



# MASTER SERVICES AGREEMENT

## GENERAL TERMS AND CONDITIONS

**Definitions.** The defined terms below shall have the meaning ascribed to them below as used throughout this MSA. Specific Exhibits or SOWs may include additional defined terms that are relevant to the terms of that Exhibit or SOW as well as this MSA. Defined terms below may also incorporate terms that are defined in a particular Exhibit or SOW, where applicable. If the same term is defined differently in two (2) or more Exhibits or SOWs, the term shall be given the meaning defined in said Exhibit and/or SOW. Further, if a term is defined differently in this MSA and one or more Exhibits or SOWs, then the MSA shall be interpreted to include all such definitions, as the context requires.

- a. **"Affiliate"** means any corporation, partnership, limited liability Client, joint venture or other form of enterprise, domestic or foreign, such as, but not limited to parents and subsidiaries, that directly or indirectly, control, is/are controlled by, or are under common control with a party to the Agreement. For purposes of this definition the term "controls", "is controlled by" or "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise.
- b. **"Applicable Laws"** means, with respect to a Party, those statutes, laws, ordinances, regulations, rules, codes, orders, judgments, decrees or other requirement or rule of law of any Governmental Authority applicable to such party's performance under this Agreement, as may be in force and effect during the Term.
- c. **"Approved Country"** means the United States of America and each of its Territories.
- d. **"Business Day"** means Monday through Friday, excluding federal holidays.
- e. **"Business Hours"** means the hours between 8:00 a.m. to 5:00 p.m., EST on any given Business Day.
- f. **"Claims"** means as defined in [Section 0](#)
- g. **"Client Content"** means content developed by HigherLRN for use in Courses, Programs, or any other Services, including Service Software.
- h. **"Commercially Reasonable Efforts"** means efforts in accordance with usual and customary standards in the relevant industry without the unreasonable expenditure of funds or utilization of resources.
- i. **"Confidential Information"** means all nonpublic or proprietary information disclosed by or on behalf of a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), which is (i) designated as Confidential Information by the Disclosing Party at the time of disclosure or within thirty (30) days thereafter; or (ii) disclosed in such a manner that a reasonable person would conclude the information is confidential or proprietary.



Confidential Information includes, but is not limited to, the following (whether furnished before or after the Effective Date, whether disclosed orally, electronically, in writing or gathered by inspection):

- (1) software applications, program modules, routines and subroutines, file layouts, displays, diagrams, graphs, sketches, algorithms, design specifications, annotations, documentation, flowcharts, coding sheets, drawings, models, source code and object code, Updates and any other proprietary information relating to Disclosing Party's owned or licensed software;
- (2) information relating to Disclosing Party's know-how, processes, formulae, techniques, practices, methodologies, policies and procedures, manuals and handbooks, testing, research and development;
- (3) information regarding acquiring, protecting, enforcing and licensing Disclosing Party's proprietary rights including Intellectual Property Rights;
- (4) information relating to Disclosing Party's employees, vendors, purchasing and internal costing, financial and other operational matters;
- (5) marketing, development and other strategic plans, price sheets and proposals, forecasts and assumptions;
- (6) information related to or provided by the Disclosing Party's customers and leads (including but not limited to Nonpublic Personal Information);
- (7) inventions, discoveries, improvements and creations; and
- (8) any and all copies, reproductions, notes, analyses, compilations, studies, interpretations and summaries of any of the above items, regardless of who prepared them.

Notwithstanding the foregoing, Confidential Information does not include any information that Receiving Party can demonstrate by documentary evidence

- (1) is or has become publicly available through no wrongful act or omission attributable to Receiving Party;
  - (2) is or becomes rightfully known to Receiving Party by a third party without restriction on disclosure prior to receipt of the information from Disclosing Party; or
  - (3) is independently developed by Receiving Party without the use of or reference to Confidential Information of Disclosing Party.
- j. **"Client Materials"** means all Infrastructure and any other items provided by or on behalf of Client to HigherLRN, including, without limitation, any documents, forms, instructions data and other materials (including Client's contracts), as well as any items specifically procured by HigherLRN for Client per Client's specifications.
- k. **"Client Parties"** means Client and its Affiliates and their respective employees, subcontractors, trainees, and other agents.
- l. **"Course"** means a single instructional course offered by HigherLRN for Client's Trainees, offered on either a stand-alone basis or as part of a Program.



