

Terms of Service

The terms and conditions described herein (the “Terms of Service”) constitute a legal agreement between you and The Forest at Duke, Inc. (“The Forest at Duke”). The Terms of Service govern access to and use of The Forest at Duke’s websites, products, services, and content thereon (collectively, the “Site”). **IF THE TERMS OF SERVICE ARE NOT ACCEPTED BY YOU IN FULL, OR IF YOU ARE UNWILLING OR UNABLE TO BE BOUND BY THE TERMS OF SERVICE, YOU MUST IMMEDIATELY CEASE ALL ACCESS AND USE OF THE SITE.**

These Terms of Service are effective as of November 15, 2010.

1. Definitions.

- a. “Content” – Any and all text, images, photos, audio, video, and all other forms of data or communication contained on the Site.
- b. “User” – Anyone who accesses, browses, or in anyway uses the Site. As used in the Terms of Service, the terms “you” and “your” refer to you as a User of the Site.
- c. “The Forest at Duke” – As used in the Terms of Service, The Forest at Duke shall refer to The Forest at Duke, Inc., a non-profit corporation organized under the laws of North Carolina, as well as to The Forest at Duke, Inc.’s current or future parents, subsidiaries, affiliates, suppliers, licensors, partners, and the officers, directors, employees, agents, and representatives of each.

2. General.

- a. By accessing and using the Site, you acknowledge that you have read and understand the Terms of Service and you accept and agree to be bound by the terms and conditions of the Terms of Service.
- b. The Terms of Service may be updated by The Forest at Duke from time to time without notice. You should revisit the Terms of Service on a regular basis as revised versions are binding on you. The Forest at Duke may provide you with notices, including those regarding changes to the Terms of Service by email, regular mail, or postings on the Site.
- c. You understand and agree that your continued access to or use of the Site after any modification to the Terms of Service indicates your acceptance of the modification.
- d. The Forest at Duke may offer other services that are governed by additional terms. For instance, Users may submit employment applications through the Site that are governed by additional terms.
- e. Subject to the terms and conditions of these Terms of Service, The Forest at Duke hereby grants to you a limited, revocable, non-transferable and non-exclusive license to access and use the Site by displaying it on your internet browser. The license granted in this paragraph does not extend to any commercial use or use on behalf of any Third-Party, except as explicitly permitted by The Forest at Duke in advance. Any breach of these Terms of Service shall result in The Forest at Duke’s immediate revocation of the license granted in this paragraph without specific notice to you.

3. Eligibility.

- a. You represent, warrant, and covenant that you (a) are of legal age and are under no impairment or infirmity which would render you incompetent to form a binding contract; (b) have full and complete authority to enter into and consummate the Terms of Service and access and use the Site without breaching any agreement made with any other person or

entity, violating any rights of any other person or entity, or violating any laws of the United States or other applicable jurisdiction; (c) will only use the Site in a lawful manner; (d) have not been suspended or banned from accessing the Site by The Forest at Duke; and (e) are not a direct competitor of The Forest at Duke.

4. Translations.

- a. The Forest at Duke may translate the Terms of Service into languages other than English for your convenience. However, the English version governs your relationship with The Forest at Duke and any inconsistencies in the translations will be resolved in favor of the English version.

5. Site Material.

- a. The Site may contain content that you find offensive, indecent, inaccurate, or otherwise objectionable. The Forest at Duke does not endorse such content and cannot vouch for the accuracy of content on the Site. Consequently, you access and use the Site at your own risk.
- b. The Forest at Duke may display advertisements and other information on the Site. The manner, mode, and extent of displaying such advertisements are subject to change without specific notice.
- c. The Site may include links to other websites. The Forest at Duke does not control or endorse any such websites and is not responsible for the availability of or content on such websites.

6. Restrictions on Use. You represent and warrant that you will not engage in the following behavior or assist others in doing so:

- a. email, transmit or otherwise send to The Forest at Duke any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- b. use the Site in violation of the Terms of Service or any applicable law;
- c. modify, adapt, appropriate, reproduce, distribute, translate, create derivative works or adaptations of, publicly display, sell, trade, or in any way exploit the Site or its Content, except as expressly authorized by The Forest at Duke;
- d. reverse engineer any portion of the Site; or
- e. remove or modify any patent, trademark, copyright, or other proprietary rights notice on the Site or on any materials printed or reproduced from the Site.

