

# "CAMPUS PACK" SUBSCRIPTION AGREEMENT

BY EXECUTING THIS AGREEMENT, EXECUTING A CP ORDER FORM, INSTALLING THE CAMPUS PACK SOFTWARE, CLICKING THE "I ACCEPT" BUTTON DISPLAYED AS PART OF THE ORDERING PROCESS OR OTHERWISE USING THE CAMPUS PACK SOFTWARE AND/OR THE SERVICE, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS (THE "AGREEMENT") GOVERNING YOUR USE OF THE CAMPUS PACK ("CP") SOFTWARE AND/OR ONLINE SERVICE, INCLUDING BOTH ONLINE AND OFFLINE COMPONENTS (COLLECTIVELY, THE "SERVICE").

This Agreement is entered into by and between Learning Objects Inc., a Delaware corporation, with offices at 1528 Connecticut Ave NW, Washington DC, 20036 ("Learning Objects") and the entity agreeing to these terms ("you" and "Customer"). This Agreement is effective as of the date you first click the "I Accept" button as part of the ordering process or in the course of first accessing the Service (the "Effective Date").

For reference, a Definitions section is included as section 30 of this Agreement. The Service is offered in several editions:

1. Evaluation Edition
2. K-12 Edition
3. For-Profit Education Edition
4. Higher Education Edition
5. Corporate and Government Edition

## 1. Authority to Contract

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF YOUR EMPLOYER OR OTHER LEGAL ENTITY, YOU PERSONALLY REPRESENT AND WARRANT THAT (i) you have full legal authority to bind your employer, or the applicable entity, to these terms and conditions; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of the party that you represent, to this Agreement, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL ALSO REFER TO AND BIND SUCH ENTITY.

**IF YOU DO NOT HAVE THE LEGAL AUTHORITY TO BIND YOUR EMPLOYER OR APPLICABLE ENTITY, YOU MUST NOT USE THE SERVICE.**

## 2. Acceptance

**This Agreement governs your access to and use of the Service. As part of the Service, Learning Objects will provide you with use of the Service, including software components and a browser interface which allows you to interact with the Service.**

Please read this Agreement carefully; it imposes legal obligations on you and on Learning Objects, and establishes our legal relationship. By using the Service or clicking accept, you are acknowledging that you have read and understood this Agreement and agree to be legally

bound by its terms, **including the following documents: (i) the Learning Objects, Inc. Privacy Policy; (ii) the CP Terms and Conditions of Use, (iii) the CP Technical Support Guidelines, and (iv) the CP Service Level Agreement, (v) any executed CP Order Forms, all of which are hereby incorporated in this Agreement. Current versions of these agreements are maintained at [www.learningobjects.com/legal](http://www.learningobjects.com/legal) and you are responsible for maintaining copies of any CP Order Forms executed at the time of purchase.**

### 3. **Delivery & Installation**

Learning Objects will deliver to Your Administrator the credentials required to access and/or download all licensed CP Software in machine-readable format, all licensed CP Services, and the Documentation (“Delivery”). Your Administrator shall be responsible for installation of the Software where required.

For all users, the Service is subject to your compliance with the technical specifications of a particular network environment, consisting of hardware, Third Party Software (such as operating system and browser software), communications infrastructure, other associated components and data format requirements (“Compatible Computers”). If there is any system or data integration or migration required, data must be formatted as reasonably established by Learning Objects. Learning Objects’ specifications for Compatible Computers for each product, service, or component are described in the product, service, or component Documentation.

### 4. **Privacy & Security**

In using the Service, there are multiple opportunities for you to provide or for Learning Objects to collect personal information and other information that is protected by privacy laws and other similar laws and regulations (“Personal Information”). Learning Objects will use the Personal Information that You provide or that Learning Objects collects only in accordance with applicable laws and regulations and in accordance with the Learning Objects, Inc. Privacy Policy (the “Privacy Policy”), the terms and conditions of which are set out in full at [www.learningobjects.com/legal](http://www.learningobjects.com/legal), and which are incorporated by reference into this Agreement. Learning Objects reserves the right to make changes to the Privacy Policy. To the extent any such changes are made, the Privacy Policy shall be no less protective of your Individual User's Personal Information.

