



Terms of Use

READ THIS AGREEMENT CAREFULLY. BY INSTALLING AND/OR USING SERVICES FROM LABSTATS, YOU (THE "CUSTOMER") SIGNIFY THAT YOU ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT. AS USED HEREIN LABSTATS AND CUSTOMER ARE COLLECTIVELY REFERRED TO AS THE "PARTIES," AND ARE EACH INDIVIDUALLY REFERRED TO AS A "PARTY".

AGREEMENT

1. Definitions.

- 1.1. "**Agreement**" means this Agreement between LabStats and the Customer.
- 1.2. "**Brand Features**" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each of the Parties, as secured by each of the Parties from time to time.
- 1.3. "**Confidential Information**" means information disclosed by a Party to the other Party under this Agreement that is marked as confidential or would normally be considered confidential under the circumstances. Customer Data is considered Confidential Information.
- 1.4. "**Customer Data**" means data, including email, provided, generated, transmitted or displayed via the Services by Customer or End Users.
- 1.5. "**End Users**" means the individuals Customer permits to use the Services, including, but not limited to, administrators, students, alumni, and Customer employees.
- 1.6. "**End User Account**" means a LabStats-hosted or locally-hosted account established by Customer through the Services for an End User.
- 1.7. "**General Data**" means aggregated, anonymized information that may contain the attributes of tracked individuals and their usage of tracked services and devices but does NOT include any information personally identifying any individual or that could be used to personally identify any individual.
- 1.8. "**Intellectual Property Rights**" means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.
- 1.9. "**Services**" means any software resources provided by LabStats and used by Customer under this Agreement.
- 1.10. "**Suspend**" means the immediate disabling of access to the Services, or components of the Services, as applicable, to prevent further use of the Services.

2. License Terms.

- 2.1. **License Grant.** Subject to the terms and conditions of this Agreement, LabStats grants to Customer a worldwide, license to use, reproduce, and distribute to End Users the Services. This license grant extends to upgrades to the services provided by LabStats to the Customer.
- 2.2. **Restrictions on Use.** Unless LabStats specifically agrees in writing, Customer will not, and will use commercially reasonable efforts to make sure a third party does not: (a) sell, resell, lease, or the functional equivalent, the Services to a third party (unless expressly authorized in this Agreement); (b) attempt to reverse engineer the Services or any component; (c) attempt to create a substitute or similar service through use of, or access to, the Services; (d) use the Services to store or transfer any Customer Data that is controlled for export under any export control laws, including, but not limited to, the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State; (e) frame or utilize framing techniques to use, surround or enclose any portion of the Services. Customer is solely responsible for any applicable compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and any regulations issued thereunder.
- 2.3. **Modifications.**
 - 2.3.1. **To the Services.** LabStats may make commercially reasonable changes to the Services from time to time. If LabStats makes a material change to the Services, LabStats will inform Customer, provided that Customer has subscribed with LabStats to be informed about such material change.
 - 2.3.2. **To the Agreement.** LabStats may make commercially reasonable changes to the Agreement from time to time. If LabStats makes a material change to the Agreement, LabStats will inform Customer by either sending an email to an email address provided by Customer or alerting Customer via the administrative console provided by LabStats. If the change has a material adverse impact on Customer and Customer does not agree to the change, Customer must so notify LabStats within thirty days after receiving notice of the change. If Customer notifies LabStats as required, then Customer will remain governed by the terms in effect immediately prior to the change until the end of the then-current Term. If the Services are renewed, they will be renewed under LabStats' then current Agreement.

3. Installation And Management Of Services.

3.1. **Cloud Service Provider Install.**

- 3.1.1. **Facilities and Data Transfer.** All facilities used to store and process Customer Data will adhere to reasonable security standards no less protective than the security standards at facilities operated by Cloud Services Provider, as defined in subsection 3.1.1.1. LabStats has implemented at least industry standard systems and procedures to ensure the security and confidentiality of Customer Data, protect against anticipated threats or hazards to the security

or integrity of Customer Data, and protect against unauthorized access to or use of Customer Data.

