

## Learning Explorer Terms of Service

Revision Date: February 13, 2022

These Terms of Service (this “**Agreement**”) form a part of the legal agreement between Learning Explorer, Inc., a Delaware corporation (“**Learning Explorer**”), and the entity agreeing to this Agreement (“**Customer**”). By entering into an Order (as defined below) with Learning Explorer or otherwise using the Platform (as defined below), Customer is agreeing to this Agreement, and this Agreement is effective as of the earlier of such events to occur (the “**Effective Date**”). If Customer does not wish to be bound by this Agreement, Customer should not enter into an Order with Learning Explorer or otherwise use the Platform.

The terms and conditions set forth in any Order or in this Agreement form the complete agreement between the parties with respect to subject matter hereof. In the event of any different, inconsistent or additional terms set forth in any Order, the terms of the Order shall have precedence over any conflicting terms contained in this Agreement.

### 1. Certain Definitions.

1.1 “**Content**” means the entire content of the Platform, including Third Party Materials, including but not limited to all site data, reviews, professional development materials, educational resources, videos, images, documents, articles, ratings, comments, unique collections and compilations of data, visual interfaces, graphics, design, information, computer code (including source code and object code), and all other elements of the Platform, except for Customer Content.

1.2 “**Customer Content**” means any digital content that Customer owns and uploads to the Platform, including but not limited to reviews, professional development materials, videos, images, documents, articles, ratings and comments.

1.3 “**De-identified Data**” means any data related to Customer’s or any User’s use of the Platform or Content from which all Personally Identifiable Information has been permanently removed so that no individual identification can be made.

1.4 “**Documentation**” means the user guides, help information and other documentation that Learning Explorer makes available to Customer regarding the use and specifications of the Platform, excluding marketing and sales collateral.

1.5 “**License Fees**” means the fees payable by Customer for the right to use the Platform.

1.6 “**License Period**” means the period for which Customer has purchased a right to use the Platform pursuant to and in accordance with this Agreement and the license start date and duration specified in the Order. At the end of the license period, service will continue pending renewal of

Agreement. Credit card purchases will renew automatically thereafter in one (1) year increments unless specified in the Agreement or terminated in accordance with Section 10.

1.7 “**Order**” means any order form or purchase order agreed to in writing by Customer and Learning Explorer.

1.8 “**Personally Identifiable Information**” means information that is linked or linkable to a specific individual so as to allow a reasonable person who does not have personal knowledge of the relevant circumstances, to identify the individual with reasonable certainty. Personally Identifiable Information includes, but is not limited to: (a) the individual’s name; (b) the name of the individual’s parent, child or other family members; (c) the address or phone number of the individual or individual’s family; (d) personal identifiers such as the individual’s student number; (e) indirect identifiers such as the individual’s date of birth, place of birth or mother’s maiden name; and (f) demographic attributes, such as race, socioeconomic information or gender, but excluding grade level.

1.9 “**Platform**” means Learning Explorer’s Learning Explorer Platform, including any Documentation.

1.10 “**Professional Services**” means any professional services identified in an applicable Order.

1.11 “**Professional Services Fees**” means the fees for the Professional Services identified in an applicable Order.

1.12 “**Third Party Materials**” means any digital content (free, open and/or licensed by Learning Explorer and/or the Customer) that is owned by a third party, including publishers, that is available and/or linked to via the Platform, including but not limited to educational resources, documents, videos, images, professional development materials, courses and resource metadata.

1.13 “**Users**” means the school district(s), school(s), educator(s), administrator(s), parent(s) and/or student(s), as applicable, authorized by Customer to use the Platform in accordance with this Agreement and the applicable Order.

## **2. Platform.**

2.1 License to Platform. Subject to the terms and conditions of this Agreement, Learning Explorer hereby grants to Customer a non-exclusive, worldwide (subject to applicable laws), limited right to use the Platform during the License Period, and to allow Users to use the Platform, solely for Customer’s own educational purposes, except as otherwise authorized by Learning Explorer. Following the License Period, Customer shall have no right to use the Platform. The Platform is deemed accepted as of the effective date on which Learning Explorer makes the Platform available, subject only to the express warranties set forth herein.