### 5. **Confidential Information**

5.1. **Obligations.** Each party will: (a) protect the other party's Confidential Information to which it has been granted access with the same standard of care it uses to protect its own Confidential Information and in no event less than reasonable care; and (b) not disclose the Confidential Information, except to affiliates, employees and agents who need to know it and who have agreed in writing to keep it confidential in a manner compliant with this section. Each party (and any affiliates, employees and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill obligations under this Agreement,

while using reasonable care to protect it. Each party is responsible for any actions of its affiliates, employees and agents in violation of this section.

- 5.2. **Exceptions.** Confidential Information does not include information that: (a) the recipient of the Confidential Information already knew; (b) becomes public through no fault of the recipient; (c) was independently developed by the recipient; or (d) was rightfully given to the recipient by another party.
- 5.3. **Required Disclosure.** Each party may disclose the other party's Confidential Information when required by law but only after it, if legally permissible: (a) notifies the other party at least 10 days prior to the disclosure; and (b) gives the other party the opportunity to challenge the disclosure.

## 6. Confidentiality of Student Information

Learning Objects acknowledges that (i) it may have access to information associated with Your students in the course of providing the Services, and (ii) such information may be subject to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, et seq. and the regulations promulgated thereunder at 34 C.F.R. Part 99. Learning Objects further acknowledges that it is serving as a "school official" acting on Your behalf and assisting you in providing Your functions, and You will indicate as much on Your annual FERPA notice. Accordingly, Learning Objects shall comply with FERPA with regard to such student information. Learning Objects will promptly inform You of any request to access such student information in writing. It shall be Your sole responsibility to respond to requests for data or information received by Learning Objects regarding Your or Your student's data or information.

## 7. License Grant & Restrictions

- 7.1. **Grant to You.** Subject to the terms and conditions of this Agreement, Learning Objects hereby grants You a limited non-exclusive, non-transferable, worldwide right to execute, display, perform, and otherwise use the Service solely for your internal institutional purposes. Learning Objects hereby grants You a limited non-exclusive, non-transferable, worldwide right to host those components of the Service intended for that purpose as stated in the Documentation.
- 7.2. **Grant to Your Individual Users.** We will permit and you shall have the right to permit Your Individual Users to access, execute, display, perform, and otherwise use the Service and any ancillary client software necessary to use the Service, subject to the terms of this Agreement, provided that each Individual User consents to our CP Terms and Conditions of Use.
- 7.3. **Grant to Learning Objects.** You hereby grant Learning Objects a non-exclusive, non-transferable, worldwide right to access and otherwise use the Customer Data for the purposes of this Agreement and for other purposes set out in the Privacy Policy.  
  
If you or any of your Individual Users provide any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by You relating to the Service ("User Feedback"), You hereby grant to Learning Objects a non-

exclusive, sub-licensable, worldwide, perpetual, royalty-free license to use and otherwise exploit the User Feedback.

7.4. **Restrictions.** All rights not expressly granted to you are reserved by Learning Objects and its licensors.

You may not access the Service if you are a direct competitor of Learning Objects, except with Learning Objects' prior written consent. In addition, You may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or other competitive purpose.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any parties other than Your permitted Individual Users the Service, ancillary client software, or the Service Content in any way; (ii) modify or make derivative works based upon the Service, the ancillary client software, or the Service Content; (iii) independently create Internet "links" to the Service or "frame" or "mirror" any Service Content on any other server or wireless or Internet-based device without Learning Objects prior written permission; or (iv) reverse engineer, reverse compile, or access the Service or ancillary client software in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service.

You may use the Service solely for your internal institutional purposes and shall not: (i) send or permit spam or otherwise duplicative or unsolicited messages in violation of applicable law; (ii) send, permit, or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send, permit, or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with, alter, or disrupt the integrity or performance of the Service or the data contained therein; (v) attempt to gain unauthorized access to the Service or its related systems or networks; or (vi) resell the Service to any other institution.

When Your Individual Users accept the CP Terms and Conditions of Use and the Privacy Policy, they will be given Individual User Accounts. Individual User accounts shall not be shared or used by more than one person. Certain editions of the Service offer integration capabilities via application programming interfaces ("APIs"). You may only use such APIs in a manner consistent with the terms of use set forth in the API or accompanying documentation.

## 8. Customer Obligations

8.1. **Compliance with the Agreement.** You will comply with the CP Terms and Conditions of Use and will use your best efforts to ensure your Individual Users do the same. You are responsible for all activity occurring under your user accounts and will abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service including, but not limited to, those related to data privacy, international communications and the transmission of technical or personal data.

Learning Objects may make additional applications, features or functionality available from time to time through the Service, the use of which may be contingent upon your agreement to additional terms.