3.1.1.1 **Cloud Services Provider.** The Services utilizes various third-party Cloud Service Providers, such as Microsoft Azure. LabStats may utilize the third-party cloud service providers to deliver portions of the Services and those third-party cloud service providers may have access to a limited amount of Customer Data necessary to deliver the Services. At Customer's request, LabStats will provide a list of the third-party Cloud Service Providers being used by LabStats at the time of the request. LabStats assumes no responsibility for the third-party Cloud Service Providers and makes no warranty or condition of any kind, either express or implied, for the suitability or performance of the third-party Cloud Service Providers.

3.2. **Customer Premise Install.** If Customer installs a customer premise install, the following additional terms apply:

3.2.1. **Facilities and Data Transfer.** Customer is solely responsible for the storage, security, and accessibility of all data stored and handled within the customer premise install. Customer also agrees to be solely responsible for any unauthorized disclosures of data that are disclosed due to the Customer's storage or handling of the data.

4. **Customer Obligations.**

4.1. **Permitted Uses.** The Services are permitted for use only by End Users in compliance with this Agreement.

4.1.1. **Usage Reports and Database.** LabStats' Services primarily monitor and evaluate Customer's technological asset usage by students, outputting analysis via dashboards, charts, graphs, and reports, accessible via the administrative console provided by LabStats. As to the accuracy of the Service analytics, Customer will exercise independent professional judgment in, and assume sole and exclusive responsibility for, determining the actual usage of Service-tracked hardware and software.

4.2. **Compliance.** Customer will use the Services in accordance with this Agreement. LabStats may make new applications, features or functionality for the Services available from time to time, the use of which may be contingent upon Customer's agreement to additional terms.

4.3. **Customer Administration of the Services.** Customer may specify one or more administrators through the administrative console provided by LabStats who will have the rights to access administrator accounts and to administer the End User Accounts. Customer is responsible for: (a) maintaining the confidentiality of the password and administrator accounts; (b) designating those individuals who are authorized to access the administrator accounts; and (c) ensuring that all activities that occur in connection with the administrator accounts comply with the Agreement. Customer agrees that LabStats' responsibilities do not extend to the internal management or administration of the Services for Customer and that LabStats is merely a service provider.

- 4.4. **End User Consent.** Customer's administrators may have the ability to access, monitor, use, or disclose data available to End Users within the End User Accounts. Customer will obtain and maintain all required consents from End Users to: (i) allow Customer's access, monitoring, use and disclosure of this data, and LabStats providing Customer with the ability to do so and (ii) allow LabStats to provide the Services.
- 4.5. **Unauthorized Use.** Customer will use commercially reasonable efforts to prevent unauthorized use of the Services and to terminate any unauthorized use. Unauthorized use includes (a) use of the Services in a way that is against applicable law or in violation of the legal rights of others, (b) use of the Services in a way that could harm them or impair anyone else's use of them, or (c) use of the Services to solicit or deceive others. Customer will promptly notify LabStats of any unauthorized use of, or access to, the Services of which it becomes aware.
- 4.6. **Third-Party Requests.** Customer is responsible for responding to third-party requests for records relating to an End User's use of the Services. Third-party requests can be a lawful search warrant, court order, subpoena, other valid legal order, or written consent from the End User permitting the disclosure. LabStats will, to the extent allowed by law and by the terms of the third-party request: (a) promptly notify Customer of its receipt of a third-party request; (b) comply with Customer's reasonable requests, as determined within LabStats' sole discretion, regarding its efforts to oppose a third-party request; and (c) provide Customer with the information or tools required for Customer to respond to the third-party requests. Customer will first seek to obtain the information required to respond to the third-party requests on its own and will contact LabStats only if it cannot reasonably obtain such information.
- 4.7. **FERPA.** Customer registration and use of the Service is in compliance with any and all applicable laws and regulations, including without limitation the Family Educational Rights and Privacy Act ("FERPA").
5. **Suspension.**
 - 5.1. **Of End User Accounts by LabStats.** If LabStats becomes aware of an End User's violation of the Agreement, then LabStats may specifically request that Customer Suspend the applicable End User Account. If Customer fails to comply with LabStats' request to Suspend an End User Account, then LabStats may do so. The duration of any Suspension by LabStats will be until the applicable End User has cured the breach, which caused the Suspension.
 - 5.2. **Emergency Security Issues.** Notwithstanding the foregoing, if the Customer's use of the Services in violation of this Agreement, could disrupt: (i) the Services; (ii) other customers' use of the Services; or (iii) the LabStats network or servers used to provide the Services, then LabStats may automatically Suspend the offending use. Suspension will be to the minimum extent and of the minimum duration required to prevent or terminate the Emergency Security Issue. If LabStats Suspend an End User Account for any reason without prior notice to Customer, at Customer's request, LabStats will provide Customer the reason for the Suspension as soon as is reasonably possible.

