



## College App ZAP Course Agreement

*Effective Date: July 1, 2023*

THE AGREEMENT: This Course Agreement (hereinafter, "Agreement") is made by and between Magellan College Counseling LLC, a limited liability company, organized under the laws of the state of California, hereinafter referred to as "Course Provider," and you, further defined below, as a participant in the Course, also defined below.

All parts and sub-parts of this Agreement are specifically incorporated by reference here. This Agreement shall govern the use of all pages and screens in and on the Course (all collectively referred to as "Course") and any services provided by or on this Course Provider through the Course ("Services") and/or on the Course Provider's website ("Website").

Your payment constitutes your agreement with the terms and conditions outlined in this Agreement.

### **Article 1 - DEFINITIONS:**

A) The parties referred to in this Agreement shall be defined as follows:

I) Course Provider, us, we: Course Provider, as the creator, operator, and publisher of the Course, is responsible for providing the Course publicly. Course Provider, us, we, our, ours and other first-person pronouns will refer to the Course Provider, as well as, if applicable, all employees and affiliates of the Course Provider.

II) You, the user, the participant: You, as the participant in the course and user of the Website, will be referred to throughout this Agreement with second-person pronouns such as you, your, yours, or as user or participant.

III) Parties: Collectively, the parties to this Agreement (Course Provider and You) will be referred to as Parties.

B) The Course details are as follows:

I) Course Name: **College App ZAP**

II) Course Description: College App ZAP is a course to help rising high school seniors understand and complete the different parts of their college application.

III) Total Course Fees ("Fees"): \$895 (eight hundred ninety-five US dollars)

IV) Course URL: <https://magellancounseling.com/zap/>

### **Article 2 - ASSENT & ACCEPTANCE:**

By purchasing and participating in the Course, you warrant that you have read and reviewed this Agreement and that you agree to be bound by it. If you do not agree to be bound by this Agreement, please cease your participation in the Course immediately. If you do so after purchase, you will not be entitled to any refund. Course Provider only agrees to provide the Course to you if you assent to this Agreement.

### **Article 3 - LICENSE TO USE WEBSITE & ACCESS COURSE MATERIALS:**

We may provide you with certain information as a result of your accessing the Course through the Website.

Such information may include, but is not limited to, documentation, data, or information developed by us and other materials which may assist in your participation in the Course ("Materials"). Subject to this Agreement, we grant you a non-exclusive, limited, non-transferable and revocable license to use the Materials solely in connection with your participation in the Course and your use of the Website. The Materials may not be used for any other purpose, and this license terminates upon your completion of the Course, your cessation of use of the Course or the Website, or at the termination of this Agreement.

#### **Article 4 - COURSE TERMS:**

The Course does not have a structured start date, which means you may begin and complete the content at any time.

The Course and any of its accompanying Materials may not be shared with any party. If we suspect that the Course or Materials are being shared and/or that you have shared your log-in information with any party, we reserve the right to immediately terminate your access to the Course, including one-on-one meetings with our Counselors, in our sole and exclusive discretion.

You must schedule your one-on-one meetings with your assigned counselor within 30 days of beginning the Course; if you sign up for the Course on or after September 1, you must schedule your one-on-one meetings within 14 days of beginning.

We do not offer any promises or guarantees with regard to our Course or Course Materials. You hereby acknowledge and agree:

- A) You are solely and exclusively responsible for the choices that you make with regard to this Course, the Materials contained within it, or any significant changes to your business or life;
- B) You are solely and exclusively responsible for your own mental health, physical health, business decisions, and any other actions or inaction you choose to take;
- C) We are not liable for any result or non-result or any consequences which may come about due to your participation in the Course, including college acceptances or denials or scholarship offers;

#### **Article 5 - INTELLECTUAL PROPERTY:**

You agree that the Materials, the Course, the Website, and any other Services provided by the Course Provider are the property of the Course Provider, including all copyrights, trademarks, trade secrets, patents, and other intellectual property ("Company IP"). You agree that the Company owns all rights, title and interest in and to the Company IP and that you will not use the Company IP for any unlawful or infringing purpose. You agree not to reproduce or distribute the Company IP in any way, including electronically or via registration of any new trademarks, trade names, service marks or Uniform Resource Locators (URLs), without express written permission from the Company.

#### **Article 6 - YOUR OBLIGATIONS:**

As a participant in the Course, you will be asked to register with us. When you do so, you will choose a user identifier, which may be your email address or another term, as well as a password. You may also provide personal information, including, but not limited to, your name. You are responsible for ensuring the accuracy of this information. This identifying information will enable you to participate in the Course. You must not share such identifying information with any third party, and if you discover that your identifying information has been compromised, you agree to notify us immediately in writing. Email notification will suffice. You are

responsible for maintaining the safety and security of your identifying information as well as keeping us apprised of any changes to your identifying information.