- 8.2. **Domain Aliases.** As part of the Service, Learning Objects permits you at your option to have your users access the Service via your own Customer Domain Name. If you choose to provide a Customer Domain Name, you are solely responsible for monitoring, responding to, and otherwise processing emails sent to the "abuse" and "postmaster" aliases for Customer Domain Names. Learning Objects shall be copied on emails sent to these aliases for Customer Domain Names.
- 8.3. **Customer Administration of the Service.** You may specify one or more Administrators through the Administrator Portal who will have the right to access the Admin Account and to administer the Individual User accounts. You shall be solely responsible for: (a) maintaining the confidentiality of the password and Admin Account; (b) designating those of your employees who are authorized to access the Admin Account; and (c) ensuring that all activities that occur in connection with the Admin Account comply with the Agreement. Learning Objects will treat anyone who uses your password and Admin Account as "You." We will provide this user with all of the rights and privileges that we provide to You, and we will hold You responsible for the activities of a person using your password. Therefore, we recommend that you maintain password and Admin Account in confidence, and that you refrain from disclosing this information to anyone who might "pretend" to be you with respect to the Service.

You further agree that Learning Objects' responsibilities do not extend to the internal management or administration of your Customer Data and use of the system, and that Learning Objects is acting under this Agreement merely as a data processor.

- 8.4. **Privacy.** You agree to protect the privacy rights of your Individual Users under all applicable laws and regulations. You are responsible for obtaining any necessary authorizations from Individual Users to enable Learning Objects to provide the Service.
- 8.5. **Unauthorized Use.** You will use all commercially reasonable efforts to prevent unauthorized use of the Service and promptly to terminate any unauthorized use. You will promptly notify Learning Objects of any unauthorized use of, or access to, the Service of which you become aware.

Specifically, you shall:

- (i) Notify Learning Objects immediately of any actual or suspected unauthorized use or any other known or suspected security breach involving any password or account,
- (ii) Report to Learning Objects immediately and use all reasonable efforts to stop immediately any improper copying of Customer Data or distribution of Service Content of which you or any of your Individual Users becomes aware, and
- (iii) Not impersonate another Individual User or institutional customer or to provide false identity information to any person in order to gain access to the Service

## **9. Account Information and Data**

Learning Objects does not own any data, information or material that you or your Individual Users submit to the Service in the course of using the Service ("Customer Data"). You, and not Learning Objects, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use all Customer Data. You are responsible for maintaining a back up version of Your Customer Data and Learning Objects shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. You may obtain your Customer Data at any time during the term of this Agreement and for one month after termination by opening a technical support request. Depending on the size of your data, Learning Objects will either post a link allowing you to download the data or work with you to deliver the data on other digital media. Learning Objects shall have no other obligation to save your Customer Data or to send your Customer Data to you.

In the event of a termination for cause, Learning Objects will use reasonable efforts to facilitate retrieval of your Customer Data upon written request received within 30 days of termination, in conjunction with Your payment of (i) any undisputed amounts due and (ii) Learning Objects' reasonable fees for such services. You agree and acknowledge that Learning Objects has no obligation to retain your Customer Data and that such Customer Data will be irretrievably deleted after 30 days following termination.

## **10. Data Protection and Transfer**

The CP Order Form executed at the time of purchase will specify where your Customer Data is processed and stored. All data processing and storage is done by Learning Objects and/or its agents ("Authorized Agents") in compliance with applicable laws and regulations. Learning Objects will not process or store your Customer Data outside of your jurisdiction unless the laws of your jurisdiction so permit.

## **11. Intellectual Property Ownership**

Learning Objects alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Learning Objects Technology, the Service Content and the Service. This Agreement is not a sale of any intellectual property ownership rights and does not convey to you any rights of ownership in or related to the Service, the Learning Objects Technology, or the Intellectual Property Rights owned by Learning Objects. The Learning Objects name, the Learning Objects logo, and the product names associated with the Service are trademarks of Learning Objects or third parties. To the extent that the Service displays Learning Objects or third party Trademarks ("Displayed Trademarks"), you agree not to remove the Displayed Trademarks without Learning Objects permission. Other than the Displayed Trademarks, you agree not to use or otherwise display Learning Objects Trademarks. Learning Objects reserves the right to remove or require you to remove the Displayed Trademarks in the event that the quality or type of your services degrades in Learning Objects' reasonable judgment.

## 12. Technical Support Service

Learning Objects will provide you technical support services related the Service in accordance with the CP Technical Support Guidelines.