- m. **"Deliverables"** means, individually and collectively, any tangible or intangible product of any Services which are identified as Deliverables in a SOW.
- n. **"Documentation"** means the user manuals, training materials, guides, product descriptions, technical manuals, product specifications, and supporting materials with respect to the Software and System prepared by HigherLRN from time to time, in printed or electronic form, together with any Updates thereto.
- o. **"HigherLRN Materials"** means the Software, Solutions (including HigherLRN's templates and Document Packages), System, Documentation, and other materials provided or made available by HigherLRN in connection with the provision of Solutions and Services to Client.
- p. **"HigherLRN"** means HigherLRN and its Affiliates and their respective employees, subcontractors and other agents.
- q. **"Governmental Authority"** means any federal, state or local government, any political subdivision thereof, or any administrative, regulatory or other governmental agency, body, or authority, or any court or tribunal of competent jurisdiction.
- r. **"Harmful Code"** means any and all instructions designed to prevent a computer from producing intended results or to cause a computer to produce unintended results, including, but not limited to the following: instructions designed to halt or disrupt the operation of a computer program at an arbitrary time ("time bombs") or upon the execution of an arbitrarily designated instruction ("logic bombs"); instructions designed to cause the computer to duplicate these instructions and retransmit those instructions to others, with or without additional disabling effects or instructions designed to cause the computer to erase its own data files ("viruses/worms"); instructions designed to override security features and facilitate access to the computer by unauthorized users ("back doors," "trap doors," and "undocumented passwords") or to place the operation of the computer under the control of unauthorized remote users ("trojan horses").
- s. **"Intellectual Property Rights"** means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence in any jurisdiction, whether owned or held for use under license, under or relating to (i) patents and utility models, (ii) copyrights and databases, (iii) trademarks and trade dress and the goodwill associated therewith, (iv) trade secrets, (v) mask works, (vi) industrial design rights; or (vii) other intellectual property rights laws, and all similar or equivalent rights or forms of protection.
- t. **"MSA"** or **"Agreement"** means this Agreement, together with all exhibits, attachments, addenda, and fully executed amendments and SOWs
- u. **"Nonpublic Personal Information"** or **"NPI"** means personally identifiable information provided by a consumer to a financial institution, as further defined in Section 509 of the Gramm Leach Bliley Act (P.L. 106-102) and any federal regulations that implement that Act).
- v. **"Primary Contact"** means the individual or individuals that have the authority to act on behalf of Client, including authorizing changes to Client's account and changes to the configuration of the Solutions or scope of the Services requested by Client.
- w. **"Program"** means a series of Courses offered by HigherLRN.
- x. **"Services"** means the various professional services provided by HigherLRN to Client pursuant to a SOW from time to time. Services include, without limitation, Program and Course Design, Instructional Services, Software Services, Support Services, Program Administration and



Support training, onboarding, annual due diligence, advanced customization and implementation.

- y. **"Software"** means the machine-readable object code version of the proprietary software applications and related programming accessed through HigherLRN's website or otherwise made available by HigherLRN to facilitate delivery of the Services described herein, together with any Updates thereto.
- z. **"Syllabus"** means the terms and content of a Program or Course, which includes Client's obligations regarding provision of access to client facilities, technology, and or Client Materials to be utilized in conjunction with the Training Services and/or the creation of a Course, Program, or other Services.]
- aa. **"System"** means the Software and the operating systems, networks, utilities and interfaces through which HigherLRN provides the Solutions to Client, together with all Updates thereto, but excluding Third Party Solutions.
- bb. **"Statement of Work"** or **"SOW"** means a separate written agreement mutually executed by the parties that identifies Solutions, Services and/or Deliverables to be provided by HigherLRN to Client pursuant to this Agreement. Each SOW (including any Exhibit, addendum or schedule) will be effective upon mutual execution and deemed attached to the Agreement.
- cc. **"Term"** means the definition set forth in Section 6.
- dd. **"Third Party Solutions"** means any software interfaces, services or systems provided by a third party, whether or not integrated with or provided in connection with the Solutions and Services.
- ee. **"Trainees"** means those employees, independent contractors, and potential hires enrolled by or in conjunction with Client's business for the purpose of enrolling in or participating the Services.
- ff. **"User"** means any employee, subcontractor, agent, or Trainee of Client (or an Affiliate of Client) who is authorized by Client to access the Services.



## Services.

### Services and Solutions.

The General Terms and Conditions of this MSA govern all of the Services (including to be provided by HigherLRN to Client (collectively, the “**Services**”) as listed in **Error! Reference source not found.** above of this Agreement and as more particularly set forth in the attached exhibits (each an “**Exhibit**”), including any schedules attached thereto and any Statement(s) of Work (“**SOW**”) mutually executed by the Parties.

Each Exhibit, schedule, or SOW may contain additional terms and conditions which are applicable solely to the Services described therein.

All Exhibits, schedules, or SOWs are incorporated herein by reference.

### HigherLRN’s Obligations Regarding Provision of Services.

HigherLRN will provide the selected Services to Client in accordance with the terms of this MSA and any applicable Exhibit and/or SOW.

HigherLRN will provide the Services in a good, diligent and professional manner in accordance with industry standards, utilizing personnel with a level of skill commensurate with the Services to be performed.

HigherLRN’s performance of the Services is dependent upon the timely completion of Client’s material responsibilities and obligations under this MSA. Without limitation of the foregoing, Client will timely provide the materials and information (“**Client Content**”) necessary for HigherLRN to provide the Services. Client shall retain all rights and interest in the original Client Content as provided to HigherLRN. Client shall have no and hereby waives any rights or interests in any Services that incorporate Client Content, including but not limited to Courses or Programs.

### Cooperation.

*HigherLRN and Client will work together to implement the Services.*



*Client will cooperate with HigherLRN and execute and deliver all documents, forms, or instruments reasonably necessary for HigherLRN to implement and render the Services.*

*Client will provide HigherLRN with all reasonable and necessary Client Content requested by HigherLRN in the format requested by HigherLRN, and will otherwise provide all reasonable assistance required of Client in order for HigherLRN to successfully implement the Services.*

### **Use of Services.**

*Client will use the Services in accordance with the terms of this MSA and solely for its own Internal Business Purposes, which shall include the training and instruction of trainees.*

*Client will be responsible for the use of the Services by Client, Client's Trainees, or any individual person enrolled in a Course or Program provided by HigherLRN under this MSA ("**Users**").*

### **No Unauthorized Users.**

Client understands and agrees that only Client's Users permitted to access and use HigherLRN Programs, Courses, Services, or Content.



**Client Content.** Client is responsible for the accuracy and completeness of the Client Content provided to HigherLRN.

***Approved Country.***

The Services are designed for use in the Approved Country only and Client understands that the Services have not been designed to assist Client in complying with the laws and regulations of any country other than the Approved Country.