6. **Termination.**

6.1. **Termination for Breach.** Either party may suspend performance or terminate this Agreement if: (i) the other party is in material breach of the Agreement and fails to cure that breach within thirty days after receipt of written notice; (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety days; or (iii) the other party is in material breach of this Agreement more than two times notwithstanding any cure of such breaches.

6.2. **Effects of Termination.** If this Agreement terminates, then: (i) the rights granted by one Party to the other will cease immediately (except as set forth in this Section); (ii) LabStats will provide Customer access to, and the ability to export, the Customer Data for a commercially reasonable period of time at LabStats' then-current rates, if applicable, for the Services; (iii) after a commercially reasonable period of time, LabStats will delete Customer Data by removing pointers to it on LabStats' active servers and overwriting it over time; and (iv) upon request each party will promptly use commercially reasonable efforts to return or destroy all other Confidential Information of the other party.

7. **Confidential Information.**

7.1. **Obligations.** Each party will: (a) protect the other party's Confidential Information with the same standard of care it uses to protect its own Confidential Information; and (b) not disclose the Confidential Information, except to affiliates, Cloud Service Providers, employees, and agents who need to know it and who have agreed to keep it confidential. Each Party (and any affiliates, employees and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill its obligations under this Agreement, while using reasonable care to protect it. Each Party is responsible for any actions of its affiliates, employees and agents in violation of this Section. Customer is solely liable and responsible for any actions or inactions that result in the sharing of any Confidential Information with others. This includes, but is not limited to, adequately protecting any Confidential Information that may be displayed on any computer screen and not leaving any computer unattended if Confidential Information is visible or accessible. LabStats does not take responsibility or liability for Customer's distribution, sharing or disclosure of such Confidential Information. Furthermore, Customer acknowledges and understands that it is subject to all applicable privacy laws, rules and regulations, including without limitation, FERPA.

7.2. **Exceptions.** Confidential Information does not include information that: (a) the recipient of the Confidential Information already knew; (b) becomes public through no fault of the recipient; (c) was independently developed by the recipient; (d) was rightfully given to the recipient by another party; or (e) constitutes General Data.

7.3. **Disclaimer.** LabStats is under no obligation to edit or control Confidential Information that Customer and affiliates post or publish, and will not be in anyway responsible or liable for the Confidential Information. Customers agrees to waive, and hereby does waive, any legal or equitable rights or remedies it has or may have against LabStats with respect thereto.

