



COOPERATIVE SALES AND SOFTWARE AS A SERVICE MASTER TERMS AND CONDITIONS

THESE MASTER TERMS AND CONDITIONS (“MASTER TERMS”), SHALL APPLY TO THE COOPERATIVE SALES AND SOFTWARE AS A SERVICE RENDERED BY CENTRIC LEARNING SYSTEMS, INC. (“CLS”) FOR THE “CUSTOMER” (CLS AND CUSTOMER SOMETIMES COLLECTIVELY REFERRED TO AS THE “PARTIES”). EACH ORDER EXECUTED BY THE PARTIES HEREUNDER SHALL FORM A SEPARATE CONTRACT BETWEEN THE PARTIES WHICH INCORPORATES AND SHALL BE GOVERNED BY THESE MASTER TERMS. THESE MASTER TERMS, TOGETHER WITH ALL ORDERS EXECUTED BY THE PARTIES CONSTITUTE THE AGREEMENT OF THE PARTIES (“AGREEMENT”).

A. Agreement Definitions

The Customer is the individual or entity that has ordered software as a service from Centric Learning Systems, Inc. (CLS) or an authorized distributor by executing the service agreement that accompanies and incorporates this software as a service agreement (collectively, the “SaaS Agreement” or “Agreement”). Software as a service consists of system administration, system management, and system monitoring activities that CLS performs for its customers, and includes the right to use the Centric Learning System, support services for the Centric Learning System, as well as any other services provided by CLS as defined in the service Agreement (collectively, the “Services”). The term “program documentation” refers to any materials provided by CLS as part of the Services. The term “Centric Learning System” refers to the software products owned or distributed by CLS to which CLS grants the Customer access as part of the Services, including any program updates provided as part of the Services. The term “Users” shall mean those individuals authorized by the Customer or on the Customer’s behalf to use the Services, as defined in the SaaS Agreement. The term “Customer data” refers to the data provided by the Customer that resides in the environment.

B. Applicability of Agreement

This SaaS Agreement is valid for the term specified in the Agreement.

C. Rights Granted

Upon CLS’s acceptance of the Customer’s Agreement and for the duration of the services term defined, the Customer has the nonexclusive, non-assignable, royalty free, worldwide limited right to use the Services for the Customer’s clients and are subject to the terms of the Agreement. The Customer may allow users to use the Services for this purpose and the Customer is responsible for its users’ compliance with the Agreement. The Services are provided as described in, and subject to, the Services policies referenced in this Agreement and will not ship copies of the Centric Learning System to the Customer as part of the Services. The Customer agrees that it will not acquire under the Agreement any license to use the Centric Learning System specified in the service Agreement in excess of the scope and/or duration of the Services. Upon the end of the Agreement or the Services thereunder, the Customer’s right to access or use the Centric Learning System specified in the Agreement and the Services shall terminate.

D. Ownership and Restrictions

The Customer retains all ownership of Customer data. CLS or its licensors retain all ownership and intellectual property rights to the Services and the Centric Learning System. CLS retains all ownership and intellectual property rights to anything developed and delivered under the Agreement.



Third party technology that may be appropriate or necessary for use with the Centric Learning System is specified in the program documentation or service Agreement as applicable. The Customer's right to use such third-party technology is governed by the terms of the third-party technology license agreement specified by CLS and not under the Agreement.

The Customer may not:

- Remove or modify any program markings or any notice of CLS's or its licensors' proprietary rights; make the programs or materials resulting from the Services available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific program license or materials from the Services the Customer has acquired);
- Modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Services (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), or access or use the Services to build or support, and/or assist a third party in building or supporting, products or Services competitive to Centric Learning Systems;
- Disclose results of any Services or program benchmark tests without CLS prior written consent; and license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the Services, Centric Learning System or materials available, to any third party other than, as expressly permitted under the terms of the Agreement.

The rights granted to the Customer under the Agreement are also conditioned on the following:

- The rights of any user licensed to use the Services (e.g., on a "named user" basis) cannot be shared or used by more than one individual (unless such license is reassigned in its entirety to another authorized user, in which case the prior authorized user shall no longer have any right to access or use the license)
- Except as expressly provided herein, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; and
- The Customer agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Services.

E. Warranties, Disclaimers and Exclusive Remedies

CLS warrants it will perform Services in all material respects in accordance with the Services policies referenced in the Agreement. If the Services provided to the Customer for any given month during the services term were not performed as warranted, the Customer must provide written notice to CLS as specified in the Agreement no later than five business days after the last day of that particular month or within such other period stated in the Agreement.