HigherLRN makes no representation or warranty that access and use of the Services from outside the Approved Country by Client or its Users who are not physically located in the Approved Country will comport with any local laws, regulations, or directives in any other country.

**Records.** Unless expressly included as a part of the Services, and without prejudice to HigherLRN's obligation to retain the data necessary for the provision of the Services, HigherLRN does not serve as Client's record keeper and Client will be responsible for retaining copies of all documentation received from or provided to HigherLRN in connection with the Services to the extent required by law or Client's internal policies.

**Third Party Services.**

*At times, HigherLRN may make available to Client through the Services, or integrate the Services with, the services of a third party, either through a link, integration, or otherwise.*

*HigherLRN reserves the right to terminate such links, services or integrations at any time for any reason and upon reasonable notice to Client.*

*If Client uses any third party services that are integrated with or linked to the Services which require the transmission, use, sharing, access or exchange of Client Content or any other payroll or other data or information provided to HigherLRN or the third party by Client, then Client is expressly agreeing to the transmission, use, sharing, access and exchange of such data between HigherLRN and the third party.*

*Client's use of any third party services will be governed by any terms Client agrees to with the third party and in the event of any conflict between the terms of this MSA and any third party terms, the terms of this MSA will apply to the provision of the Services by HigherLRN to Client.*

**Changes.** HigherLRN reserves the right, in its sole discretion, to make any changes to the Services that it deems appropriate to:

*maintain or enhance the quality or delivery of HigherLRN's Services, or to comply with applicable law.*



**Suspension or Termination of Services.** HigherLRN may suspend, terminate or otherwise deny Client's, any User's or any other user's access to or use of all or any part of the Services, without incurring any resulting obligation or liability, if:

*HigherLRN receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires HigherLRN to do so; or*

*Client or any authorized User has failed to comply with any term of an applicable SOW, this MSA, or accessed or used the Services beyond the scope of the rights granted, or for a purpose not authorized, under the applicable SOW and/or this MSA; or  
this MSA expires or is terminated in accordance with its terms.*

## License, Authorization and Use Restrictions.

### License.

Subject to the terms herein, HigherLRN grants to Client, and Client accepts from HigherLRN, a non-exclusive license to use the **Services** and **Service Content** embodied in the Service Software (collectively referred to as "**Software**"), for Licensee's own business purposes.

HigherLRN represents and warrants that:

*The Services, Service Content, and Service Software, each to the extent provided hereunder, do not and will not infringe or misappropriate any patents, copyrights, trademarks, mask works, trade secrets, or other intellectual property rights of a third party;*

*As of the date of this MSA, there are no actions or claims that the Services, Service Content, or Service Software is infringing and that it is not aware of any circumstances that would lead a reasonable person to believe that a claim of infringement is likely to occur, regardless of the merits of any such claim;*

*it has not asserted or threatened to assert any actions or claims against any third party for infringement of the Services, Service Content, or Service Software and is not aware of any circumstances that would lead a reasonable person to believe that a claim of infringement is likely to occur: and*

*it has all rights necessary to permit HigherLRN to use and access the Services, Service Content, and Service Software .*

### Authorization.



Subject to and conditioned on Client's payment of the Fees (as defined below) and compliance with all other terms and conditions of this MSA, HigherLRN hereby authorizes Client to access and use, solely in the United States and during the Term, the Services, Service Software, or Service Content solely for internal business operations by and through Users in accordance with the conditions and limitations set forth in this MSA.

This authorization is non-exclusive and non-transferable.

**Reservation of Rights.** Nothing in this MSA grants any right, title or interest in or to (including any license under) any intellectual property rights in or relating to, the Services, Service Software, and Service Content, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services, Services Software, Service Content are and will remain with HigherLRN.

### Use Restrictions.

Client will not, and will not permit any other Person to, access or use the Services, Service Software, or Service Content except as expressly permitted by this MSA or applicable SOW.

For purposes of clarity and without limiting the generality of the foregoing, Client will not, except as this MSA expressly permits:

*copy, modify or create derivative works or improvements of the Services, Service Software, or Service Content;*

*rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services, Service Software, or Service Content to any third party, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;*

*reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services, Service Software, or Service Content;*

*bypass or breach any security device or protection used by the Services, Service Software, or Service Content other than by a User through the use of his or her own then-valid Access Credentials;*

*input, upload, transmit or otherwise provide to or through the Services or HigherLRN Systems, any information or materials that are unlawful or injurious, or contain, transmit or activate any harmful code;*



*damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services or HigherLRN Systems in whole or in part;*

*remove, delete, alter or obscure any trademarks, specifications, documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services, Service Software, or Service Content, including any copy thereof;*

*access or use the Services, Service Software, or Service Content in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property right or that violates any Applicable Law;*

*access or use the Services, Service Software, or Service Content for purposes of competitive analysis of the Services, Service Software, or Service Content or use of a competing software service or product or any other purpose that is to HigherLRN's detriment or commercial disadvantage;*

*otherwise access or use the Services, Service Software, or Service Content Hosted Services or Service Software beyond the scope of the authorization granted herein.*

## Client Obligations.

**Client Systems and Cooperation.** Client will, at its sole cost and expense, at all times during the Term:

Provide HigherLRN with all Client Materials and access to Client facilities and technology required to complete Program or Course Design at least three weeks prior to the scheduled start of any Program or Course, as identified in any Syllabus, SOW, or other documentation;

provide all cooperation and assistance that HigherLRN may reasonably request to enable HigherLRN to exercise its rights and perform its obligations under and in connection with this MSA and any SOW, including but not limited to assistance requested regarding HigherLRN's creation and offering of Services to Client's Trainees;



To the extent required, set up, maintain and operate in good repair a computer or computers using a reasonably up-to-date version of Microsoft Windows with Internet access and equipped with a reasonably up-to-date version of Google Chrome, Microsoft Edge, Mozilla Firefox, or Apple Safari for purposes of accessing the Hosted Services; and

Without limiting the generality of the foregoing, Client will use commercially reasonable efforts to make its designated Trainees access to the Services available for training by telephone, the Internet, or in person as needed.