2.2 License to Content. Subject to the terms and conditions of this Agreement, Learning Explorer hereby grants to Customer a non-exclusive, worldwide (subject to applicable laws), limited right to use the

Content during the License Period, and to allow Users to use the Content, solely for Customer's internal purposes. Following the License Period, Customer shall have no right to use the Content.

2.3 License to Third Party Materials. Subject to the terms and conditions of this Agreement, Learning Explorer hereby grants to Customer a non-exclusive, worldwide (subject to applicable laws), limited right to utilize the Third Party Materials during the License Period, and to allow Users to use the Third Party Materials, solely for Customer's own educational purposes, except as otherwise authorized by Learning Explorer. Following the License Period, Customer shall have no right to use the Third Party Materials.

2.4 License Fees. License Fees are payable in accordance with Section 6.1. If License Fees are not paid in full within three (3) months after the beginning of any License Period, Learning Explorer reserves the right to suspend or terminate the right to use the Platform without liability to Customer, in addition to any other remedy in law or equity. Except as provided herein, all License Fees are non-refundable.

2.5 Restrictions. Except as specifically set forth in this Agreement, Customer will not, and will not permit any third party to: (a) use the Platform; (b) frame or reproduce the Platform; (c) modify, translate, adapt or create derivative works of the Platform ; (d) reverse engineer, decompile, disassemble (except to the extent applicable laws specifically prohibit such restriction) or attempt to derive the source code of the Platform; (e) lend, rent, host, outsource, lease, time-share, distribute, provide subscription services or otherwise transfer the Platform except as permitted by the Platform; or (f) remove, alter or obscure any proprietary notices or labels on the Platform. Additional restrictions may apply to the use of Third Party Materials.

2.6 Ownership and Retention of Rights. All right, title and interest in and to the Platform and Content will at all times remain exclusively vested in Learning Explorer, its affiliates and/or its third party licensors including, without limitation, all copyrights, patents and the right to apply for patents, trade secrets, moral rights and other intellectual and industrial property rights. Learning Explorer reserves all rights not expressly granted to Customer in this Agreement. Customer acknowledges and agrees that it does not acquire any rights, express or implied, in or to the Platform or Content, except as specifically set forth in this Agreement.

2.7 Use of De-identified Data. Learning Explorer may collect, store and use De-identified Data for purposes of research, the improvement of the Platform and Content, and/or the development of new products and Content. In no event shall Learning Explorer re-identify or attempt to re-identify any De-identified Data or use De-identified Data in combination with other data elements or De-identified Data, thereby posing risks of re-identification.

2.8 Feedback. Any new features, functionality, corrections or enhancements for the Platform or Content suggested by Customer shall be free from any confidentiality restrictions that might be imposed upon Learning Explorer pursuant to this Agreement or otherwise, and may be incorporated into the Platform or Content by Learning Explorer. Customer acknowledges and agrees that the Platform or Content incorporating any such new features, functionality, corrections or enhancements shall be the sole and exclusive property of Learning Explorer.

### **3. Customer Content and Personal Information.**

3.1 License to Customer Content. In the event Customer selects permission options on the Platform to share Customer Content with other customers of Learning Explorer, Customer thereby grants to Learning Explorer and other customers of Learning Explorer a non-exclusive, worldwide (subject to applicable laws), transferable, assignable, perpetual, irrevocable, fully-paid and royalty-free right to host, transfer, display, perform, reproduce, distribute, compress, convert and otherwise use the Customer Content; provided, however, the Customer may select permission options on the Platform to keep Customer Content private or limit distribution of Customer Content to Users. Such license will apply to any form, media or technology now known or hereafter developed.

3.2 Customer Content Warranty. Customer, on behalf of itself and each User, warrants that (i) it owns or has the right to license the Customer Content to Learning Explorer hereunder, (ii) that it will comply with all applicable privacy and data protection laws and regulations, and (iii) that the Customer Content will not infringe, violate or misappropriate any third party right, including any intellectual property right, privacy right, copyright, right of publicity or contractual right.