## 13. Charges and Payment of Fees

You shall pay all fees or charges to your account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable, as set out in your CP Order Form. All payments due are in U.S. dollars unless otherwise indicated on the invoice. Payments must be made annually in advance unless otherwise mutually agreed in a CP Order Form. All payment obligations are noncancelable and all amounts paid are nonrefundable. You are responsible for paying for all fees applicable for the entire Term, even in the event of low usage or non-usage. As a condition to subscribing to the Service, you must provide Learning Objects with an: (i) approved purchase order or; (ii) payment by check, wire, or ACH transfer; or, (iii) with Learning Objects' approval, valid credit card information. Pricing terms and other details of the CP Order Form are confidential, and you agree not to disclose them to any third party.

**Taxes.** You are responsible for any Taxes levied in association with the Service, and you agree to pay Learning Objects for the Service without any reduction for such amounts. If Learning Objects is obligated to collect or pay Taxes, the Taxes will be invoiced to you, unless you provide Learning Objects with a valid tax exemption certificate authorized by the appropriate taxing authority. If you are required by law to withhold any Taxes from payments to Learning Objects, you must provide Learning Objects with an official tax receipt or other appropriate documentation to support such payments.

Learning Objects' fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on Learning Objects' income.

## 14. Billing and Renewal

You may elect either "automatic renewal preference" or "manual renewal preference" by notifying Learning Objects at any time of your preference. Unless you specify otherwise during the ordering process, your initial preference will be set to automatic renewal.

Upon renewal, the renewal charge will be equal to the then current annual Fees applicable to entities in the relevant Price Band for the applicable service edition, unless stated otherwise in a CP Order Form. Learning Objects reserves the right to adjust Fees over time as market conditions, costs of delivering the Service, and other factors change. The renewal Fees will also be adjusted to account for any discount accrued in the previous term under the CP Service Level Agreement. Learning Objects will give notice of any change in pricing at least 30 days in advance of the renewal date. Fees for other services will be charged on an as-quoted basis.

**Automatic Renewal.** If automatic renewal is elected, after the initial term, this Agreement will automatically renew on each anniversary of the Service Commencement Date for an additional twelve month term. Upon each renewal, Learning Objects automatically issue an invoice or bill your credit card as appropriate.

**Manual Renewal.** If manual renewal is elected, Learning Objects will make reasonable efforts to notify you that this Agreement is ending so that you may elect to renew if desired. If you have not renewed this Agreement before the conclusion of the then current term, your Individual User accounts and all access to the Service will terminate upon the conclusion of the then current term.

If you are renewing and your purchasing process requires that invoices reflect a purchase order number, then you must provide Learning Objects a purchase order in advance of the renewal date.

To be eligible to receive an adjustment or credit if you believe your bill is incorrect, you must contact us in writing within 60 days after the date of the invoice containing the amount in question.

## 15. **Capacity Allocation**

Each CP Order Form will identify certain capacity parameters that determine how much capacity you are allocated to use on the Service. You may refer to the CP Service Level Agreement and your CP Order Form for definitions of these parameters.

You may request additional capacity in any of these areas from Learning Objects at any time. Learning Objects will make reasonable efforts to accommodate your request. If the required resources are reasonably available, Learning Objects will provide you with a draft CP Order Form reflecting the new capacity parameters and the additional related Fees. Learning Objects may deny the request for more capacity if it cannot provide the requested capacity in a timely fashion.

Learning Objects will use reasonable efforts to notify you if your actual usage approaches 90% of the permitted amount for any relevant capacity parameter.

## 16. **Non-Payment and Suspension**

In addition to any other rights granted to Learning Objects herein, Learning Objects reserves the right to Suspend or terminate this Agreement and your access to the Service if your account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to interest of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. You will continue to be charged for the license during any period of suspension. If you or Learning Objects terminates this Agreement, you will be obligated to pay the balance due on your account computed in accordance with the Charges and Payment of Fees section above. You agree that Learning Objects may charge such unpaid fees to your credit card or otherwise bill you for such unpaid fees.



Learning Objects reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Service. Your access to Customer Data shall be as set out in Section 9.

