



**LEARNING OVATIONS, INC.**

**TERMS OF SERVICE**

*Last Modified: May 2021*

This page explains the terms by which you may use our online and/or mobile services, web site, and software provided on or in connection with the service (collectively, the “**Service**”). This Service is made available to you by Learning Ovations, Inc. (the “**Company**,” “**we**,” or “**us**”). By accessing or using the Service, or by clicking a button or checking a box marked “I Agree” (or something similar), you signify that you have read, understood, and agree to be bound by these Terms of Service (this “**Agreement**”), whether or not you are a registered user of our Service. The Company reserves the right to modify these terms and will provide notice of these changes as described below. This Agreement applies to all visitors, users, and others who access the Service (“**Users**”).

PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION. THIS AGREEMENT CONTAINS A MANDATORY INDIVIDUAL ARBITRATION PROVISION IN SECTION 9.2 (THE “**ARBITRATION AGREEMENT**”) AND CLASS ACTION/JURY TRIAL WAIVER PROVISION IN SECTION 9.3 (THE “**CLASS ACTION/JURY TRIAL WAIVER**”) THAT REQUIRE, UNLESS YOU OPT OUT PURSUANT TO THE INSTRUCTIONS IN SECTION 9.2, THE EXCLUSIVE USE OF FINAL AND BINDING ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES BETWEEN YOU AND US, INCLUDING ANY CLAIMS THAT AROSE OR WERE ASSERTED BEFORE YOU AGREED TO THESE TERMS. TO THE FULLEST EXTENT PERMITTED BY LAW, YOU EXPRESSLY WAIVE YOUR RIGHT TO SEEK RELIEF IN A COURT OF LAW AND TO HAVE A JURY TRIAL ON YOUR CLAIMS, AS WELL AS YOUR RIGHT TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS, COLLECTIVE, PRIVATE ATTORNEY GENERAL OR REPRESENTATIVE ACTION OR PROCEEDING.

**1. Our Service**

The Company provides a platform designed to support family engagement to improve Pre-Kindergarten through third grade literacy outcomes.

**1.1 Eligibility**

This is a contract between you and the Company. You must read and agree to these terms before using the Company Service. If you do not agree, you may not use the Service. You may use the Service only if you can form a binding contract with the Company, and only in compliance with this Agreement and all applicable local, state, national, and international laws, rules and regulations. Any use or access to the Service by anyone under 13 (or under 16 in Europe) is strictly prohibited and in violation of this Agreement. The Service is not available to any Users previously removed from the Service by the Company.

**1.2 Limited License**

Subject to the terms and conditions of this Agreement, you are hereby granted a non-exclusive, limited, non-transferable, freely revocable license to use the Service as permitted by the features of the Service. The Company reserves all rights not expressly granted herein in the Service and the Company Content (as defined below). The Company may terminate this license at any time for any reason or no reason.

### 1.3 User Accounts

Your account on the Service (your “**User Account**”) gives you access to the services and functionality that we may establish and maintain from time to time and in our sole discretion. We may maintain different types of User Accounts for different types of Users. If you open a User Account on behalf of a company, organization, or other entity, then (i) “you” includes you and that entity, and (ii) you represent and warrant that you are an authorized representative of the entity with the authority to bind the entity to this Agreement, and that you agree to this Agreement on the entity’s behalf.

You may never use another User’s User Account without permission. When creating your User Account, you must provide accurate and complete information, and you must keep this information up to date. You are solely responsible for the activity that occurs on your User Account, and you must keep your User Account password secure. We encourage you to use “strong” passwords (passwords that use a combination of upper and lower case letters, numbers and symbols) with your User Account. You must notify the Company immediately of any breach of security or unauthorized use of your User Account. The Company will not be liable for any losses caused by any unauthorized use of your User Account.

You may control your User profile and how you interact with the Service by changing the settings in your settings page. By providing the Company your email address you consent to our using the email address to send you Service-related notices, including any notices required by law, in lieu of communication by postal mail. We may also use your email address to send you other messages, such as changes to features of the Service and special offers.