7. Content.

- a. All Content, including but not limited to visual interfaces, interactive features, graphics, design, compilation, computer code, products, software and aggregate user review ratings, is the sole property of The Forest at Duke.
- b. The Forest at Duke also owns or has rights to use the patent, trademark, trade secret, copyright, and other intellectual property or proprietary rights throughout the world associated with the Content and the Site. These rights are protected by applicable intellectual and proprietary laws. Consequently, you may not modify, reproduce, distribute, create derivative works or adaptations of, publicly display, or in any way exploit any of the Content except as expressly authorized by The Forest at Duke.
- c. Except as expressly and unambiguously provided herein, The Forest at Duke does not grant you any express or implied rights, and all rights in and to the Site and its Content are retained by The Forest at Duke.

d. THE FOREST AT DUKE is a proprietary service mark of The Forest at Duke, Inc.

8. Survival.

- a. All sections or provisions of the Terms of Service regarding payment (for unpaid and owed payment obligations), licenses, waivers, releases, representations and warranties, limitations of liability, indemnification, and others which by their nature are intended to survive, shall apply notwithstanding any other sections or provisions of the Terms of Service, and all such sections and provisions shall survive termination, cancellation, or expiration of the Terms of Service.

9. Privacy.

- a. For information regarding how The Forest at Duke handles User personal information, please see our [Privacy Policy](#), which is fully incorporated herein by reference.

10. Site Availability.

- a. The Forest at Duke reserves the right to modify, update, or discontinue the Site at its sole discretion, at any time, for any or no reason, and without notice or liability.

11. Unauthorized Access.

- a. The Forest at Duke reserves the right to exercise whatever lawful means The Forest at Duke deems necessary to prevent unauthorized access to or use of the Site, including, but not limited to, technological barriers, IP mapping, and contacting your Internet Service Provider regarding such unauthorized use.

12. Warranties, Disclaimers, Limitations of Liability and Indemnification.

- a. **Your use of the Site and its Content is at your own discretion and risk, including downloading, viewing, or otherwise obtaining any Content. You will be solely responsible for any loss or damage resulting from your access or use of the Site and/or its Content, including but not limited to any damage to your computer or device, loss of data, from viruses, or other harm. The Site, including all Content, is made available to you on an “as is” and “as available” basis. You acknowledge and agree that The Forest at Duke is not responsible for any third party action or inaction that affects your use of the Site.**
- b. **The Forest at Duke makes no warranties, representations, or conditions of any kind, including as to (1) the functionality of the Site or its Content, including whether the Site or its Content will be uninterrupted, timely, secure, or error-free, or whether any errors will be corrected, (2) whether the Site or its Content will meet your requirements or expectations, (3) the accuracy, reliability, integrity, quality, legality, usefulness, or safety of the Site, its Content, or results from use of the Site or its Content, or (4) the products and services associated with the Site or its Content, including but not limited to the products and services sold by businesses listed on the Site.**
- c. **The Forest at Duke specifically disclaims to the extent allowed under applicable law any and all warranties, whether express, statutory, implied, or other, including, but not limited to, any warranties of fitness for a particular purpose, merchantability, merchantable quality, durability, accuracy or quality of informational content, quiet enjoyment, title, noninfringement, validity, exclusivity, condition, quality, durability,**

sustainability, arising from a course of dealing, a course of performance, or usage of trade, or under any enactment of the Uniform Computer Information Transactions Act, and oral or written representations, proposals or statements made on or prior to the effective date of these Terms of Service. To the extent any such warranty may not be disclaimed, any such warranty is hereby limited to the minimum duration and extent allowed under applicable law.