Client Materials.

*Client will be responsible for ensuring the validity, accuracy and completeness of all information, data and instructions (including Client's contracts) provided to HigherLRN (collectively "**Client Materials**").*

*HigherLRN will be entitled to rely upon the Client Materials in providing the Services.*

*HigherLRN will not be required to act on instructions provided by Client if HigherLRN reasonably doubts an instruction's contents or Client's compliance with this MSA or any Applicable Law.*

*Client represents, warrants and covenants to HigherLRN that Client owns or otherwise has and will have the necessary rights and consents in and relating to the Client Materials so that, as received by HigherLRN and processed in accordance with this MSA, they do not and will not infringe, misappropriate or otherwise violate any intellectual property rights or other rights of any third party or violate any Applicable Law.*

**Effect of Client Failure or Delay.** HigherLRN will not be responsible or liable for any delay or failure of performance in the Services caused in whole or in part by Client's delay in performing, or failure to perform, any of its obligations under this MSA.

**Corrective Action and Notice.** If Client becomes aware of any actual or threatened activity prohibited by under this MSA or any SOW, Client will, and will cause its Users to, immediately:



take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services, Service Content, and Service Software and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and

notify HigherLRN, in writing, and via telephone, of any such actual or threatened activity.

### Communication.

Client will provide HigherLRN with design assets, templates, logos, employee images, and other necessary collateral to allow for all information shared with Users to adhere to Client Brand Guidelines and Creative Direction. Client will review and initiate quarterly and annual education benefits marketing initiatives to employees to ensure delivery on mutually agreed upon education benefit goals.

To the extent applicable or otherwise specified in a SOW, Client shall work with HigherLRN to create internal marketing plan(s) to make information about the program available to Users. Nothing in this provision shall be construed to prevent Client's independent marketing of ongoing enrollment details/programs. Client's internal marketing efforts shall include:

*Placement of information regarding the program, or a link to said information, within the relevant benefits section of Client's Employee intranet;*

*On a quarterly basis, placement of information regarding the program in an internal communication by Client to Employees, where such communication may be conveyed to Employees via email, blog posting, or other means as determined by Client, in its sole discretion;*

*At least once each calendar year, inclusion of information regarding the program in events directed toward Client employees, such as an internal career fair or onsite tabling (or less frequently if such events are held less than once a year); and*

*Inclusion of information regarding the program as a part of onboarding materials or presentation provided to new employees.*



**External Employee Communication.** Client will provide HigherLRN a copy of any external communications related to Client education program that mention HigherLRN by name. All such communications shall comply with Section 25 of the Agreement.

**Contract Manager.** Client shall designate one of its employees to serve as its primary contact with respect to this MSA and to act as its authorized representative with respect to matters pertaining to this MSA (the "Client Contract Manager"), with such designation to remain in force unless and until a successor Client Contract Manager is appointed.

**User ID Number.** Client shall assign a unique identification number to each of Client's Users utilizing the Services (each, a "**HigherLRN ID**"), which Client shall send to HigherLRN in a data feed, which shall be provided as a data file transmitted by Client to HigherLRN. Further, each Users HigherLRN ID shall remain the same for the duration of this MSA, permitting consistent and uninterrupted tracking and reporting of all information regarding each employee as required under this MSA.

**Non-Solicitation.** During the Term and for one (1) year after, Client will not, and will not assist any other third party to, directly or indirectly recruit, solicit or hire for employment or engagement as an independent contractor any person then or within the prior eighteen (18) months employed or engaged by HigherLRN or any subcontractor of HigherLRN.

## Fees.

### Payment Terms.

Client will pay HigherLRN for all expenditures, fees, additional service fees and special fees, costs and charges (collectively, "Fees") if any, incurred for the Services provided by HigherLRN. Payments for Fees are due and payable, and Client will pay Fees, within thirty (30) days of the invoice therefor, unless different payment terms are specified in the applicable SOW.

Client will pay all amounts payable to HigherLRN by electronic means pursuant to the Automated Clearing House Payment Authorization, by check, or such other method as agreed to by the parties in writing.

If Fees are due upon signing, then Client shall be pay such fees within 1 day of the full execution of this MSA and any applicable SOW.



**Remedies for Failure to Pay Fees.** If Client fails to make any payment when due, then, in addition to all other remedies that may be available,

HigherLRN will impose a late charge equal to the lesser of one and one-half percent (1-1/2%) per month or the maximum amount allowed by law, on the unpaid balance,

Client will reimburse HigherLRN for all attorneys' fees and other costs incurred by HigherLRN in collecting any late payments and/or interest, and

HigherLRN may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Client or any third party by reason of such suspension.

Notwithstanding anything to the contrary in this MSA, if Client's annual asset size increase exceeds ten percent, HigherLRN reserves the right to increase fees hereunder by a percentage equal to such annual asset size increase percentage.



**Taxes.** Except for HigherLRN' income tax, Client will pay, or reimburse HigherLRN for, any and all applicable sales, use, excise, franchise or other taxes (collectively, "Taxes"), whether federal, state or local, however designated, which are levied or imposed with respect to Client's use of the Services.