### 1.4 Service Rules

You agree not to engage in any of the following prohibited activities: (i) copying, distributing, or disclosing any part of the Service in any medium, including without limitation by any automated or non-automated “scraping”; (ii) using any automated system, including without limitation “robots,” “spiders,” “offline readers,” etc., to access the Service in a manner that sends more request messages to the Company servers than a human can reasonably produce in the same period of time by using a conventional on-line web browser (except that the Company grants the operators of public search engines revocable permission to use spiders to copy publicly available materials from the Service for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials); (iii) transmitting spam, chain letters, or other unsolicited email; (iv) attempting to interfere with, compromise the system integrity or security or decipher any transmissions to or from the servers running the Service; (v) taking any action that imposes, or may impose at our sole discretion an unreasonable or disproportionately large load on our infrastructure; (vi) uploading invalid data, viruses, worms, or other software agents through the Service; (vii) collecting or harvesting any personally identifiable information, including account names, from the Service; (viii) using the Service for any commercial solicitation purposes; (ix) impersonating another person or otherwise misrepresenting your affiliation with a person or entity, conducting fraud, hiding or attempting to hide your identity; (x) interfering with the proper working of the Service; (xi) accessing any content on the Service through any technology or means other than those provided or authorized by the Service; or (xii) bypassing the measures we may use to prevent or restrict access to the Service, including without limitation features that prevent or restrict use or copying of any content or enforce limitations on use of the Service or the content therein.

### 1.5 Changes to the Service

We may, without prior notice, change the Service; stop providing the Service or features of the Service, to you or to Users generally; or create usage limits for the Service. We may permanently or temporarily terminate or suspend your access to the Service without notice and liability for any reason, including if in our sole determination you violate any provision of this Agreement, or for no reason. Upon termination for any reason or no reason, you continue to be bound by this Agreement.

## 1.6 **Disputes with Other Users**

You are solely responsible for your interactions with other Users. We reserve the right, but have no obligation, to monitor disputes between you and other Users. The Company shall have no liability for your interactions with other Users, or for any User's action or inaction.

## 1.7 **Service Location**

The Service is controlled and operated from facilities in the United States. The Company makes no representations that the Service is appropriate or available for use in other locations. Those who access or use the Service from other jurisdictions do so at their own volition and are entirely responsible for compliance with all applicable United States and local laws and regulations, including but not limited to export and import regulations. You may not use the Service if you are a resident of a country embargoed by the United States, or are a foreign person or entity blocked or denied by the United States government. Unless otherwise explicitly stated, all materials found on the Service are solely directed to individuals, companies, or other entities located in the United States.

## 2. **Our Proprietary Rights**

Except for your User Content, the Service and all materials therein or transferred thereby, including, without limitation, software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, copyrights, photographs, audio, videos, music, and User Content belonging to other Users (the "**Company Content**"), and all Intellectual Property Rights related thereto, are the exclusive property of the Company and its licensors (including other Users who post User Content to the Service). Except as explicitly provided herein, nothing in this Agreement shall be deemed to create a license in or under any such Intellectual Property Rights, and you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any Company Content. Use of the Company Content for any purpose not expressly permitted by this Agreement is strictly prohibited.

You may choose to or we may invite you to submit comments or ideas about the Service, including without limitation about how to improve the Service or our products ("**Ideas**"). By submitting any Idea, you agree that your disclosure is gratuitous, unsolicited and without restriction and will not place the Company under any fiduciary or other obligation, and that we are free to use the Idea without any additional compensation to you, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, the Company does not waive any rights to use similar or related ideas previously known to the Company, or developed by its employees, or obtained from sources other than you.

## 3. **Paid Services**

3.1 **Billing Policies.** Certain aspects of the Service may be provided for a fee or other charge. If you elect to use paid aspects of the Service, you agree to any pricing and payment terms that we provide through the Service. The Company may add new services for additional fees and charges, add or amend fees and charges for existing services, at any time in its sole discretion.

3.2 **No Refunds.** You may cancel your User Account at any time; however, there are no refunds for cancellation.

3.3 **Automatic Renewal of Subscription Fees.** IF YOU SIGN UP FOR A SUBSCRIPTION, THE CORRESPONDING FEES AT THE RATE AS SET FORTH IN YOUR USER ACCOUNT AND/OR ON THE CHECKOUT PAGE WILL AUTOMATICALLY RENEW ON A CONTINUOUS BASIS UNLESS AND UNTIL YOU NOTIFY US THAT YOU WANT TO CANCEL YOUR SUBSCRIPTION. ANY NOTICE OF CANCELLATION MUST BE SUBMITTED ON YOUR SETTINGS PAGE OR IN WRITING AND SENT TO LEGAL@LEARNINGOVATIONS.COM AND WILL BE EFFECTIVE IN THE MONTH FOLLOWING THE

