling it within ten to fourteen (10-14) business days, unless TCC receives notice from the alleged copyright owner (who filed the initial Notice of Infringement) that said party has filed a court action seeking to stop your alleged infringement.

IX. Trademark Notice. You agree that in the event that TCC receives a written demand alleging that any Content infringes upon, dilutes, tarnishes, or otherwise violates its trademark rights, TCC may in its sole discretion, remove or disable access to such Content until TCC receives either: 1) written confirmation from the party sending such demand that the demand is withdrawn or has been resolved, or 2) you submit sufficient evidence to satisfactorily rebut the allegations contained in such demand, the adequacy of such evidence to be determined by TCC in TCC's sole discretion and which TCC may reject for any reason without penalty or liability to you. In order for TCC to accept such rebuttal, you expressly acknowledge and agree that such rebuttal shall include: 1) the information set forth in Section VIII hereinabove, except that such information shall relate to the disputed trademark at issue rather than disputed copyrighted material and 2) an express, irrevocable, and binding obligation pursuant to which you shall indemnify, defend, and hold harmless TCC from damages, costs, or expenses that TCC may incur, in any manner whatsoever, arising out of or in connection with the disputed Content and TCC restoration thereof. The procedures of the DMCA apply only to copyrighted works and expressly exclude any other forms of intellectual property rights, including any rights in trademarks; the process hereinabove is intended only to provide a convenient mechanism for addressing trademark disputes and does not, and shall not, be construed, as imposing any obligation on TCC under the DMCA with regards to response times or the like. TCC is under no obligation to restore access to any removed Content even if you provide the aforementioned rebuttal.

X. Links to Other Websites or Services. The Site may include links or references to other websites or services ("**Linked Sites**"). Linked Sites are provided for your convenience and information only. TCC does not control the availability and content of Linked Sites. Access and use of Linked Sites, including the information, materials, products, and services on or available through Linked Sites is solely at your own risk. Any concerns regarding Linked Sites, or any information, resources, or services therein, should be directed to the operator of the particular Linked Site.

XI. Changes to the Site. TCC or an Affiliate may discontinue or change any Content, service, function, or feature of the Site at any time with or without notice.

XII. Disclaimer of Warranties. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, TCC AND OUR AFFILIATES, DISCLAIM ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS WITH REGARDS TO THE SITE AND ALL CONTENT ON THE SITE.

YOU EXPRESSLY AGREE THAT YOUR USE OF THE SITE IS SOLELY AT YOUR OWN RISK. THE SITE AND ALL CONTENT THEREON IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE", "WITH ALL FAULTS" BASIS AND WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND EITHER EXPRESS OR IMPLIED.

TCC AND TCC'S AFFILIATES DO NOT WARRANT THAT THE DATA, CONTENT, FUNCTIONS, OR ANY OTHER INFORMATION OFFERED ON OR THROUGH THE SITE OR ANY LINKED SITES WILL BE UNINTERRUPTED OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS AND DO NOT WARRANT THAT ANY OF THE FOREGOING WILL BE CORRECTED.

TCC AND TCC'S AFFILIATES DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SITE OR ANY LINKED SITES IN TERMS OF USE OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE.

XIII. Limitation of Liability and Damages. UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, SHALL TCC, OUR AFFILIATES, CONTRACTORS, EMPLOYEES, AGENTS, OR THIRD-PARTY PARTNERS, LICENSORS, OR SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM ANY UNSUCCESSFUL COURT ACTION OR LEGAL DISPUTE, LOST BUSINESS, LOST REVENUES OR LOSS OF ANTICIPATED PROFITS OR ANY OTHER PECUNIARY OR NON-PECUNIARY LOSS OR DAMAGE OF ANY NATURE WHATSOEVER) ARISING OUT OF OR RELATING TO THE TERMS OR THAT RESULT FROM YOUR USE OR YOUR INABILITY TO USE THE CONTENT ON THE SITE OR ANY LINKED SITES, OR ANY OTHER INTERACTIONS WITH TCC, EVEN IF TCC OR AN AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

CERTAIN JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF YOU RESIDE IN SUCH A JURISDICTION, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS. THE LIMITATIONS OR EXCLUSIONS OF WARRANTIES, REMEDIES, OR LIABILITY CONTAINED IN THE TERMS OF USE APPLY TO YOU TO THE FULLEST EXTENT SUCH LIMITATIONS OR EXCLUSIONS ARE PERMITTED UNDER THE LAWS OF THE JURISDICTION WHERE YOU ARE LOCATED.