## Term and Termination.

### Term.

This Agreement commences on the Effective Date as described the first page of this MSA and extends for the longer of (i) as long as any term under any Exhibit, Addendum, or SOW continues in force or (ii) one year (the "**Term**").

This Agreement and any Exhibit, addendum, or SOW shall automatically renew for an additional term equal in duration to the initial one year Term unless a Party provides written notice of non-renewal thirty (30) days prior to the expiration of the then-current term, unless otherwise stated in an applicable Exhibit, Addendum, or SOW.

**Fee Adjustments.** Fees may be increased by HigherLRN by no more than twelve percent per year during each Exhibit's and/or Addendum's term.

**Termination of Agreement by HigherLRN.** HigherLRN may terminate this MSA if:

Client fails to timely pay any amounts due under this MSA, or

Client commits any material breach of this MSA, which is not remedied within sixty (60) days after receiving notice from HigherLRN.

Any termination notice sent pursuant to this MSA, including this Section 0 must be in writing and given in accordance with Section 0 of this MSA.

**Termination of Agreement by Client.** Client may terminate this MSA if HigherLRN commits any material breach of this MSA, which is not remedied within sixty (60) days after receiving written notice of such breach from Client. Any termination notice must be in writing and given in accordance with Section 0 of this MSA.

**No Termination for Convenience.** Unless stated otherwise in a specific SOW, neither party has a right to terminate this MSA, in whole or in part, for convenience.



## Consequences of Termination of Agreement.

Upon termination of this MSA, Client will immediately cease all use of the Services.

All amounts owed to HigherLRN will be immediately due and payable, and HigherLRN will disable Client's Access Credentials and cease performance of all obligations hereunder without liability to HigherLRN.

Upon termination of this MSA or termination or expiration of any Exhibit or SOW, Client may request a digital copy of the basic Client data entered into the system (including current data for default views and any uploaded documents) related to the terminated Exhibit(s) in HigherLRN's possession, which HigherLRN will provide for a commercially reasonable fee, which will not exceed \$2,500 per Exhibit, in a commercially reasonable format.

Client may request extraction to specific formats, historical data, custom data, and other types of data exports or reasonable deconversion assistance, which HigherLRN will provide on a time and materials basis at HigherLRN's then-current rates; provided, however, that HigherLRN may condition such assistance on the execution of a mutually acceptable SOW.

If Client terminates any Exhibit or SOW without cause prior to the expiration of any applicable term of such Exhibit or SOW, then Client will pay HigherLRN a termination fee equal to all fees that would have been incurred by Client through the expiration of the then-current term of such Exhibit or SOW, and Client agrees that this fee is reasonable based on the implementation and other services provided by HigherLRN.

**Intellectual Property Rights.** All right, title and interest in and to the Services (including Content), Service Software, and Service Content, including all intellectual property rights therein, are and will remain with HigherLRN. Client has and will have no right, license or authorization with respect to any of the Hosted Services or Service Software except as expressly set forth in Section 0, in each case subject to the terms and conditions of this MSA. All other rights in and to the Services, Service Software, and/or Service Content are expressly reserved by HigherLRN.



## Indemnification

### Indemnification by HigherLRN.

Subject to the terms of this MSA, HigherLRN will indemnify, defend and hold harmless Client from and against any and all costs, expenses (including, without limitation, reasonable attorneys' fees), damages and other liabilities associated with any claim, demand, suit, action or proceeding brought by a third party (collectively, "**Claims**") alleging that the Services as delivered to Client infringe that third party's U.S. patent, U.S. trademark or U.S. copyright or misappropriates that third party's U.S. trade secret or other U.S. intellectual property right.

Notwithstanding the foregoing, HigherLRN will have no obligation under this Section 0 or otherwise with respect to Claims based upon

*modification of the Services by anyone other than HigherLRN;*

*use of the Services other than in accordance with this MSA;*

*the failure of Client to implement any replacements, releases, updates, upgrades, corrections or modifications made available by HigherLRN for the Services; or*

*use of the Services in combination with any other products, services, equipment, software, hardware or data not provided by HigherLRN.*

If a Claim is made or appears likely to be made, HigherLRN, in its sole discretion, may elect:

*to procure for Client the right to continue to use any of the Services;*

*to replace, at HigherLRN's cost, any of the Services, or any portion thereof, with substitute services that function substantially in accordance with the applicable specifications;*

*to modify the Services so that they do not infringe or misappropriate, provided that the Services, as modified, continue to perform substantially in accordance with the applicable specifications; or*

*to terminate the applicable SOW and pay to Client a refund of any prepaid but unaccrued fees through the remainder of the term of the applicable SOW.*

THIS SECTION 0 SETS FORTH HIGHERLRN'S ENTIRE OBLIGATION TO CLIENT WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OR MISAPPROPRIATION.



## Indemnification by Client.

Client shall indemnify, defend and hold HigherLRN its Affiliates, and its Affiliates' direct or indirect Affiliates, and each of the foregoing's respective directors, officers, agents, employees, members, parents, subsidiaries, and successors in interest harmless from and against any costs, expenses (including, without limitation, reasonable attorneys' fees), damages and other liabilities associated with any Claim based on any of the following:

Client's or its Users' receipt or use of the Services or Client Data or any decisions or analyses arising out of such use;

a failure by Client to appropriately obtain consent from its customers to properly allow a Third Party Provider to send, and HigherLRN to receive, Client Data;

Client's alleged violation of Applicable Law, rules, regulations, statutes, orders or regulatory guidance;

Client's breach of any Third Party Provider terms; or

allegations that the Client Data or any content provided by Client in connection with Client's use of the Services infringes a patent, copyright, trademark or any other intellectual property right of that third party or misappropriates a trade secret of that third party.