MONTH YOU PROVIDE US NOTICE. YOU UNDERSTAND THAT UNLESS AND UNTIL YOU NOTIFY US OF YOUR CANCELLATION, YOUR SUBSCRIPTION AND ALL CORRESPONDING FEES WILL AUTOMATICALLY RENEW, AND YOU AUTHORIZE US OR OUR AUTHORIZED THIRD PARTY PAYMENT PROVIDER (WITHOUT NOTICE TO YOU, UNLESS REQUIRED BY APPLICABLE LAW) TO CHARGE YOU THE APPLICABLE SUBSCRIPTION FEES AND ANY TAXES, USING ANY ELIGIBLE PAYMENT METHOD WE HAVE ON RECORD FOR YOU.

**3.4 Payment Information; Taxes.** We accept various payment methods through a payment processor, including, without limitation, Mastercard, Visa, Discover, and American Express. By using our Service, you agree to be bound by such payment processor's applicable services agreement which may include Stripe's Services Agreement available at <https://stripe.com/us/legal>. All information that you provide in connection with a purchase or transaction or other monetary transaction interaction with the Service must be accurate, complete, and current. You agree to pay all charges incurred by users of your credit card, debit card, or other payment method used in connection with a purchase or transaction or other monetary transaction interaction with the Service at the prices in effect when such charges are incurred. You will pay applicable taxes, if any, relating to any such purchases, transactions or other monetary transaction interactions.

**3.5 California Residents.** The provider of services is Learning Ovations, Inc., 16 Coltrane Court, Irvine, CA 92617-4132, telephone (734-904-1459). If you are a California resident, in accordance with Cal. Civ. Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210 or (916) 445-1254.

#### **4. Security**

The Company uses commercially reasonable physical, managerial, and technical safeguards to preserve the integrity and security of your personal information and implement your privacy settings. However, we cannot guarantee that unauthorized third parties will never be able to defeat our security measures or use your personal information for improper purposes. You acknowledge that you provide your personal information at your own risk.

#### **5. Third-Party Links and Information**

The Service may contain links to third-party materials that are not owned or controlled by the Company. The Company does not endorse or assume any responsibility for any such third-party sites, information, materials, products, or services. If you access a third-party website or service from the Service or share your User Content on or through any third-party website or service, you do so at your own risk, and you understand that this Agreement and the Company's Privacy Policy do not apply to your use of such sites. You expressly relieve the Company from any and all liability arising from your use of any third-party website, service, or content, including without limitation User Content submitted by other Users. Additionally, your dealings with or participation in promotions of advertisers found on the Service, including payment and delivery of goods, and any other terms (such as warranties) are solely between you and such advertisers. You agree that the Company shall not be responsible for any loss or damage of any sort relating to your dealings with such advertisers.

#### **6. Indemnity**

You agree to defend, indemnify and hold harmless the Company and its subsidiaries, agents, licensors, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the

Service, including any data or content transmitted or received by you; (ii) your violation of any term of this Agreement, including without limitation your breach of any of the representations and warranties above; (iii) your violation of any third-party right, including without limitation any right of privacy or Intellectual Property Rights; (iv) your violation of any applicable law, rule or regulation; (v) User Content or any content that is submitted via your User Account including without limitation misleading, false, or inaccurate information; (vi) your willful misconduct; or (vii) any other party's access and use of the Service with your unique username, password or other appropriate security code.

#### **7. No Warranty**

THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. USE OF THE SERVICE IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE COMPANY OR THROUGH THE SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE FOREGOING, THE COMPANY, ITS SUBSIDIARIES, ITS AFFILIATES, AND ITS LICENSORS DO NOT WARRANT THAT THE CONTENT IS ACCURATE, RELIABLE OR CORRECT; THAT THE SERVICE WILL MEET YOUR REQUIREMENTS; THAT THE SERVICE WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. ANY CONTENT DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DOWNLOADED AT YOUR OWN RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR MOBILE DEVICE OR LOSS OF DATA THAT RESULTS FROM SUCH DOWNLOAD OR YOUR USE OF THE SERVICE.

