

# Terms of Service

By using Actively Learn Inc.'s free or paid products, software, services or web sites ("Actively Learn Services"), you, an Actively Learn Services' account holder and user ("You"), agree to the following terms and conditions, and any policies, guidelines or amendments that may be presented to you from time to time (collectively, the "Terms of Service"). We may update these Terms of Service without prior notice.

## 1. Use of Services

Actively Learn Inc. ("Actively Learn") offers You access to use Actively Learn Services for educational purposes, provided that You are of legal age to form a binding contract and are not a person barred from receiving Actively Learn Services under the laws of the United States or other applicable jurisdiction.

### ***Educational Purposes***

Using Actively Learn Services for educational purposes includes, but is not limited to: - instruction or curriculum-based teaching by educators to students at educational or educational support (e.g., tutoring) institutions,- planned study or investigation directed toward making a contribution to a field of knowledge, or- presentation of research findings at peer conferences, workshops, or seminars.

### ***Base Content; Instructional Content***

Using Actively Learn Services for educational purposes, You may assign to students (1) texts available in the Actively Learn Services catalog (some of which are free and some of which must be purchased) or (2) texts you add to your Actively Learn Services account from the world wide web or by upload of a Word, PDF, ePub, or other electronic file. The texts You create are referred to herein as "Your Base Content," and the texts you use that were created by someone else are referred to herein as "Third Party Base Content." Together, Your Base Content and Third Party Base Content are referred to as "Base Content."

Actively Learn Services make it possible for You to create, use, and share "Instructional Content" for any Base Content, where Instructional Content could consist of text, lessons and assignments, summative and formative assessments, questions, notes, instructional feedback, links, music, sound, photographs, graphics, and videos related to the text of the Base Content to help your students as they read the Base Content. Instructional Content you create entirely on your own or in direct collaboration with other educators is referred to herein as "Your Instructional Content" and

direct collaboration with other educators is referred to herein as Your Instructional Content, and Instructional Content you use, transform, or assign that was originally created by a third party without your participation is referred to as "Third Party Instructional Content."

### ***Identifying Information; Password Security***

In order to access certain services, You may be required to provide current, accurate identification, contact, and other information as part of the registration process and/ or continued use of Actively Learn Services. You are responsible for maintaining the confidentiality of your account password, and are responsible for all activities that occur under your account. You agree to immediately notify Actively Learn of any unauthorized use of your password or account or any other breach of security. Actively Learn cannot and will not be liable for any loss or damage arising from your failure to provide us with accurate information or to keep your password secure.

## **2. Your Instructional Content and Your Base Content; Your Conduct**

You agree that You are the owner of and retain all patent, trademark and copyright rights to Your Base Content and Your Instructional Content. You further agree that Actively Learn does not take title to or claim ownership of Your Base Content or Your Instructional Content and nothing in these Terms of Service may be construed as infringing upon your ownership of Your Base Content or Your Instructional Content.

While you retain all patent, trademark and copyright rights to Your Base Content and Your Instructional Content, by creating, transforming, organizing, embedding, uploading, importing or assigning Your Base Content or Your Instructional Content in Actively Learn Services, You grant Actively Learn a worldwide, non-exclusive, royalty free license to reproduce, adapt, modify, publish, share, use and distribute Your Base Content and Your Instructional Content for the purposes of (1) displaying, distributing and promoting Actively Learn Services, (2) improving the performance, features, sophistication and effectiveness of our products, software, services or websites, and (3) enabling other Actively Learn Services account holders to use, adapt, modify, assign, and share Your Base Content and Your Instructional Content for educational purposes. Actively Learn furthermore reserves the right to refuse to accept, post, display or transmit Your Base Content or Your Instructional Content in its sole discretion.

You represent and warrant that You have all the rights, power and authority necessary to grant the rights granted herein to Your Base Content and Your Instructional Content. You agree that you are solely responsible for your use of Your Base Content and Your Instructional Content in Actively Learn Services, for your own conduct in Actively Learn Services, and for any consequences thereof.