## Procedure.

Each party's obligation to indemnify the other hereunder will be contingent on the party seeking indemnification (the "**Indemnified Party**") doing the following:



promptly notifying the other party (the “**Indemnifying Party**”) in writing of the Claim;

allowing the Indemnifying Party to control, and cooperating with Indemnifying Party in, the defense thereof and any related settlement negotiations; and in no event agreeing to, or authorizing settlement of, any such Claim without the Indemnifying Party’s prior written consent.

## Confidentiality.

### Duties Regarding Confidential Information.

Neither party will disclose, reproduce, transfer or use the other party’s Confidential Information; provided, however, that:

*HigherLRN’ employees, Affiliates, agents, advisors or subcontractors may access and use Client’s Confidential Information in connection with providing the Services provided such persons will comply with the confidentiality provisions of this MSA and*

*either party may disclose Confidential Information to the extent it must be communicated in response to a valid law, regulation or court order, provided the disclosing party uses reasonable efforts to notify the other party prior to disclosure (unless such notification is prohibited by law, regulation or court order) so such party may seek a protective order or otherwise prevent or limit such disclosure.*

HigherLRN and Client agree to comply with the rules and regulations of Title V of the Gramm-Leach-Bliley Act (including, without limitation, the Interagency Guidelines Establishing Standards for Safety and Soundness) (“GLBA”), the California Consumer Privacy Act of 2018, as may be amended from time to time (Cal. Civ. Code §§ 1798.100 to 1798.199) (the “CCPA”), and any other applicable state privacy laws regarding any information either party receives from or on behalf of the other party, which is applicable under the GLBA, CCPA, or such other Applicable Laws.

### Non-Public Information.



The parties acknowledge that either party may come into contact with nonpublic personal financial information of its customers (“**NPI**”), as defined in GLBA, and each party shall take steps in order to maintain the security and confidentiality of NPI.

HigherLRN shall not disclose NPI to any third party for any reason whatsoever, other than with respect to:

*its employees on a “need to know” basis;*

*Affiliates, subprocessors, and service providers on a “need to know” basis, provided that they are subject to a confidentiality agreement which will be no less restrictive than the provisions of this MSA; and*

*As required by Applicable Law, provided that, prior to any disclosure of NPI as required by Applicable Law, HigherLRN will notify Client and cooperate with the Client’s reasonable, lawful efforts to resist, limit, or delay disclosure.*

## Warranty and Disclaimer.

**Warranty.** HIGHERLRNS WARRANTS THAT THE SERVICES PROVIDED HEREIN WILL BE RENDERED IN A COMMERCIALY REASONABLE MANNER WITH QUALIFIED PERSONNEL.

**Disclaimer of Warranties.** EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE SERVICES AND SERVICE SOFTWARE ARE PROVIDED “AS-IS”, AND HIGHERLRN DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FURTHER, HIGHERLRN DOES NOT WARRANT THAT CLIENT’S USE OF THE SERVICES WILL BE SECURE, ACCURATE, COMPLETE, UNINTERRUPTED OR ERROR-FREE. HIGHERLRN DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM HIGHERLRN’S’ NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CLIENT’S AND/OR HIGHERLRN’S CONNECTIONS TO THE INTERNET. HIGHERLRN DOES NOT MAKE AND HEREBY EXPRESSLY DISCLAIMS, ANY REPRESENTATION OR WARRANTY TO ANY THIRD PARTY.



## **Limitation of Liability. HigherLRN's Liability.** HIGHERLRN'S

AGGREGATE LIABILITY FOR ANY AND ALL DAMAGES ARISING FROM OR RELATING TO ANY AND ALL CLAIMS AND CAUSES OF ACTION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEES (EXCLUDING ANY PASS-THROUGH CHARGES) PAID OR PAYABLE BY CLIENT PURSUANT TO THE APPLICABLE ORDER GIVING RISE TO THE DAMAGES IN THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF OCCURRENCE OF THE EVENT UPON WHICH A CLAIM IS ASSERTED, LESS ANY AMOUNTS PREVIOUSLY PAID BY HIGHERLRN IN SATISFACTION OR SETTLEMENT OF OTHER CLAIMS APPLICABLE TO THOSE SERVICES GIVING RISE TO SUCH CLAIM OR CAUSE OF ACTION, REGARDLESS OF THE BASIS ON WHICH CLIENT IS ENTITLED TO CLAIM DAMAGES (INCLUDING, WITHOUT LIMITATION BREACH, NEGLIGENCE, MISREPRESENTATION, OR OTHER CONTRACT OR TORT CLAIM) AND SHALL CONSTITUTE CLIENT'S SOLE MONETARY REMEDY. THIS SECTION 0 ALLOCATES THE RISKS UNDER THIS AGREEMENT BETWEEN HIGHERLRN AND CLIENT AND IS VIEWED BY THE PARTIES AS AN INTEGRAL PART OF THE BUSINESS ARRANGEMENT BETWEEN THEM. THE PRICING AND OTHER TERMS AND CONDITIONS OF THIS AGREEMENT AND ANY ORDER HERETO REFLECT THIS ALLOCATION OF RISK AND THE LIMITATIONS SPECIFIED HEREIN.