FURTHER, THE COMPANY DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE, AND THE COMPANY WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

FEDERAL LAW, SOME STATES, PROVINCES AND OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION AND LIMITATIONS OF CERTAIN IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. THE DISCLAIMERS AND EXCLUSIONS UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

#### **8. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE COMPANY, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, ARISING OUT OF OR RELATING TO THE USE OF, OR INABILITY TO USE, THE SERVICE. UNDER NO CIRCUMSTANCES WILL THE COMPANY BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF OUR SERVICE; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH OUR SERVICE BY ANY THIRD PARTY; (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE; AND/OR (VII) USER CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY. IN NO EVENT SHALL THE COMPANY, ITS AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES, SUPPLIERS, OR LICENSORS BE LIABLE TO YOU FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES

OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNT YOU PAID TO THE COMPANY HEREUNDER OR \$50.00, WHICHEVER IS GREATER.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE. THE DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS OF LIABILITY UNDER THIS AGREEMENT WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## 9. **Governing Law, Arbitration, and Class Action/Jury Trial Waiver**

9.1 **Governing Law.** You agree that: (i) the Service shall be deemed solely based in Delaware; and (ii) the Service shall be deemed a passive one that does not give rise to personal jurisdiction over us, either specific or general, in jurisdictions other than Delaware. This Agreement shall be governed by the internal substantive laws of the State of Delaware, without respect to its conflict of laws principles. The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the preceding sentences with respect to the substantive law, the Federal Arbitration Act (9 U.S.C. §§ 1-16) ("**FAA**") governs the interpretation and enforcement of the Arbitration Agreement in Section 9.2 and preempts all state laws to the fullest extent permitted by law. If the FAA is found to not apply to any issue that arises from or relates to the Arbitration Agreement, then that issue shall be resolved under and governed by the law of your state of residence. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. You agree to submit to the exclusive personal jurisdiction of the federal and state courts located in Delaware for any actions for which we retain the right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a our copyrights, trademarks, trade secrets, patents, or other intellectual property or proprietary rights, as set forth in the Arbitration provision below, including any provisional relief required to prevent irreparable harm. You agree that Delaware is the proper and exclusive forum for any appeals of an arbitration award or for trial court proceedings in the event that the arbitration provision below is found to be unenforceable.

9.2 **Arbitration.** READ THIS SECTION CAREFULLY BECAUSE IT REQUIRES THE PARTIES TO ARBITRATE THEIR DISPUTES AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM THE COMPANY. This Section 9.2 (the "**Arbitration Agreement**") applies to and governs any dispute, controversy, or claim between you and the Company that arises out of or relates to, directly or indirectly: (a) this Agreement, including the formation, existence, breach, termination, enforcement, interpretation, validity, or enforceability thereof; (b) access to or use of the Service, including receipt of any advertising or marketing communications; (c) any transactions through, by, or using the Service; or (d) any other aspect of your relationship or transactions with the Company, directly or indirectly, as a consumer ("**Claim**" or collectively, "**Claims**"). The Arbitration Agreement shall apply, without limitation, to all Claims that arose or were asserted before or after your agreement to this Agreement.

If you are a new Company user, you can reject and opt-out of this Arbitration Agreement within 30 days of accepting this Agreement by emailing the Company at [legal@learningovations.com](mailto:legal@learningovations.com) with your first and last name and stating your intent to opt-out of the Arbitration Agreement. Note that opting out of this Arbitration Agreement does not affect any other part of this Agreement, including the provisions regarding controlling law or in which courts any disputes must be brought.

For any Claim, you agree to first contact us at [legal@learningovations.com](mailto:legal@learningovations.com) and attempt to resolve the dispute with us informally. In the unlikely event that the Company has not been able to resolve a Claim

after sixty (60) days, we each agree to resolve any Claim exclusively through binding arbitration by AAA before a single arbitrator (the “**Arbitrator**”), under the Expedited Procedures then in effect for AAA (the “**Rules**”), except as provided herein. In the event of any conflict between the Rules and this Arbitration Agreement, this Arbitration Agreement shall control. AAA may be contacted at [www.adr.org](http://www.adr.org), where the Rules are also available. The arbitration will be conducted in the U.S. county where you live or Delaware, unless you and the Company agree otherwise. If you are using the Service for commercial purposes, each party will be responsible for paying any AAA filing, administrative and arbitrator fees in accordance with AAA rules, and the award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys’ fees and reasonable costs for expert and other witnesses. If you are an individual using the Service for non-commercial purposes: (i) AAA may require you to pay a fee for the initiation of your case, unless you apply for and successfully obtain a fee waiver from AAA; (ii) the award rendered by the arbitrator may include your costs of arbitration, your reasonable attorney’s fees, and your reasonable costs for expert and other witnesses; and (iii) you may sue in a small claims court of competent jurisdiction without first engaging in arbitration, but this does not absolve you of your commitment to engage in the informal dispute resolution process. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. You and the Company agree that the Arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any disputes relating to the interpretation, applicability, enforceability or formation of this Arbitration Agreement, including any claim that all or any part of this Arbitration Agreement is void or voidable. The Arbitrator shall also be responsible for determining all threshold arbitrability issues, including issues relating to whether the Agreement, any provision of the Agreement, is unconscionable or illusory and any defense to arbitration, including waiver, delay, laches, unconscionability, or estoppel.