CLS does not guarantee that the services will be performed error-free or uninterrupted, or that CLS will correct all service errors. The customer acknowledges that CLS does not control the transfer of data over communications facilities, including the internet, and that the service may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. CLS is not responsible for any delays, delivery failures, or other damage resulting from such problems.



For any breach of the above warranties, CLS will remit a services fee credit to the customer calculated at ten percent (10%) of net monthly fees for the applicable services for the month in which the breach occurred. The credit will be provided only towards any outstanding balance for services owed to CLS and the remittance of such credit will represent the customer exclusive remedy, and CLS sole liability, for all breaches of any warranty specified in the agreement.

To the extent not prohibited by law, these warranties are exclusive and there are no other express or implied warranties or conditions including for hardware, systems, networks or environments or for merchantability, satisfactory quality and fitness for a particular purpose.

G. Indemnification

Both parties shall, to the maximum extent permitted by applicable law, indemnify and hold each other harmless from and against any losses, claims, damages or liabilities, joint or several, to which either party may become subject to in connection with their performance of their obligations under this Agreement; provided, however, neither party shall be responsible for the gross negligence or willful misconduct of the other party, or the other party's employees, officers, directors, or agents.

H. Payment

The Customer agrees to make timely payment to CLS in accordance with the following terms:

Payment is due upon of the initiation of the Agreement, for aforementioned Services and support. With respect to calculating its payment obligation, the Customer will lock in a guaranteed minimum number of students upon the Agreement execution date. After an official count has been established, fees for additional Users added during the term will be prorated and invoiced separately. A one percent (1%) late fee will be incurred for any payment not received within 30 days of invoicing. Further, the Customer acknowledges that in addition to paying the above costs, it will be solely responsible for the costs of training staff as deemed necessary by the Customer for proper implementation.

I. Term

The Initial Term of this Agreement shall commence on the Effective Date and shall include (a) the planning period for preparation toward initial launch and (3) school years of continuous operation thereafter, unless earlier termination is otherwise provided for herein. The term of the Agreement will be extended automatically each year for an additional school year after the Initial Term has ended if notification in writing is not made to CLS within 60 days prior to the end of the Initial Term.

J. Termination

Upon **material** breach of any of provision of this Agreement, defined for purposes of this Agreement as documented and substantial noncompliance with any provisions of this Agreement, as referenced herein, either party may issue a written notice demanding that the default be cured within thirty (30) days. If the default is not cured satisfactorily within the time period specified, the Agreement may be terminated with an additional thirty (30) day written notice to that effect.

CLS may terminate this Agreement immediately with ten (10) days of written notification, in the event of any breach by the Customer of any provision hereunder concerning the Intellectual Property or Proprietary Information of CLS.

The Customer may terminate this Agreement immediately, in the event of any intentional breach by CLS of any provision hereunder relating to the confidentiality of Student Information or the confidentiality of Partner information.



K. Activities on Termination.

At the end of term or upon termination, whether voluntary or involuntary, the Customer will no longer receive access to Services, materials and technology provided by CLS. The Customer shall no longer have access to the Centric Learning System, Services or educational content. Student data will remain with the Customer. The Customer agrees and acknowledges that CLS has no obligation to retain Customer data after 60 days following the termination of the Service Agreement.

L. Fees and Taxes

The Customer agrees to pay for all Services ordered as set forth in the applicable service Agreement. All fees due under the Agreement are non-cancelable and the sums paid nonrefundable. The Customer agrees to pay any sales, value-added or other similar taxes imposed by applicable law that CLS must pay based on the Services the Customer ordered, except for taxes based on CLS income. The Customer will reimburse CLS for reasonable expenses related to providing any on-site portion of the Services. Fees for Services listed in the Agreement are exclusive of taxes and expenses. All amounts invoiced hereunder are due and payable within 30 days of the date of the invoice.

The Customer agrees that it has not relied on the future availability of any Services, programs or updates in entering into the payment obligations in the ordering document; however, the preceding does not relieve CLS of its obligation to deliver Services that the Customer has ordered per the terms of the Agreement.

M. Nondisclosure

By virtue of the Agreement, the parties may have access to information that is confidential to one another ("confidential information"). We each agree to disclose only information that is required for the performance of obligations under the Agreement. Confidential information shall be limited to the terms and pricing under the Agreement, the Customer data residing in the services environment, and all information clearly identified as confidential at the time of disclosure.