- d. Information or advice obtained from the Site shall not create any warranty, representation, condition, or obligation not expressly stated in the Terms of Service.
- e. The Forest at Duke disclaims all liability, and you expressly understand and agree that The Forest at Duke is not liable, for (1) direct, indirect, special, incidental, punitive, exemplary, reliance, or consequential damages, (2) loss of profits, (3) business interruption, (4) loss of or damage to reputation or goodwill, (5) loss of information or data, or (6) other loss or damage arising out of your use of the Site or its Content, even if The Forest at Duke has been advised of the possibility of such liability or damages. You will be solely responsible for any loss or damage resulting from your use of the Site and/or its Content, including but not limited to any loss of data or damage to your computer or other device from viruses that may be downloaded to such devices in the course of using the Site.
- f. The Forest at Duke disclaims all liability for any loss or damage arising out of your communications or dealings with any of the advertisers on the Site.
- g. Your sole and exclusive right and remedy in case of dissatisfaction with the Site or any other complaint or grievance shall be your termination and discontinuation of use of the Site. Regardless of cause or theory of recovery, whether in contract, tort or otherwise, in no event shall The Forest at Duke's liability under the Terms of Service exceed the amount of paid by you to The Forest at Duke in connection with your access and use of the Site in the twelve (12) months prior to the action giving rise to the claim of liability. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to access or use of the Site or its Content must be filed within one (1) year after such claim or cause of action arose or be forever barred.
- h. You will, at your cost and sole expense, defend, indemnify, and hold free and harmless The Forest at Duke, its officers, directors, shareholders, employees, agents, affiliate corporations, successors, and assigns from all liability, losses, costs, expenses, judgments, and damages (including all reasonable attorneys' fees, costs, and expenses) incurred by any of them in connection with, as a result of, or from any third party claim, action, or suit arising from (a) your failure to comply with applicable laws and regulations, including violation of any intellectual property or other rights of any third party by you or anyone using your User Account, (b) your violation of the Terms of Service, (c) bodily injury (including death) or damage to property arising from the negligent, fraudulent, or intentional acts or omissions of you, or (d) your access or use of the Site or its Content. You may not settle any claims giving rise to an indemnification obligation hereunder where such settlement imposes a monetary obligation that is not covered by the indemnification, imposes any material, non-monetary obligation, or that admits any liability on the part of The Forest at Duke and which does not include an unconditional release of The Forest at Duke without the prior written consent of The Forest at Duke. The Forest at Duke reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify The Forest at Duke and you agree to cooperate with The Forest at Duke's defense of these claims.

13. Miscellaneous.

- a. Nothing in the Terms of Service will create or imply an employment or agency relationship between you and The Forest at Duke, nor will the Terms of Service be deemed to constitute a joint venture or partnership between you and The Forest at Duke. You do not have any authority of any kind to bind The Forest at Duke in any respect whatsoever. These Terms of Services are solely between you and The Forest at Duke and shall not inure to the benefit of third parties.
- b. You may not assign or transfer the Terms of Service or duties or obligations hereunder, in whole or in part, without the prior written consent of The Forest at Duke. The Forest at Duke may freely assign or transfer the Terms of Service or its duties and rights hereunder, and all terms and conditions of these Terms of Service will inure to the benefit of and be enforceable by such successors, assigns, subsidiaries, purchasers, or transferees.
- c. **These Terms of Service will be solely governed by and construed in accordance with the laws of the State of North Carolina and the United States. Any disputes are exclusively subject to jurisdiction and resolution in the state or federal courts located in Durham County, North Carolina, without regard to conflict of laws under any jurisdiction, and you and The Forest at Duke agree to submit to the personal and exclusive jurisdiction of and venue in the federal and state courts in Durham County, North Carolina in event of any such dispute. You agree that your access and use of the Site and its Content occurs solely within Durham County, North Carolina, USA, regardless of where your computer, browser, or device is physically located, and that the Site and its Content are located in, served from, and performed wholly within Durham County, North Carolina, USA.**
- d. If any legal proceeding is necessary to enforce the terms or conditions of the Terms of Service, the prevailing party will be entitled to reasonable attorneys' fees and costs.
- e. If any provision, or portion thereof, of the Terms of Service is unenforceable, prohibited, or invalid under, or contrary to, any applicable statute or rule of law, it will be modified to the least extent necessary to make it enforceable, such unenforceability shall not affect any other provision of the Terms of Service, and the remaining Terms of Service will remain in full force and effect. Further, such invalidity, prohibition, or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- f. Waiver of any breach will not be construed to be a waiver of any other breach. All waivers must be in writing, and signed by the party waiving its rights.
- g. The headings for the sections herein are inserted for convenience of reference and are not intended to be a part of or to affect the meaning or interpretation of the Terms of Service.
- h. The Terms of Service including the documents incorporated herein by reference constitutes the entire agreement between you and The Forest at Duke with respect to its subject matter, governs your access and use of the Site and its Content, and supersedes all prior agreements, proposals, negotiations, representations, or communications relating to the subject matter. You acknowledge that you have not been induced to enter into these Terms of Service by any representations or promises not specifically stated herein. Neither you nor The Forest at Duke shall be considered the drafter of these Terms of Service, or any provisions of these Terms of Service, for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter. You also may be subject to additional terms and conditions that may apply when you access, use, or purchase certain other products or services. You agree that the Terms of Service constitutes a set form in writing, whether or not you choose to print the Terms of Service, including the terms and conditions as described herein.

Please contact us with any questions regarding the Terms of Service. Please report any violations of the Terms of Service to our legal department through [Contact Us](#).