3.3 Privacy and Security of Personal Information. Learning Explorer's privacy policy, available at [www.learningexplorer.com/terms](http://www.learningexplorer.com/terms) as in effect from time to time, will apply to the Platform. Learning Explorer will maintain administrative, physical, and technical safeguards designed for the protection of the security, confidentiality and integrity of any personal information of Customer and its Users stored on the Platform. Such safeguards will include measures designed to prevent access, use, modification or disclosure of such information by Learning Explorer's personnel, except: (a) to provide the Platform and other Services and prevent or address service or technical problems; (b) as compelled by law; or (c) as Customer or a User expressly permits in writing (including in this Agreement). Notwithstanding the foregoing, however, Customer acknowledges that no data transmission over the Internet or data storage system can be guaranteed to be 100% secure and Learning Explorer does not guarantee the security of any such personal information transmitted to it or that it stores. Customer acknowledges that if it wishes to protect its transmission of any such personal information, it is Customer's responsibility to use a secure encrypted connection to communicate with the Platform. Learning Explorer shall not be liable to Customer for any liabilities arising from the operation of the Platform over the Internet or other networks outside of its control.

3.4 Customer's Responsibility for Personal Information. Customer is responsible for (a) providing and obtaining all required notices, consents and/or authorizations related to Customer's provision of, and Learning Explorer's processing of, any personal information of Customer or its Users, or any other individuals, as part of the Platform, (b) any security vulnerabilities, and the consequences of such vulnerabilities, arising from such personal information, including any viruses, Trojan horses, worms or other harmful programming routines contained in the Platform or Content, and (c) any use by Customer or Users of such personal information in a manner that is inconsistent with the terms of this Agreement. To the extent Customer discloses or transmits any such personal information to a third party, Learning

Explorer is no longer responsible for the security, integrity or confidentiality of such personal information outside of Learning Explorer's control.

**4. Third Party Terms.** The Platform and Content, and the results of any Professional Services, may include, access or otherwise operate, interface or be delivered with Third Party Materials which are licensed from and owned by third parties, including other customers of Learning Explorer. Learning Explorer does not control or endorse Third Party Materials, and Customer acknowledges and agrees that Learning Explorer (i) makes no representations or warranties to Customer concerning the Third Party Materials, and (ii) shall have no liability or obligation to Customer as a result of Customer's use of the Third Party Materials. Customer shall comply with any licensing terms or restrictions applicable to such Third Party Materials.

#### **5. Professional Services.**

5.1 Professional Services. Subject to the terms and conditions of this Agreement and the payment of applicable Professional Services Fees set forth in an Addendum, Learning Explorer will provide the Professional Services as described in the applicable Addendum.

5.2 Professional Services Fees. The Professional Services Fees are set forth in the applicable Order and are payable in accordance with Section 6.1. Learning Explorer may suspend Professional Services for nonpayment of Professional Services Fees (except with respect to Professional Services Fees then under reasonable and good faith dispute), without liability to Customer, in addition to any other remedy in law or equity. In the event of any termination of this Agreement or applicable Addendum, Customer shall pay Learning Explorer for all Professional Services performed and/or delivered online or in person through the date of termination.

5.3 Acceptance. Acceptance criteria for the Professional Services, if any, are described in an applicable Addendum. If the Addendum does not specify any acceptance criteria, the Professional Services will be deemed accepted when performed.

#### **6. Payment.**

6.1 Payment Terms. License Fees are payable in advance of each License Period, but in no event later than thirty (30) days of the date of Learning Explorer's invoice therefore. Professional Services Fees are payable no later than thirty (30) days of the date of Learning Explorer's invoice therefore, unless otherwise provided in an applicable Order. Customer will pay all invoices in U.S. Dollars, in full, without set-off, refund or deduction, within thirty (30) days of the date of the invoice.

6.2 Past Due Amounts. Past due amounts accrue interest at the lower of 1.5% per month or the highest interest rate permitted by law.

6.3 Taxes. Customer will pay any sales, value-added or similar taxes imposed by applicable law that Learning Explorer must pay under this Agreement or any Order, except for taxes based on Learning

Explorer's income. License Fees and other fees listed in an Order are exclusive of taxes and expenses, which are the Customer's responsibility.