### *Suspension*

- **Of Individual User Accounts by Customer.** If you become aware of an Individual User's violation of the Agreement, unless Learning Objects agrees otherwise in writing (including by email), you must Suspend the applicable Individual User account. The duration of any suspension will be until the applicable Individual User cures the breach giving rise to such suspension. You may also Suspend your Individual Users for your own reasons.
- **Of Individual User Accounts by Learning Objects.** If Learning Objects becomes aware of an Individual User's violation of the Agreement or if you fail to Suspend an Individual User Account pursuant to the preceding paragraph, then Learning Objects may specifically request that you do so. Your failure to comply with this request shall be deemed a material breach of this Agreement. Further, if you fail to comply with Learning Objects' request to Suspend an Individual User Account, then Learning Objects reserves the right to do so. The duration of any suspension by Learning Objects will be until Learning Objects is reasonably satisfied that the applicable Individual User has cured the breach which caused the Suspension.
- **Of the Service by Learning Objects.** If: (i) you materially violate this Agreement; (ii) Learning Objects provides you with advance notice of this violation (which may be by email to the Notification Email Address); (iii) Learning Objects uses commercially reasonable efforts to discuss and resolve the violation with you; and (iv) despite the foregoing, the violation is not resolved to Learning Objects' reasonable satisfaction, then Learning Objects reserves the right to Suspend your access to the Administrator Portal, or to particular components of the Service. If, after all of the foregoing, you have not cured a violation within 30 days of the commencement of a suspension under this section, then Learning Objects may immediately terminate the Service for cause.
- **Emergency Security Issues.** Notwithstanding the foregoing, if there is an Emergency Security Issue, occurring or threatened, then Learning Objects may automatically Suspend the offending Individual User. Suspension will be to the minimum extent required, and of the minimum duration, to prevent or terminate the Emergency Security Issue. If Learning Objects Suspends an Individual User Account for any reason without prior notice to you, at your request, Learning Objects will provide you the reason for the suspension as soon as is reasonably possible.

## 17. Termination upon Expiration

This Agreement commences on the Effective Date, and terminates one year after its Effective Date, or such other period as may be mutually agreed upon by the parties in an CP Order Form or other written agreement. Either party may terminate this Agreement, effective upon the expiration of the Term, by notifying the other party in writing at least five (5) business days prior to the end of the Term. In the case of free or unpaid subscriptions,

access will terminate on the date specified in the CP Order Form unless terminated earlier, and Learning Objects will not be otherwise obligated to give notice of termination.

## **18. Termination for Cause**

Any breach of your payment obligations or unauthorized use of the Learning Objects Technology or Service will be deemed a material breach of this Agreement. Learning Objects, in its sole discretion, may terminate your password, account, or use of the Service if you breach or otherwise fail in any way to comply with this Agreement. In addition, Learning Objects may terminate any free or unpaid use of the system at any time, in its sole discretion, without notice. You agree and acknowledge that Learning Objects has no obligation to retain your Customer Data and may delete such Customer Data, if you have materially breached this Agreement for any reason, including but not limited to, failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach. In the event of a termination for cause, Your access to Customer Data shall be as set out in Section 9.

## **19. Representations & Disclaimers**

Each party represents that: (a) it has full power and authority to enter into the Agreement; and (b) it will comply with all laws and regulations applicable to its provision, or use, of the Service, as applicable. Learning Objects warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with the online Learning Objects help documentation under normal use and circumstances, provided (i) You have a network environment that meets Learning Objects specifications and (ii) you use the Service on a Compatible Computer.

You acknowledge and agree that you are solely responsible for compliance with the Children's Online Privacy Protection Act of 1998 ("COPPA") including, but not limited to, obtaining appropriate parental consent concerning collection of students' personal information used in connection with the provisioning and use of the Service by you and Individual Users.

You represent and warrant that (i) you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct, and (ii) the Customer Data you submit to the Service and any User Feedback you provide (a) will not infringe the intellectual property rights of third parties, (b) will not contain any viruses, Trojan horses, worms, time bombs, cancelbots, or other computer-programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, or personal information, and (c) will not contain any images or other materials that are unlawful, obscene, harmful, hateful, invade the privacy of any third party, contain nudity or pornography, or are otherwise objectionable.