A party's confidential information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

We each agree to hold each other's confidential information in confidence for a period of three years from the date of disclosure. Also, we each agree to disclose confidential information only to those employees or agents who are required to protect it against unauthorized disclosure in a manner no less protective than under the Agreement. CLS will protect the confidentiality of the Customer's data residing in the services environment in accordance with the CLS security practices specified in the services policies referenced in the Agreement. Nothing shall prevent either party from disclosing the terms or pricing under the Agreement in any legal proceeding arising from or in connection with the Agreement or from disclosing the confidential information to a governmental entity as required by law.

N. Entire Agreement

The Customer agrees that the Agreement (including the information which is incorporated into the Agreement by written reference (including reference to information contained in a URL or referenced policy), is the complete Agreement for the Services ordered by the Customer, and that the Agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such Services. If any term of the Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of the Agreement. It is expressly agreed that the terms of the Agreement, including any CLS ordering document, shall supersede the terms in any purchase order or other non-CLS document and no terms included in any such purchase order or other non-CLS document shall apply to the Services ordered. The Agreement may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or by authorized representatives of the Customer and of CLS.



O. Limitation of Liability

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THE AGREEMENT), DATA, OR DATA USE. CLS MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS SOFTWARE AS A SERVICE AGREEMENT OR THE CUSTOMER ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO CLS FOR THE SERVICES UNDER THE ORDER THAT IS THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. ANY DAMAGE IN THE CUSTOMER'S FAVOR AGAINST CLS SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY THE CUSTOMER UNDER THE AGREEMENT AND ANY SUCH REFUND AND CREDIT SHALL APPLY TOWARDS THE LIMITATION OF LIABILITY.

P. Export

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Services. The Customer agrees that such export control laws govern the Customer's use of the services (including technical data) and any Services deliverables provided under this Agreement, and the Customer agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). The Customer agrees that no data, information, software programs and/or materials resulting from Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

Q. Other

1. CLS is an independent contractor and we agree that no joint venture, or agency relationship exists with the Customer. Both CLS and the Customer is responsible for paying their respective employees, including employment related taxes and insurance.
2. The Customer shall obtain at the Customer's sole expense any rights and consents from third parties necessary for CLS and its subcontractors to perform the Services under the Agreement.
3. The Agreement is governed by the substantive and procedural laws of Michigan and the Customer and CLS agree to submit to the exclusive jurisdiction of, and venue in, the courts Michigan in any dispute arising out of or relating to the Agreement.
4. If the Customer has a dispute with CLS or if the Customer wishes to provide a notice under the Indemnification section of this SaaS Agreement, or if the Customer becomes subject to insolvency or other similar legal proceedings, the Customer will promptly send written notice to CLS at the following address: 369 Main St., Belleville MI, 48111. CLS may give notice applicable to CLS SaaS customer base by means of a general notice on the CLS portal for the services, and notices specific to the Customer by electronic mail to the Customer's e-mail address on record in CLS account information or by written communication sent by first class mail or pre-paid post to the Customer's address on record in CLS account information.
5. The Customer may not assign the Agreement or give or transfer the Services or an interest in them to another individual or entity. If the Customer grants a security interest in any portion of the Services, the secured party has no right to use or transfer the Services or any deliverables.
6. Except for actions for nonpayment or breach of CLS proprietary rights, no action, regardless of form, arising out of or relating to the Agreement may be brought by either party more than two years after the cause of action has accrued.



7. CLS may audit Customer use of the Services. The Customer agrees to cooperate with CLS audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with the Customer's normal business operations. The Customer agrees to pay within 30 days of written notification any fees applicable to the Customer's use of the Services in excess of the Customer's rights. If the Customer does not remit payment, CLS can end the Customer's Services and/or the Agreement. The Customer agrees that CLS shall not be responsible for any Customer costs incurred in cooperating with the audit.

8. The Uniform Computer Information Transactions Act does not apply to this SaaS Agreement or orders placed under it. The Customer understands that CLS business partners, including any third-party firms retained by the Customer to provide computer consulting services, are independent of CLS and are not CLS agents. CLS is not liable for nor bound by any acts of any such business partner, unless the business partner is providing services as an CLS subcontractor on an engagement ordered under this SaaS Agreement.

R. Force Majeure

Neither CLS or the Customer shall be responsible for failure or delay of performance if caused by an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may cancel unperformed services upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or the Customer's obligation to pay for the services.

S. Customer Data

CLS reserves the right to provide the services from locations, and/or through use of subcontractors, worldwide. CLS subscribes to the United States/European Union Safe Harbor Principles, and as a result, appears on the U.S. Department of Commerce Safe Harbor list (available at <http://www.export.gov/safeharbor>) as of the effective date of this SaaS Agreement.