USERS WHO ARE CALIFORNIA RESIDENTS AGREE TO WAIVE CALIFORNIA CIVIL CODE SECTION 1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

XIV. Indemnification. You agree to indemnify, defend, and hold TCC, our Affiliates, contractors, employees, agents, or third-party partners, licensors, or suppliers harmless from any liability, loss, claim, and expense, including reasonable attorney fees, related to your Content, your violation or alleged violation of the Terms, or access or use of the Site.

XV. Waiver. The failure of TCC to exercise or enforce any right or provision of the Terms will not constitute a waiver of such right or provision. Any waiver of any provision of the Terms will be effective only if in writing and signed by duly authorized agent of TCC.

XVI. Governing Law. The Terms will be governed by and construed in accordance with the laws of the State of Texas, without giving effect to any principles of conflicts of law.

XVII. Jurisdiction. You agree that any action at law or in equity arising out of or relating to the Terms Of Use, the Site, or TCC will be filed only in the state or federal courts in and for San Antonio, Texas, and you hereby consent and submit to the personal and exclusive jurisdiction of such courts for the purposes of litigating any such action and expressly submit to extraterritorial service of process.

XVIII. Dispute Resolution. You agree to first try to resolve any controversy, claim, or dispute arising out of or relating to the Terms or the access and/or use of the Site, with the help of a mutually agreed upon mediator in San Antonio, Texas. Any costs and fees other than attorney fees associated with the mediation shall be shared equally by the parties. Attorney fees associated with the mediation shall be paid by the respective parties.

If it proves impossible to arrive at a mutually satisfactory solution through mediation, You agree to submit the dispute to binding arbitration in San Antonio, Texas. Such arbitration shall be conducted in accordance with the then prevailing commercial arbitration rules of the American Arbitration Association (“AAA”), and judgment on the award rendered by the arbitrator(s) may be entered in the state or federal courts in and for San Antonio, Texas. The parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator shall be final and conclusive and may be entered in any court having jurisdiction thereof as a basis of judgment and of the issuance of execution for its collection. All such controversies, claims, or disputes shall be settled in this manner in lieu of any action at law or equity. The arbitrator shall not have the right to award punitive damages or speculative damages to either party and shall not have the power to amend this Agreement. The arbitrator shall be required to follow applicable law.

IF FOR ANY REASON THIS ARBITRATION CLAUSE BECOMES INAPPLICABLE, THEN YOU, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO.

XIX. Attorney Fees. If any litigation or arbitration is necessary to enforce the Terms the prevailing party shall be entitled to reasonable attorney fees, costs, and expenses.

XX. International Use. TCC makes no representation that Content on the Site is appropriate or available for use in locations outside the United States. If you choose to access and/or use the Site from a location outside the U.S., You do so on Your own initiative and You are responsible for compliance with local laws.

XXI. Severability. If any provision of the Terms is held to be unlawful, void, or for any reason unenforceable, then that provision will be limited or eliminated from the Terms to the minimum extent necessary and will not affect the validity and enforceability of any remaining provisions.

XXII. Assignment. Your rights and licenses under the Terms may not be transferred or assigned by You, but may be assigned by TCC without restriction. Any assignment attempted to be made in violation of the Terms shall be void.

XXIII. Headings. The heading references herein are for convenience purposes only, do not constitute a part of the Terms, and will not be deemed to limit or affect any of the provisions hereof.

XXIV. Relationship. The Terms create no agency, partnership, joint venture, or employee-employer relationship between You and TCC unless otherwise noted in writing by TCC.

XXV. Entire Agreement. The Terms are the entire agreement between You and TCC relating to the subject matter herein and will not be modified except in writing, signed by both parties, or by a change to the Terms made by TCC as set forth in Section III of the Terms.

XXVI. Contact Information. Any comments, complaints, or requests for further information can be directed to mcmurry@sanantonioagc.org.