The billing information you provide us, including credit card, billing address and other payment information, is subject to the same confidentiality and accuracy requirements as the rest of your identifying information. Providing false or inaccurate information, or using the Course or the Website to further fraud or unlawful activity is grounds for immediate termination of this Agreement.

**OBLIGATIONS:** As a Course participant, you will undertake and complete the following obligations:

1. Submit intake form with attachments before beginning the Course
2. Watch three recorded seminars
3. Download pdf documents on the Course website
4. Fill out templates provided
5. Meet with a Counselor, who we will assign to you at the beginning of your participation in the Course, three times (*See Article 4 for time frame limitations on scheduling meetings*)

**You MUST complete the first four items before scheduling your Counselor meetings.**

**Article 7 - PAYMENT & FEES:**

The Fee for the Course is \$895 (eight hundred ninety-five US dollars), due and payable upon your registration in the Course. No payment or installment plans are available. Additional counselor time may be purchased.

**Article 8 - ACCEPTABLE USE:**

You agree not to use the Course or the Website for any unlawful purpose or any purpose prohibited under this clause. You agree not to use the Course or the Website in any way that could damage the Course, Website, Services, or general business of the Course Provider.

a) You further agree not to use the Course or the Website:

- I) To harass, abuse, or threaten others or otherwise violate any person's legal rights;
- II) To violate any intellectual property rights of the Course Provider or any third party;
- III) To upload or otherwise disseminate any computer viruses or other software that may damage the property of another;
- IV) To perpetrate any fraud;
- V) To engage in or create any unlawful gambling, sweepstakes, or pyramid scheme;
- VI) To publish or distribute any obscene or defamatory material;
- VII) To publish or distribute any material that incites violence, hate, or discrimination towards any group;
- VIII) To unlawfully gather information about others.

**Article 9 - NO LIABILITY:**

The Course and Website are provided for informational purposes only. You acknowledge and agree that any information posted in the Course, in the Materials, or on the Website is not intended to be legal advice, medical advice, or financial advice, and no fiduciary relationship has been created between you and us. You further agree that your participation in the Course is at your own risk. We do not assume responsibility or liability for any advice or other information given in the Course, in the Materials, or on the Website.

**Article 10 - REVERSE ENGINEERING & SECURITY:**

You agree not to undertake any of the following actions:

- a) Reverse engineer, or attempt to reverse engineer or disassemble any code or software from or on the Course or Website;
- b) Violate the security of the Course or Website through any unauthorized access, circumvention of encryption or other security tools, data mining or interference to any host, user or network.

**Article 11 - DATA LOSS:**

We do not assume or accept responsibility for the security of your account or content. You agree that your participation in the Course or use of the Website is at your own risk.

**Article 12 - INDEMNIFICATION:**

You agree to defend and indemnify the Course Provider and any of our affiliates (if applicable) and hold us harmless against any and all legal claims and demands, including reasonable attorney's fees, which may arise from or relate to your participation in the Course, your use or misuse of the Website, your breach of this Agreement, or your conduct or actions. You agree that we shall be able to select our own legal counsel and may participate in our own defense, if we wish.

**Article 13 - SPAM POLICY:**

You are strictly prohibited from using Course for illegal spam activities, including gathering email addresses and personal information from others or sending any mass commercial emails.

**Article 14 - MODIFICATION & VARIATION:**

We may, from time to time and at any time without notice to you, modify this Agreement. You agree that we have the right to modify this Agreement or revise anything contained herein. You further agree that all modifications to this Agreement are in full force and effect immediately upon posting on the Website and that modifications or variations will replace any prior version of this Agreement, unless prior versions are specifically referred to or incorporated into the latest modification or variation of this Agreement.

To the extent any part or sub-part of this Agreement is held ineffective or invalid by any court of law, you agree that the prior, effective version of this Agreement shall be considered enforceable and valid to the fullest extent.

**Article 15 - ENTIRE AGREEMENT:**

This Agreement constitutes the entire understanding between the Parties with respect to the Course. This Agreement supersedes and replaces all prior or contemporaneous agreements or understandings, written or oral.

**Article 16 - SERVICE INTERRUPTIONS:**

We may need to interrupt your access to the Course to perform maintenance or emergency services on a scheduled or unscheduled basis. You agree that your access to the Course and/or Website may be affected by unanticipated or unscheduled downtime, for any reason, but that we shall have no liability for any damage or loss caused as a result of such downtime.

**Article 17 - TERM, TERMINATION & SUSPENSION:**

We may terminate this Agreement with you at any time for any reason, with or without cause. We specifically reserve the right to terminate this Agreement if you violate any of the terms outlined herein, including, but not limited to, violating the intellectual property rights of us or a third party, failing to comply

with applicable laws or other legal obligations, and/or publishing or distributing illegal material. You may also terminate this Agreement at any time by contacting us and requesting termination. At the termination of this Agreement, any provisions that would be expected to survive termination by their nature shall remain in full force and effect.