The Customer agrees to provide any notices and obtain any consents related to the Customer's use of the Services and CLS provision of the services, including those related to the collection, use, processing, transfer and disclosure of personal information. The Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of Customer data.

T. Confidentiality

The Customer will not disclose to any other person, firm, corporation or entity, nor use for its own benefit, during or after the term of this Agreement, any trade secrets or other confidential information ("Proprietary Information") of CLS or its licensors or partners which is acquired by the Customer in the course of accepting the Services hereunder, except to the extent allowed hereunder. For purposes of this Agreement, a "trade secret" includes, without limitation, information not generally known to the public which gives an advantage over its competitors, including products or services under development, production methods and processes, subscriber or customer lists and marketing plans. Any information, which (i) at or prior to the time of disclosure by CLS to the Customer was generally available to the public through no breach of this Agreement, (ii) was available to the public on a non-confidential basis prior to its disclosure by CLS to the Customer or (iii) was made available to the Customer from a third party (provided that the Customer did not know that such party obtained or disseminated such information in breach of any legal obligation to CLS shall not be deemed confidential information of CLS for purposes hereof. CLS understands and agrees that disclosure by the Customer of trade secrets or other confidential information of CLS is also permitted if such disclosure is required by compliance with law, including in response to a Public Information Act request, a subpoena or other order of any court or public agency.

CLS will comply with all federal, state and local laws, rules and regulations regarding the Customer's student, employee and agent information including without limitation, all applicable provisions of the Family Educational Rights and Privacy Act.



U. Restrictions on Use of the Services

The Customer agrees not to use or permit use of the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (e) constitute an infringement of intellectual property or other proprietary rights, or (f) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to CLS under the Agreement, CLS reserves the right to remove or disable access to any material that violates the foregoing restrictions. CLS shall have no liability to the Customer in the event that CLS takes such action. The Customer agrees to defend and indemnify CLS against any claim arising out of a violation of the Customer's obligations under this section.

V. Statistical Information

CLS may compile statistical information related to the performance of the Services, and may make such information publicly available, provided that such information does not incorporate Customer data and/or identify the Customer's confidential information or include the Customer's name. CLS retains all intellectual property rights in such information.

W. Third Party Web Sites, Content, Products and Services

The services may enable the Customer to add links to Web sites and access to content, products and services of third parties, including users, advertisers, affiliates and sponsors of such third parties. CLS is not responsible for any third-party Web sites or third-party content provided on or through the services and the Customer bears all risks associated with the access and use of such Web sites and third-party content, products and services.

X. Intellectual Property Rights

Title to all intellectual property rights associated with or derived from materials and Services delivered under this Agreement, including without limitation, any and all patent rights, know how, show how, copyrightable works of authorship, inventions whether reduced to practice or not, and any and all components thereof shall be and remain with CLS and/or its licensors at all times for all purposes hereunder. CLS and/or its licensors shall hold all rights, title, and interest in improvements, enhancements and other work product made hereunder.

All new Project and Problem Based Learning ("PBL") units, other educational or training methods and materials, products, know how, code, software and upgrades thereto developed or prepared by the Customer or its employees, agents, subcontractors and/or licenses ("Created Property") and all other contributed works, including, without limitation, products, materials, source code, object code, forms, images, texts, manuals, charts, designs, documents, derived from or based on such Created Property shall be owned by and assigned to CLS and/or its licensors, but shall be included in the rights licensed to the Customer hereunder, for the term of the Agreement. Usage of CLS intellectual property at sites outside of the Customer's site requires written permission from CLS. The rights to sell, market, distribute, and promote the materials are solely held by CLS and/or its licensors.

Both parties agree to take reasonable measures to ensure no infringement or damage to the other party's ownership rights and interest in the other's copyrights, trade secrets, patents, trademarks, service marks, know how, show how, and other intellectual property rights, or those held by its employees and agents. Both parties will cooperate fully in the investigation of any unauthorized use or disclosure, to the extent permitted by law.

Within two years of the termination of this Agreement, the Customer shall refrain from creating or offering services, system or materials substantially similar to those made available under this Agreement or substantially drawing upon the underlying model. The parties understand and agree that promulgation of such systems, services or materials shall presumptively be characterized as infringing upon CLS intellectual property rights and creating imminent irreparable harm to CLS, giving rise to CLS entitlement to injunctive relief and other relief as appropriate.