## **20. Disclaimer of Warranties**

**LEARNING OBJECTS AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS,**

**QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY SERVICE CONTENT. LEARNING OBJECTS AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) STORAGE OR RETRIEVAL OF ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL SERVICE CONTENT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY LEARNING OBJECTS AND ITS LICENSORS.**

## **21. Internet Delays**

THE PROVISION OF THE SERVICE BY LEARNING OBJECTS MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. LEARNING OBJECTS SHALL NOT BE RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

## **22. Limitation of Liability**

EXCEPT WITH RESPECT TO BREACHES OF SECTION 6, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER UNDER THIS AGREEMENT EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS ALLEGEDLY GIVING RISE TO A CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES EXCEPT DIRECT DAMAGES, OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY RELATED TO THE SERVICE INCLUDING, BUT NOT LIMITED TO, THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY SERVICE CONTENT OR CUSTOMER DATA OBTAINED FROM OR THROUGH YOU OR THE SERVICE, ANY INTERRUPTION IN ACCURACY, ERROR OR OMISSION, REGARDLESS OF

CAUSE IN THE SERVICE CONTENT OR CUSTOMER DATA, EVEN IF THE PARTY FROM WHICH DAMAGES ARE SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### 23. **Additional Rights**

Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to you.

### 24. **Mutual Indemnification**

- 24.1. **By Customer.** You shall defend, indemnify and hold Learning Objects, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and settlement costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data, Customer Domain Names or Customer Brand Features infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you or your Individual Users of this Agreement, provided in any such case that Learning Objects (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release Learning Objects of all liability and such settlement does not affect Learning Objects' business or the Service); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.
- 24.2. **By Learning Objects.** Learning Objects shall defend, indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes a copyright, a patent issued as of the Effective Date, or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by Learning Objects of its representations or warranties; or (iii) a claim arising from breach of this Agreement by Learning Objects; provided that you (a) promptly give written notice of the claim to Learning Objects; (b) give Learning Objects sole control of the defense and settlement of the claim (provided that Learning Objects may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to Learning Objects all available information and assistance; and (d) have not compromised or settled such claim. Notwithstanding the foregoing, in no event shall Learning Objects have any obligations or liability under this section arising from: (i) use of the Service or Learning Objects Brand Features in a modified form or in combination with products, service, and hardware or business processes not furnished by Learning Objects, and (ii) any Customer Data provided by you, your Individual Users or other third parties.

- 24.3. **Possible Infringement - Repair, Replace, or Modify.** If Learning Objects reasonably believes the Service may infringe a third party's Intellectual Property Rights, then Learning Objects may repair, replace, modify, or terminate the Service so as to render it non-infringing. Learning Objects may in its sole discretion, Suspend or terminate Customer's use of the impacted Service. If Learning Objects terminates the impacted Service, then Learning Objects will provide a pro-rata refund of the unearned Fees actually paid by Customer applicable to the period following termination of the Service

THE INDEMNITIES IN SECTION 24 ARE THE ONLY REMEDY UNDER THIS AGREEMENT FOR VIOLATION OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

## 25. Local Laws and Export Control

In providing the Service, Learning Objects uses software and technology that may be subject to export jurisdiction and regulation by agencies of the U.S. government, including the U.S. Department of Commerce. You acknowledge and agree that You are responsible for obtaining all licenses or other approvals necessary for downloading or transfer of the CP Software or use of the Service, including licenses to export, re-export or import the Service and/or underlying CP Software, as may be required. You agree to comply with export control laws and regulations, including but not limited to the Export Administration Regulations (15 C.F.R. Parts 730-744). You represent and warrant that you are not identified on any United States Government export exclusion lists.

The Service and underlying CP Software and related technology have been developed solely at private expense and is commercial computer software provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the U.S. Government or a U.S. Government contractor or subcontractor is subject to the restrictions set forth in this Agreement and as provided in FAR 12.211 and 12.212 (48 C.F.R. §12.211 and 12.212) and DFARS 227. 7202 (48 C.F.R. §227-7202).

## 26. Notice

Learning Objects may give notice by means of a general notice communicated via the Service, electronic mail to your e-mail address on record in Learning Objects' account information, or by written communication sent by first class mail or pre-paid post to your address on record in Learning Objects' account information. Such notice shall be deemed to have been given upon the expiration of 72 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to Learning Objects (such notice shall be deemed given when received by Learning Objects) at any time by any of the following: letter sent by confirmed facsimile to Learning Objects at the following fax numbers: (202) 318-0331; letter delivered by nationally recognized overnight delivery service or first class, certified, postage prepaid mail to Learning Objects at the following addresses: Learning Objects, Inc., 1528 Connecticut Ave NW, Washington, DC 20036, USA, addressed to the attention of the Controller.