Please be advised that termination of this Agreement **does not entitle you to a refund** on any monies spent with us.

**Article 18 - NO WARRANTIES:**

You agree that your participation in the Course and your use of the Website is at your sole and exclusive risk and that any Services provided by us are on an "As Is" basis. We hereby expressly disclaim any and all express or implied warranties of any kind, including, but not limited to the implied warranty of fitness for a particular purpose and the implied warranty of merchantability. We make no warranties that the Course or Website will meet your needs or that the Course or Website will be uninterrupted, error-free, or secure. We also make no warranties as to the reliability or accuracy of any information in the Course or on the Website. You agree that any damage that may occur to you, through your computer system, or as a result of loss of your data from your participation in the Course or your use of the Website is your sole responsibility and that we are not liable for any such damage or loss.

**Article 19 - LIMITATION ON LIABILITY:**

We are not liable for any damages that may occur to you as a result of your participation in the Course or your use of the Website, to the fullest extent permitted by law, as noted above. The maximum liability of Course Provider arising from or relating to this Agreement is limited to the greater of one hundred (\$100) US Dollars or the amount you paid to us in the last six (6) months. This section applies to any and all claims by you, including, but not limited to, lost profits or revenues, consequential or punitive damages, negligence, strict liability, fraud, or torts of any kind.

**Article 20 - GENERAL PROVISIONS:**

A) LANGUAGE: All communications and notices given pursuant to this Agreement shall be in English.

B) JURISDICTION, VENUE & CHOICE OF LAW: Through your participation in the Course and your use of the Website, you agree that the laws of California shall govern any matter or dispute relating to or arising out of this Agreement, as well as any dispute of any kind that may arise between you and us, with the exception of its conflict of law provisions. In case any litigation specifically permitted under this Agreement is initiated, the Parties agree to submit to the personal jurisdiction of the state and federal courts of the following County: Los Angeles, California. The Parties agree that this choice of law, venue, and jurisdiction provision is not permissive, but rather mandatory in nature. You hereby waive the right to any objection of venue, including assertion of the doctrine of forum non conveniens or similar doctrine.

C) ARBITRATION: In case of a dispute between the Parties relating to or arising out of this Agreement, the Parties shall first attempt to resolve the dispute personally and in good faith. If these personal resolution attempts fail, the Parties shall then submit the dispute to binding arbitration. The arbitration shall be conducted in the following county: Los Angeles. The arbitration shall be conducted by a single arbitrator, and such arbitrator shall have no authority to add Parties, vary the provisions of this Agreement, award punitive damages, or certify a class. The arbitrator shall be bound by applicable and governing Federal law as well as the law of the following state: California. Each Party shall pay their own costs and fees. Claims necessitating arbitration under this section include, but are not limited to:

contract claims, tort claims, claims based on Federal and state law, and claims based on local laws, ordinances, statutes or regulations. Intellectual property claims by us will not be subject to arbitration and may, as an exception to this sub-part, be litigated. The Parties, in agreement with this sub-part of this Agreement, waive any rights they may have to a jury trial in regard to arbitral claims.

D) ASSIGNMENT: This Agreement, or the rights granted hereunder, may not be assigned, sold, leased or otherwise transferred in whole or part by you. Should this Agreement, or the rights granted hereunder, be assigned, sold, leased or otherwise transferred by Course Provider, the rights and liabilities of Course Provider will bind and inure to any assignees, administrators, successors, and executors.

E) SEVERABILITY: If any part or sub-part of this Agreement is held invalid or unenforceable by a court of law or competent arbitrator, the remaining parts and sub-parts will be enforced to the maximum extent possible. In such condition, the remainder of this Agreement shall continue in full force.

F) NO WAIVER: In the event that we fail to enforce any provision of this Agreement, this shall not constitute a waiver of any future enforcement of that provision or of any other provision. Waiver of any part or sub-part of this Agreement will not constitute a waiver of any other part or sub-part.

G) HEADINGS FOR CONVENIENCE ONLY: Headings of parts and sub-parts under this Agreement are for convenience and organization, only. Headings shall not affect the meaning of any provisions of this Agreement.

H) NO AGENCY, PARTNERSHIP OR JOINT VENTURE: No agency, partnership, or joint venture has been created between the Parties as a result of this Agreement. No Party has any authority to bind the other to third parties.

I) FORCE MAJEURE: We are not liable for any failure to perform due to causes beyond our reasonable control including, but not limited to, acts of God, acts of civil authorities, acts of military authorities, riots, embargoes, acts of nature and natural disasters, and other acts which may be due to unforeseen circumstances.

J) ELECTRONIC COMMUNICATIONS PERMITTED: Electronic communications are permitted to both Parties under this Agreement, including e-mail or fax. For any questions or concerns, please email us at the following address: [info@magellancounseling.com](mailto:info@magellancounseling.com).