Nothing in this Section shall be deemed as: preventing the Company from seeking injunctive or other equitable relief from the courts as necessary to prevent the actual or threatened infringement, misappropriation, or violation of our data security, Intellectual Property Rights or other proprietary rights; or preventing you from asserting claims in small claims court, if your claims qualify and so long as the matter remains in such court and advances on only an individual (non-class, non-representative) basis.

If this Arbitration Agreement is found to be void, unenforceable, or unlawful, in whole or in part, the void, unenforceable, or unlawful provision, in whole or in part, shall be severed. Severance of the void, unenforceable, or unlawful provision, in whole or in part, shall have no impact on the remaining provisions of the Arbitration Agreement, which shall remain in force, or the parties’ ability to compel arbitration of any remaining claims on an individual basis pursuant to the Arbitration Agreement. Notwithstanding the foregoing, if the Class Action/Jury Trial Waiver is found to be void, unenforceable, or unlawful, in whole or in part, because it would prevent you from seeking public injunctive relief, then any dispute regarding the entitlement to such relief (and only that relief) must be severed from arbitration and may be litigated in a civil court of competent jurisdiction. All other claims for relief subject to arbitration under this Arbitration Agreement shall be arbitrated under its terms, and the parties agree that litigation of any dispute regarding the entitlement to public injunctive relief shall be stayed pending the outcome of any individual claims in arbitration.

**9.3 Class Action/Jury Trial Waiver.** WITH RESPECT TO ALL PERSONS AND ENTITIES, REGARDLESS OF WHETHER THEY HAVE OBTAINED OR USED THE SERVICE FOR PERSONAL, COMMERCIAL OR OTHER PURPOSES, ALL CLAIMS MUST BE BROUGHT IN THE PARTIES’ INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION OR OTHER REPRESENTATIVE PROCEEDING. THIS WAIVER APPLIES TO CLASS ARBITRATION, AND, UNLESS WE AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON’S CLAIMS. YOU AND THE COMPANY AGREE THAT THE ARBITRATOR MAY AWARD RELIEF ONLY TO AN INDIVIDUAL CLAIMANT AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF ON YOUR INDIVIDUAL

CLAIM(S). ANY RELIEF AWARDED MAY NOT AFFECT OTHER COMPANY USERS. YOU AND THE COMPANY FURTHER AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND THE COMPANY ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO BRING, JOIN, OR PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION, OR OTHER REPRESENTATIVE PROCEEDING OF ANY KIND AS A PLAINTIFF OR CLASS MEMBER.

10. **General**

10.1 **Assignment.** This Agreement, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by the Company without restriction. Any attempted transfer or assignment in violation hereof shall be null and void.

10.2 **Notification Procedures and Changes to the Agreement.** The Company may provide notifications, whether such notifications are required by law or are for marketing or other business related purposes, to you via email notice, written or hard copy notice, or through posting of such notice on our website, as determined by the Company in our sole discretion. The Company reserves the right to determine the form and means of providing notifications to our Users, provided that you may opt out of certain means of notification as described in this Agreement. The Company is not responsible for any automatic filtering you or your network provider may apply to email notifications we send to the email address you provide us. The Company may, in its sole discretion, modify or update this Agreement from time to time, and so you should review this page periodically. When we change the Agreement in a material manner, we will update the 'last modified' date at the top of this page and notify you that material changes have been made to the Agreement. Your continued use of the Service after any such change constitutes your acceptance of the new Terms of Service. If you do not agree to any of these terms or any future Terms of Service, do not use or access (or continue to access) the Service.

10.3 **Entire Agreement/Severability.** This Agreement, together with any amendments and any additional agreements you may enter into with the Company in connection with the Service, shall constitute the entire agreement between you and the Company concerning the Service. Except as otherwise stated in Section 9.2, if any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect.

10.4 **No Waiver.** No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and the Company's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision.

10.5 **Contact.** Please contact us at [legal@learningovations.com](mailto:legal@learningovations.com) with any questions regarding this Agreement.