## 27. Modifications

- 27.1. **To the Service.** Learning Objects may make modifications to the Service, or particular components of the Service, from time to time. Learning Objects will notify you of any such changes in accordance with section 26 when we deem that these changes are significant in nature.
- 27.2. **To Applicable Terms.** If Learning Objects makes a material change to the terms of this Agreement, then Learning Objects will notify you by either sending an email to the Notification Email Address or alerting you via the Administrator Portal. If the change has a material adverse impact on you and you do not agree to the change, you must so notify Learning Objects within 30 days after receiving notice of the change. If you notify Learning Objects as required, then you will remain governed by the terms and conditions in effect immediately prior to the change until the end of the then current term for the Service. If the Service is extended under a new term, the Agreement will be extended under Learning Objects' then current terms and conditions.

## 28. Assignment; Change in Control

This Agreement may not be assigned by you without the prior written approval of Learning Objects, but may be assigned without your consent by Learning Objects to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of you that results or would result in a direct competitor of Learning Objects directly or indirectly owning or controlling 50% or more of you shall entitle Learning Objects to terminate this Agreement for cause immediately upon written notice.

## 29. Miscellaneous

- 29.1. **Force Majeure.** Neither party will be liable for inadequate performance, except failure to make timely payment, to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.
- 29.2. **No Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver.
- 29.3. **Severability.** If any provision of this Agreement is found unenforceable, it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose, with all other provisions remaining in full force and effect.
- 29.4. **No Agency.** Except with respect to an individual agreeing to this Agreement on behalf of an institution, the parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.
- 29.5. **No Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement.

- 29.6. **Equitable Relief.** Nothing in this Agreement will limit either party's ability to seek equitable relief.
- 29.7. **Governing Law.** This Agreement is governed by Delaware law, excluding its choice of law rules. FOR ANY DISPUTE RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF the courts of the State of Delaware.
- 29.8. **Entire Agreement.** This Agreement, and all documents referenced herein, is the parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject.
- 29.9. **Amendments.** No text or information set forth on any other purchase order, preprinted form or document (other than an CP Order Form, if applicable) shall add to or vary the terms and conditions of this Agreement. Any amendment must be agreed to by both parties in writing and expressly state that it is amending this Agreement.
- 29.10. **Survival.** Those provisions that by their nature should survive termination of this Agreement, such as confidentiality obligations and indemnification, will survive termination of this Agreement.
- 29.11. **Precedence and Interpretation of Conflicting Terms.** If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: executed CP Order Forms which are not expired in reverse chronological order, the Campus Pack Subscription Agreement, and any attachments to this Agreement.
- 29.12. **Counterparts.** The parties may enter into this Agreement in counterparts, including facsimile, PDF or other electronic copies, which taken together will constitute one instrument.
- 29.13. **Publicity.** Customer hereby grants to Learning Objects the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the Service in Learning Objects' promotional materials. Neither party will unreasonably deny any request from the other party to use in advertising, publicity or other marketing activities, any name, trade name, trademark, or other designation of the other party or to refer to the existence of a relationship created under this Agreement. Learning Objects will obtain prior permission from Customer before publicly attributing to Customer any Software feedback provided by Customer. The parties agree not to misrepresent the relationship created under this Agreement or the actions of either party, and will discontinue such use upon receipt of a written request.

## 30. Definitions

As used in this Agreement and in any CP Order Forms now or hereafter associated herewith,

- 30.1. **“Admin Account”** means the administrative account(s) provided to you by Learning Objects for the purpose of administering your Individual User Accounts as well as performing other administrative tasks supported by the Administrator Portal.

The use of the Admin Account requires a password, which Learning Objects will provide to you.