**Liability Exclusions.** EXCEPT WITH RESPECT TO CLIENT'S OR ITS REPRESENTATIVES' MISUSE OF THE SERVICES OR INFRINGEMENT OR MISAPPROPRIATION OF HIGHERLRN'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY ORDER HERETO (INCLUDING LOST PROFITS, DAMAGE TO REPUTATION, REGULATORY FINES OR ACTIONS, OR LOST SAVINGS), EVEN IF FORESEEABLE OR EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **Acknowledgment of Limitations and Exclusions.**

The parties acknowledge that the amounts stated in Sections 0 and 0 are fair under the circumstances and that the charges reflect this limitation of liability.

Each party has a duty to mitigate damages that would otherwise be recoverable from the other party under this MSA by taking appropriate and reasonable actions to reduce or limit the amount of such damages.

**Non-Solicitation.** During the term of this MSA and for a twelve (12) month period following its termination or expiration, Client covenants and agrees that it shall not, directly, indirectly or in concert with any other person, solicit the services of, retain, offer employment to, or employ any employee of the HigherLRN, provided that this provision shall not prevent Client from employing an employee of HigherLRN who responds to a generally published employment solicitation.



**Change Management.** The work to be performed by HigherLRN under a SOW is based on the pricing and scope set forth in the SOW. All changes, modifications, and additions to the obligations of either party under an SOW and all increases to HigherLRN's efforts and/or costs as a result of changes to the scope, Client's delay or failure to perform an obligation necessary for HigherLRN to fulfil its obligations under an SOW, and/or a failure or delay in obtaining regulatory approval (if applicable) in connection with Client's receipt and/or use of the Services (and/or components thereof) require a written change order (a "Change SOW"). Either party may initiate a Change SOW request by submitting a written request to the other party along with an explanation of reasons as to why the requested modification is desirable or necessary. Change SOWs should be submitted to the HigherLRN project contact or the Client project contact, as appropriate. Each Change SOW must contain a description of any changes to the scope, costs, schedule, resource allocation or other requirements and be signed by duly authorized individuals for each party. In addition to the foregoing, if Client proposes modifications to the specifications set forth in an SOW in a manner that, in the reasonable discretion of HigherLRN, will require modification of the delivery schedule, the addition of resources, or otherwise materially affect the terms of the SOW including, without limitation, the price, HigherLRN will promptly, after notification by Client of the proposed modification, inform Client of the anticipated impact of the modification on the delivery dates and other terms and, if Client desires that HigherLRN make those modifications, then the parties shall negotiate in good faith a revised delivery, acceptance and payment schedule (including additional fees, as applicable), and set those modified terms out in a Change SOW.

**No Exclusivity.** Nothing within this MSA is intended nor may be construed as limiting HigherLRN's ability to provide the same or similar goods or services from any other party.

## Miscellaneous.

### Compliance with Laws.

Client and HigherLRN will comply with, and will not use or provide the Services in violation of, Applicable Law, and each party will be solely liable for any violation by such party of any Applicable Law.

Neither party will be responsible for any violation by the other party of any Applicable Law. Client and HigherLRN acknowledge that new U.S. state privacy laws and regulations may become effective during the Term of this MSA that may impose additional or different obligations on one or both parties under this MSA with respect to the collection, use, retention, and processing of nonpublic personal information.



Client and HigherLRN agree to use commercially reasonable efforts to comply with and to reasonably cooperate with the other party to ensure compliance with obligations as may be applicable under such state privacy laws and regulations with respect to activities under this MSA.

### Governing Law and Remedies.

This Agreement will be deemed to have been made in and will be construed under the laws of the State of Michigan and the United States, without regard to conflicts of law provisions.

The exclusive venues for all disputes arising out of this MSA will be the United States District Court for the Eastern District of Michigan and the Third Judicial Circuit, Wayne County, Michigan (the “**Agreed-Upon Venues**”), and no other venues.

The parties stipulate that the Agreement is an arms-length transaction entered into by sophisticated parties, and that the Agreed-Upon Venues are convenient, are not unreasonable, unfair, or unjust, and will not deprive any party of any remedy to which it may be entitled.

The parties agree to consent to the dismissal of any action arising out of this MSA that may be filed in a venue other than one of the Agreed-Upon Venues; the reasonable legal fees and costs of the party seeking dismissal for improper venue will be paid by the party that filed suit in the improper venue..

**No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other person, entity, organization, association or governmental agency any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this MSA.



**Severability; Modification; Waiver.** If one or more provisions of this MSA are held to be unenforceable under Applicable Law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then: (a) such provision shall be excluded from this MSA; (b) the balance of the Agreement shall be interpreted as if such provision were so excluded; and (c) the balance of the Agreement shall be enforceable in accordance with its terms. This Agreement may not be modified or amended except through the execution of a legal instrument signed by authorized signatories of each of the parties. No term or condition of this MSA may be waived except in writing signed by the party charged with waiver. A waiver will operate only as to the specific term or condition waived and will not constitute a waiver for the future.

**Entire Agreement; Amendments; Headings; Survival.** This Agreement constitutes the entire agreement between Client and HigherLRN, and supersedes all prior agreements, written or oral, related to the Services. This Agreement includes, and incorporates, the attached Exhibits and schedules. Any amendment to this MSA must be in writing and signed by HigherLRN and Client. The headings in this MSA are for reference only. Sections 3.5, 5, 6, 7, 8, 10, 11, 12, and all accrued payment obligations hereunder, all representations and warranties of Client set forth herein or in any Exhibit or schedule attached hereto, and any limitation of liability set forth in any exhibit or schedule attached hereto, will survive termination of this MSA and/or such Exhibit or schedule, as applicable.

**Counterparts.** This Agreement may be executed in two or more counterparts, each of which is deemed an original, and all of which together constitute one and the same instrument. Facsimile, electronic or other copies of the executed Agreement will be valid and effective.