**7. Confidentiality.** The recipient of a party's Confidential Information will not disclose such Confidential Information to third parties (except to its employees or agents who are under a similar written obligation of confidentiality) or use such Confidential Information for any purpose other than as authorized under this Agreement. "**Confidential Information**" means any information disclosed by a party to the other party which is labeled or otherwise identified as confidential or proprietary or, which is disclosed under circumstances which would lead a reasonable person to believe such information is Confidential Information, but excludes De-identified Data. Learning Explorer's Confidential Information includes the Platform and Content and the pricing terms of this Agreement, whether or not marked as confidential. Notwithstanding the foregoing, the recipient will not be required to protect or hold in confidence any information which: (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the recipient through no action or inaction of the recipient; (iii) is already in the possession of the recipient at the time of disclosure by the disclosing party as shown by the recipient's files and records immediately prior to the time of disclosure; (iv) is obtained by the recipient from a third party without a breach of such third party's obligations of confidentiality; (v) is independently developed by the recipient without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the recipient's possession; or (vi) is required by law to be disclosed by the recipient, provided that the recipient gives the disclosing party prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure.

**8. Indemnification.** Customer agrees that Learning Explorer has the right to defend, or at its option to settle, and Learning Explorer agrees, at its own expense, to defend or at its option to settle, any third party claim, suit or proceeding ("**Claim**") brought against Customer by a third party that the Platform directly infringes any United States patent, copyright or trademark or misappropriates any trade secret ("**Infringement**") and pay damages finally awarded if Customer promptly notifies Learning Explorer of any such Claim, grants Learning Explorer sole control of the disposition of any such Claim and cooperates in the disposition of any such Claim, at Learning Explorer's expense. If the Platform or any part thereof is, or in the opinion of Learning Explorer may become, the subject of any Claim for Infringement, or if it is judicially determined that the Platform or any part thereof directly infringes any United States patent, copyright or trademark or misappropriates any trade secret, or if the use of the Platform or any part thereof is, as a result, enjoined, then Learning Explorer will, at its option and expense: (a) procure for Customer the right to continue using the Platform; (b) modify or replace the Platform; or (c) terminate this Agreement and refund to Customer all prepaid, but unused License Fees for such infringing Platform. Learning Explorer will not be liable for any costs, expenses or fees incurred without its prior written approval. Notwithstanding the foregoing, Learning Explorer will have no liability with respect to any infringement claims arising out of: (i) combination of the Platform with any hardware, software or services not provided by Learning Explorer, where the combination causes the infringement and not the Platform standing alone; (ii) modification of the Platform other than by Learning Explorer; or (iii) use of

the Platform other than in accordance with the Documentation and this Agreement. THIS SECTION 8 STATES LEARNING EXPLORER'S ENTIRE LIABILITY AND OBLIGATION AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO CLAIMS OF INFRINGEMENT OF ALL INTELLECTUAL PROPERTY RIGHTS BY THE PLATFORM.

## **9. Warranties.**

9.1 Platform Warranty. Learning Explorer warrants that the Platform will be capable of performing in all material respects in accordance with the functional specifications set forth in the applicable Documentation. As Customer's sole and exclusive remedy and Learning Explorer's entire liability for any breach of this warranty, Learning Explorer will, at its option: (a) promptly correct any portion of the Platform that fails to meet this warranty; (b) provide Customer with a reasonable procedure to circumvent the nonconformity; or (c) refund the License Fees paid by Customer for the non-conforming Platform.

9.2 Professional Services Warranty. Learning Explorer warrants that it will perform the Professional Services in a good and workmanlike manner. As Customer's sole and exclusive remedy and Learning Explorer's entire liability for any breach of this warranty, Learning Explorer will, at its option: (a) promptly re-perform the Professional Services related to such breach; or (b) refund the fees paid by Customer for such Professional Services.