- 30.2. **“Administrator Portal”** means the online tool provided by Learning Objects to you for use in certain other administration functions.
- 30.3. **“Administrator”** means the technical personnel designated by you who administer the Service to your Individual Users on your behalf.
- 30.4. **“API”** means Application Programming Interfaces that Learning Objects may make available with the Service or as a separate option from time to time. These interfaces allow your programmers to build rich data integrations with the Service.
- 30.5. **“Brand Features”** means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.
- 30.6. **“CP”** means Campus Pack (TM).
- 30.7. **“CP Terms and Conditions of Use”** means the Terms and Conditions of Use for the Service, located at [www.learningobjects.com/legal](http://www.learningobjects.com/legal).
- 30.8. **“CP Order Form(s)”** means the form evidencing the initial subscription for the Service and any subsequent CP Order Forms submitted online or in written form, specifying, among other things, the number of licenses and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such CP Order Form to be incorporated into and to become a part of this Agreement.
- 30.9. **“Learning Objects, Inc. Privacy Policy”** means the terms of the privacy policy for the Service, located at [www.learningobjects.com/legal](http://www.learningobjects.com/legal).
- 30.10. **“CP Service Level Agreement”** means the service level agreement for the Service, located at [www.learningobjects.com/legal](http://www.learningobjects.com/legal).
- 30.11. **“CP Technical Support Guidelines”** means the technical support services guidelines for the Service, located at [www.learningobjects.com/legal](http://www.learningobjects.com/legal).
- 30.12. **“Confidential Information”** means information disclosed by one party to the other party under this Agreement that is marked as confidential or would normally be considered confidential under the circumstances. Customer Data is Customer's Confidential Information. Confidential Information may include, but is not limited to, personal information, the CP Software, technical information and documents, designs and design documents, marketing information, and/or financial information.
- 30.13. **“Customer Data”** means data, information or material, including email, provided, generated, submitted, transmitted or displayed via the Service by you or your Individual Users.
- 30.14. **“Customer Domain Name”** means the domain names owned or controlled by you, which will be used in connection with the Service and specified in the CP Order Form.
- 30.15. **“Documentation”** means Learning Objects' standard documentation, in any medium which is delivered to Your Administrator under this Agreement, including



manuals, functional specifications, instructions, and complete or partial copies of the foregoing.

- 30.16. **“Effective Date”** means the earlier of the date this Agreement is accepted by selecting the "I Accept" option presented on the screen after this Agreement is displayed, the date you begin using the Service, or the date you submit a signed CP Order Form.
- 30.17. **“Emergency Security Issue”** means either: (a) an Individual User's use of the Service in violation of the Terms and Conditions of Use, which could disrupt: (i) the Service; (ii) other Individual Users' use of the Service; or (iii) the Learning Objects network or servers used to provide the Service; or (b) unauthorized third party access to the Service.
- 30.18. **“Fees”** means the amounts invoiced to you by Learning Objects for the Service as described in an CP Order Form.
- 30.19. **“Help Center”** means the Learning Objects help center accessible through the "Help" menu in the Service web interface or other such URL as may be provided by Learning Objects.
- 30.20. **“High Risk Activities”** means uses such as the operation of nuclear facilities, air traffic control, or life support systems, or any activity where the failure of the Service could lead to death, personal injury, or environmental damage.
- 30.21. **“Individual User(s)”** means the individuals you permit to use the Service, including your core end-user audience as well as members of the public that you or the individuals using your system permit to access the system through the sharing setting.
- 30.22. **“Individual User Account”** means Learning Objects-hosted accounts provided to your Individual Users through the Service for the purpose of enabling such Individual Users to use the Service.
- 30.23. **“Initial Term”** means the contract term, beginning on the contract start date and ending on the contract end date, specified on the applicable CP Order Form.
- 30.24. **“Intellectual Property Rights”** means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.
- 30.25. **“Notification Email Address”** means the email address(es) designated by you to receive email notifications from Learning Objects. You may change the email address(es) through the Administrator Portal.
- 30.26. **“Learning Objects”** means Learning Objects, Inc., a Delaware corporation, having its principal place of business at 1528 Connecticut Ave NW, Washington DC, 20036.
- 30.27. **“Learning Objects Technology”** means all of Learning Objects' proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by Learning Objects in providing the Service.

- 30.28. **“Service”** means the specific edition of Learning Objects' online learning and collaboration software identified during the ordering process, however made available, together with any and all ancillary online or offline products and services provided to you by Learning Objects.
- 30.29. **“Service Commencement Date”** is the date upon which Learning Objects first makes the Service available to you.
- 30.30. **“Service Content”** means the audio and visual information, documents, software, products and services contained or made available to you by Learning Objects in the course of using the Service.
- 30.31. **“Suspend” or “Suspension”** means the immediate disabling of access to the Service, or components of the Service, as applicable, to prevent further use of the Service.
- 30.32. **“Taxes”** means any duties, customs fees, or taxes (other than Learning Objects' income tax) associated with the sale of the Service, including any related penalties or interest.
- 30.33. **“Third Party Request”** means a request from a third party for records relating to an Individual User's use of the Service. Third Party Requests can be a lawful search warrant, court order, subpoena, other valid legal order, or written consent from the Individual User permitting the disclosure.

**LEARNING OBJECTS, INC.**

**Subscriber:** \_\_\_\_\_

Signature:

Signature:

\_\_\_\_\_

\_\_\_\_\_

Printed Name:

Printed Name:

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