- 7.4. **Required Disclosure.** Including situations outlined in subsection 4.6, each Party may disclose the other Party's Confidential Information when required by law but only after it, if legally permissible: (a) uses commercially reasonable efforts to notify the other Party; and (b) gives the other Party the chance to challenge the disclosure.
- 7.5. **FERPA.** The Parties acknowledge that (a) Customer Data may include personally identifiable information from education records that are subject to FERPA ("FERPA Records"); and (b) to the extent that Customer Data includes FERPA Records, LabStats will be considered a "School Official" (as that term is used in FERPA and its implementing regulations) and the Parties will comply with FERPA.
- 7.6. **Other Required Data Compliance.** The Customer acknowledge that from time to time, additional applicable regulations on educational data confidentiality and protection may be enacted at local, regional, state, provincial, federal and/or national levels. The Customer will: (a) notify LabStats immediately upon being aware of additional applicable regulations; (b) collaborate in determining and implementing any necessary modifications of the Service to meet compliance requirements; and (c) provide to LabStats a reasonable time period, as permitted by the regulation in question, to comply.
8. **Intellectual Property Rights; Brand Features.**
- 8.1. **Intellectual Property Rights.** Except as expressly set forth herein, this Agreement does not grant either Party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. The Parties acknowledge and agree that LabStats owns or holds all relevant rights to the Services and is only licensing use of the Services as a service to Customer under this Agreement. The Services are not and shall not be construed as work product developed by LabStats on behalf of Customer. As between the Parties, Customer owns all Intellectual Property Rights in Customer Data, and LabStats owns all Intellectual Property Rights in the Services.
- 8.2. **Display of Brand Features.** LabStats may display those Customer Brand Features authorized by Customer (such authorization is provided by Customer uploading its Brand Features into the Services) within designated areas of the Services. Customer may specify the nature of this use using the administrative console provided by LabStats. LabStats may also display LabStats Brand Features on the Services to indicate that LabStats provides the Services. Neither Party may display or use the other Party's Brand Features beyond what is allowed in this Agreement without the other Party's prior written consent.
- 8.3. **Brand Features Limitation.** Any use of a Party's Brand Features will inure to the benefit of the Party holding Intellectual Property Rights in those Brand Features. A Party may revoke the other Party's right to use its Brand Features pursuant to this Agreement with written notice to the other Party and a reasonable period to stop the use.
9. **Publicity.** Customer agrees that LabStats may include Customer's name or Brand Features in a list of LabStats customers, online or in promotional materials. Customer also agrees that LabStats may verbally reference Customer as a customer of the LabStats products or services that are the subject of this Agreement. This Section is subject to

Section 8.3.

10. Representations, Warranties and Disclaimers.

10.1. **Representations and Warranties.** Each Party warrants that it will comply with all laws and regulations applicable to its provision, or use, of the Services, as applicable (including applicable security breach notification law). Customer acknowledges and agrees that it is solely responsible for compliance with the Children's Online Privacy Protection Act of 1998, including, but not limited to, obtaining parental consent concerning collection of students' personal information used in connection with the provisioning and use of the Services by the Customer and End Users.

10.2. **Limited Warranty.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.

11. Indemnification.

11.1. **By LabStats.** LabStats shall indemnify, defend and hold harmless Customer and Customer's respective officers, representatives, agents, servants, employees, successors and assigns from and against any and all liabilities, losses, claims, damages, costs and expenses arising, directly or indirectly, in connection with (i) a breach of any term or condition of this Agreement by LabStats, and/or (ii) a breach of any representation made or warranty given in this Agreement by LabStats.

11.2. **By Customer.** Customer shall indemnify, defend and hold harmless LabStats and LabStats' respective officers, representatives, agents, servants, employees, successors and assigns from and against any and all liabilities, losses, claims, damages, costs and expenses arising, directly or indirectly, in connection with (i) a breach of any term or condition of this Agreement by Customer, (ii) a breach of any representation made or warranty given in this Agreement by Customer, and/or (iii) infringement of a third party's intellectual property rights caused by a Customer's modification or non-conventional use of the Services.

11.3. Possible Infringement.

11.3.1. **Repair, Replace, or Modify.** If LabStats reasonably believes the Services infringe a third party's intellectual property rights, then LabStats will: (a) obtain the right for Customer, at LabStats' expense, to continue using the Services; (b) provide a non-infringing functionally equivalent replacement; or (c) modify the Services so that they no longer infringe.