9.3 Disclaimers. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, THE PLATFORM AND CONTENT IS LICENSED, AND PROFESSIONAL SERVICES ARE PROVIDED, ON AN AS-IS BASIS WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, LEARNING EXPLORER, ITS THIRD PARTY LICENSORS AND SUPPLIERS DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, TO THE MAXIMUM EXTENT PERMITTED BY LAW. LEARNING EXPLORER, ITS THIRD PARTY LICENSORS AND SUPPLIERS DO NOT WARRANT THAT THE PLATFORM, CONTENT OR PROFESSIONAL SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, BE COMPATIBLE WITH ANY APPLICATION, HARDWARE OR ENVIRONMENT, OR THAT OPERATION OF PLATFORM WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE. LEARNING EXPLORER, ITS THIRD PARTY LICENSORS AND SUPPLIERS ARE NOT RESPONSIBLE OR LIABLE FOR LOSS, CORRUPTION OR DESTRUCTION OF DATA.

Learning Explorer warrants that the Platform will be capable of performing in all material respects in accordance with the functional specifications set forth in the applicable Documentation.

**10. Limitations of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LEARNING EXPLORER, ITS THIRD PARTY LICENSORS AND SUPPLIERS ARE NOT LIABLE CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) MATTER BEYOND ITS REASONABLE CONTROL, OR COST OF PROCURING SUBSTITUTE TECHNOLOGIES, GOODS OR SERVICES, (B)

INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, INTERRUPTION OR LOST, DESTROYED OR CORRUPTED DATA, USE, BUSINESS, REVENUES, PROFITS OR GOODWILL, OR (C) DAMAGES, IN THE AGGREGATE, WHICH ARE NO GREATER THAN (I) THE LICENSE FEE FOR THE AFFECTED PLATFORM FOR 12 MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION FIRST ACCRUED, OR (II) THE PROFESSIONAL SERVICES FEES FOR THE AFFECTED PROFESSIONAL SERVICES FOR 12 MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION FIRST ACCRUED, AS APPLICABLE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN.

## **11. Termination.**

11.1 Termination. A party may terminate this Agreement: (a) if the other party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receipt of email or other written notice specifying the breach or within thirty (30) days for nonpayment of License Fees; or (b) a party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors. Should there be a lapse in the provision of the Platform for failure to pay License Fees (and not because the Agreement is terminated as a result of Customer's uncured material breach), Customer may reinstate the Platform by paying the applicable fee.

11.2 Effect of Termination. Upon any expiration or termination of this Agreement for any reason, all rights, obligations and licenses of the parties hereunder will cease, except that: (a) all obligations that accrued prior to the effective date of termination (including payment obligations) and any remedies for breach of this Agreement will survive; (b) each party will return the other party's Confidential Information; (c) Learning Explorer will stop providing the Platform to Customer, (d) Learning Explorer will discontinue the Professional Services; and (e) the provisions of Sections 2.5, 2.6, 2.7, 2.8, 3.1, 3.2, 3.3, 3.4, 4, 6, 7, 8, 9.3 and 10 through 12 inclusive, will survive.

**12. General.** This Agreement is governed in all respects by the laws of the State of Delaware. The parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. Customer and Learning Explorer are independent contractors, and nothing in this Agreement is intended to, or should be construed to, create a partnership, agency, joint venture or employment relationship. Customer may not assign, sublicense, or otherwise transfer this Agreement, by merger or operation of law or otherwise, without the prior written consent of Learning Explorer. If any provision of this Agreement is held illegal, invalid or unenforceable, in whole or in part, such provision will be modified to the minimum extent necessary to make it legal, valid and enforceable, and the remaining provisions of this Agreement will not be affected thereby. All notices permitted or required under this Agreement will be in writing and will be deemed given upon personal delivery or rejection. The failure or delay of any of the parties to enforce any right, power or remedy under this Agreement will not constitute a waiver of such right, power or remedy.



Neither party is liable if its failure to perform any obligation under this Agreement is caused solely by supervening conditions beyond that party's reasonable control, including acts of God, civil commotion, war, strikes, labor disputes, Internet service interruptions or slowdowns, vandalism or "hacker" attacks, acts of terrorism or governmental demands or requirements. The prevailing party in any action brought under this Agreement is entitled to an award of reasonable attorneys' fees and costs. This Agreement may be modified by Learning Explorer upon thirty (30) days' written notice to Customer. This Agreement together with any documents incorporated herein by reference, completely and exclusively state the agreement of the parties regarding the subject matter hereof, and supersedes all prior and contemporaneous proposals, representations, agreements, or other communications between the parties, oral or written, regarding such subject matter.