**Electronic Signatures - Binding.** This Agreement and associated SOWs and related documents may be accepted in electronic form (e.g., by an electronic or digital signature or other means of demonstrating assent). HigherLRN acknowledges and agrees it will not contest the validity or enforceability of this MSA and associated SOWs and related documents, including under any applicable statute of frauds, because they were accepted and/or signed in electronic form.

**Assignment.** This Agreement may not be assigned, voluntarily or by operation of law, by either party without prior written consent from the other party, which will not be unreasonably withheld. Consent, however, is not needed for HigherLRN or Client to assign this MSA in connection with a merger, acquisition or sale of all or substantially all of the assigning party's assets.



**Notices.** All notices, requests, demands, and other communications that are required or permitted to be given under this MSA must be in writing and will be deemed to have been duly given: (a) upon receipt if delivered in person; (b) the third business day after mailing by first-class certified or registered mail, return receipt requested and postage prepaid; (c) the following business day after mailing by recognized overnight courier, with proof of delivery requested and charges prepaid; or, (d) the same business day if sent by email prior to 4:00 pm ET (the following business day if sent after 4:00 pm ET) and proof of such email delivery can be reasonably established, when sent to the mailing or email addresses first set forth above or below, or to such other mailing or email address as a party may specify by written notice to the other party in accordance with this section.

**Independent Contractors.** HigherLRN and Client are independent contractors. Nothing in this MSA will be deemed to create a joint venture, partnership, employment or similar relationship between the parties.

**Force Majeure.** In the event an act of government, war, fire, flood or other act of God prevents either party from performing in accordance with the terms of this MSA, such nonperformance shall be excused and shall not be considered a breach or default for so long as such conditions prevail.

**Dispute Resolution.** The parties agree that, in the event of a dispute or alleged breach, they will first work together in good faith to resolve the matter internally through negotiations and, if necessary, by escalating it to higher levels of management. The foregoing will not apply to, and will not prevent HigherLRN from seeking immediate relief in the event of, disputes involving the confidentiality provisions of this MSA or infringement of intellectual property rights, in which case HigherLRN may seek available remedies in a court of competent jurisdiction.

**Remedies Cumulative.** No right or remedy herein conferred upon or reserved to either party is intended to be exclusive of any other right or remedy unless otherwise specified herein, and each and every right and remedy will be cumulative and in addition any other right remedy under this MSA, or under Applicable Law, unless otherwise specified herein.

**No Waiver.** No provision of this MSA shall be deemed waived by course of conduct, unless such waiver is in writing signed by the parties and stating specifically that it was intended to modify this MSA. Any waiver by any party of any of its rights under this MSA or of any breach of this MSA shall not constitute a waiver of any other rights or of any other or future breach.



**Headings: Interpretation; Construction.** The headings in this MSA are for purposes of reference only and will not in any way limit or affect the meaning or interpretation of any of the terms hereof. Unless the context of this MSA clearly requires otherwise, (a) references to the plural include the singular, the singular the plural, the part the whole, (b) references to any gender include all genders, (c) “or” has the inclusive meaning frequently identified with the phrase “and/or,” (d) “including” has the inclusive meaning frequently identified with the phrase “without limitation,” and (e) references to “hereunder,” “hereof” or “herein” relate to this MSA. The parties agree that this MSA is the result of careful negotiations between sophisticated parties and thus any principle of construction or rule of law that provides that an agreement will be construed against the drafter of the agreement in the event of any inconsistency or ambiguity in such agreement will not apply to the terms and conditions of this MSA.

**CCPA.** To the extent this MSA permits or requires HigherLRN to Process Personal Information of California residents provided by or on behalf of Client, this Section sets out additional terms and conditions pursuant to which HigherLRN shall Process such Personal Information for so long as HigherLRN has access to it. Capitalized terms not defined in this Section shall have the meaning attributed to them in the CCPA. Reference to the CCPA shall, in all instances, include reference to any regulations and amendments thereto, including the California Privacy Rights Act of 2020, as of the applicable effective date. In the event of a conflict between any provision in the Agreement and this Section, the terms of this Section shall control with respect to California resident Personal Information.

**Authority.** The undersigned who signs on behalf of a party is authorized to execute this MSA on behalf of such party and bind such party to the terms and conditions of this MSA.

**Attorneys’ Fees.** The prevailing party in any dispute arising out of this MSA is entitled to an award of costs and attorneys’ fees, including, but not limited to, in-house counsel fees calculated at market rate. For purposes of this MSA, the prevailing party is the party for whom a court of competent jurisdiction renders judgment.

Client hereby represents and warrants that the signatory below (“**Authorized Representative**”) is either a duly elected corporate officer or the owner/proprietor of the company listed above and is duly authorized to execute this HigherLRN Master Services Agreement and any Statement(s) of Work (“**SOW**”) on behalf of Client.

Client agrees to be bound by all terms and conditions contained in this Master Services Agreement and any corresponding attachments, Exhibits, schedules, or SOWs, as each may amended from time to time, each of which is hereby incorporated herein (collectively, this “**MSA**”). By signing below, Higher Learn LLC, d/b/a HigherLRN (“**Higher Learn**”) and Client acknowledge that each has read, understands and agrees to this Agreement, which shall be effective as of the **Effective Date** (defined below), for the duration of the applicable Term (defined below), unless otherwise provided in an SOW or earlier terminated in accordance with the terms of this Agreement.



**IN WITNESS WHEREOF**, HigherLRN and Client have executed this Agreement, which shall be effective as of the latest date of execution appearing below.