11.3.2. **Suspension or Termination.** If LabStats does not believe the foregoing options are commercially reasonable, then LabStats may suspend or terminate Customer's use of the impacted Services. If LabStats terminates the impacted Services, then LabStats will provide a pro-rata refund of the unearned fees, if any, actually paid by Customer applicable to the period following termination of such Services.

11.4. **General.** Customer will promptly notify LabStats of any claim and cooperate with LabStats in defending the claim. LabStats has full control and authority over the defense, except that: (a) any settlement requiring Customer to admit liability or to

pay any money will require Customer's prior written consent, such consent not to be unreasonably withheld or delayed; and (b) Customer may join in the defense with its own counsel at its own expense. THE INDEMNITY DESCRIBED IN SECTION 11.3 IS CUSTOMER'S ONLY REMEDY UNDER THIS AGREEMENT FOR VIOLATION BY LABSTATS OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

12. Limitation of Liability.

- 12.1. **Limitation on Indirect Liability.** NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.
- 12.2. **Limitation on Amount of Liability.** NEITHER PARTY MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE GREATER OF: (I) ONE THOUSAND DOLLARS OR (II) THE AMOUNT PAID BY CUSTOMER TO LABSTATS UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.
- 12.3. **Exceptions to Limitations.** These limitations of liability apply to the fullest extent permitted by applicable law, but do not apply to breaches of confidentiality obligations, violations of a Party's Intellectual Property Rights by the other Party, or indemnification obligations.

13. Miscellaneous.

- 13.1. **Notices.** Unless specified otherwise herein: (a) all notices must be in writing and addressed to the attention of the other Party's legal department and primary point of contact; and (b) notice will be deemed given: (i) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt; or (ii) when verified by automated receipt or electronic logs if sent by facsimile or email.
- 13.2. **Assignment.** Neither Party may assign or transfer any part of this Agreement without the written consent of the other Party, except to an affiliate, but only if: (a) the assignee agrees in writing to be bound by the terms of this Agreement; and (b) the assigning party remains liable for obligations incurred under the Agreement prior to the assignment. Any other attempt to transfer or assign is void.
- 13.3. **Change of Control.** Upon a change of control (for example, through a stock purchase or sale, merger, or other form of corporate transaction): (a) the Party experiencing the change of control will provide written notice to the other Party within thirty days after the change of control; and (b) the other Party may immediately terminate this Agreement any time between the change of control and thirty days after it receives the written notice in subsection (a).
- 13.4. **Force Majeure.** Neither Party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.
- 13.5. **No Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver.
- 13.6. **Severability.** If any provision of this Agreement is found unenforceable, the

balance of the Agreement will remain in full force and effect.

- 13.7. **No Agency.** The Parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.
- 13.8. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 13.9. **Equitable Relief.** Nothing in this Agreement will limit either Party's ability to seek equitable relief.
- 13.10. **Governing Law.**
 - 13.10.1. **For City, County, Provincial, State, National or Federal Government Entities.** If Customer is a city, county, provincial, state, national, or federal government entity, then the Parties agree to remain silent regarding governing law and venue.
 - 13.10.2. **For All other Entities.** If Customer is any entity not set forth in Section 13.10.1 then the following applies: This Agreement is governed by Idaho law, excluding that state's choice of law rules. FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN BONNEVILLE COUNTY, IDAHO.
- 13.11. **Amendments.** Any amendment must be in writing and expressly state that it is amending this Agreement.
- 13.12. **Survival.** The following Sections will survive expiration or termination of this Agreement: 1 (Definitions), 6.2 (Effects of Termination), 7 (Confidential Information), 8.1 (Intellectual Property Rights), 11 (Indemnification), 12 (Limitation of Liability), and 13 (Miscellaneous).
- 13.13. **Entire Agreement.** This Agreement, and all documents referenced herein, is the Parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject. If Customer is presented with a similar agreement on the same subject matter upon its log in to use the Services, this Agreement supersedes and replaces that agreement.