You agree to use Actively Learn Services only for purposes that are legal, proper and in accordance with the Terms of Service and any applicable policies or guidelines. Actively Learn has the right but not the obligation to monitor and edit or remove any activity or any Base Content or Instructional Content. Actively Learn takes no responsibility and assumes no liability for any Base Content or Instructional Content posted by You or any other account holder. You agree that you will not engage in any activity that interferes with or disrupts Actively Learn Services.

Account holders outside of the United States agree to comply with their own local rules regarding online conduct and acceptable content, including laws regulating the export of data to and from the United States or your country of residence.

## **3. Third Party Base Content**

If you use or assign Third Party Base Content in Actively Learn Services, whether or not you do so by creating Your Instructional Content for the Third Party Base Content or by using or transforming Third Party Instructional Content for the Third Party Base Content, You agree and confirm that: (1) the Third Party Base Content is in the public domain, (2) a third party licensor is the owner of and retains all patent, trademark and copyright rights to such Third Party Base Content, and You are licensed to use the Third Party Base Content through purchase or other form of license, or (3) You are making "fair use," for educational purposes, of such Third Party Base Content.

You further agree that Actively Learn does not take title to or claim ownership of Third Party Base Content You use in Actively Learn Services and nothing in these Terms of Service may be construed as infringing upon a third party's patent, trademark and copyright rights, if any, to the Third Party Base Content.

### **3b. Purchased Third Party Base Content**

Certain purchased Third Party Base Content may be made available for use in Actively Learn Services subject to certain restrictions. This includes Third Party Base Content purchased in Actively Learn Services and digital Third Party Base Content purchased elsewhere and assigned and used in Actively Learn Services. Purchased Third Party Base Content is only to be accessed in Actively Learn Services by a user licensed to access this content. Actively Learn deploys a number of security measures to ensure that only licensed users are able to access purchased Third Party Base Content used in Actively Learn Services, including, but not limited to, the following measures: (i) obfuscating JavaScript code, (ii) preventing access to content via a browser's view source or a device's clipboard, (iii) requiring user authentication prior to delivering the Third Party Base Content to the user, (iv) transmitting the content only through secure services, (v) storing only a limited portion of the content on a device at any given time, and (vi) encrypting where the purchased Third Party Base Content is stored.

### **4. Privacy; Account Access**

Any personally identifying information submitted through Actively Learn Services is subject to our Privacy Policy, the terms of which are incorporated herein. Please read our [Privacy Policy](#).

By using Actively Learn Services, you acknowledge and agree that Actively Learn may access, preserve, and disclose your account information and any Content associated with that account if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to: (a) satisfy any applicable law, regulation, legal process or enforceable governmental request, (b) enforce the Terms, including investigation of potential violations hereof, (c) detect, prevent, or otherwise address fraud, security or technical issues (including, without limitation, the filtering of spam), or (d) protect against imminent harm to the rights, property or safety of Actively Learn, its users or the public as required or permitted by law.

### **5. Children's Online Privacy Protection Act**

If you are a school, district or teacher in the United States and want your students who are under the age of 13 to create Actively Learn accounts, you agree that you are responsible for complying with the U.S. Children's Online Privacy Protection Act ("COPPA") and, to the extent applicable, The Family Educational Rights and Privacy Act ("FERPA"). This means you must notify those students' parents/guardians of the personally identifiable information Actively Learn will collect and obtain parental/guardian consent before your students establish accounts or use Actively Learn Services. When obtaining such consent, you must provide parents/guardians with a copy of our Privacy Policy. You must keep all consents on file and provide them to us if we request them.

policy. You must keep all consents on file and provide them to us if we request them.

## 6. Digital Millennium Copyright Act

If you are a copyright owner or an agent thereof and believe that any Content in Actively Learn Services infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing Actively Learn with the following information in writing (see 17 U.S.C 512(c)(3) for further detail):

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works at that site;
- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit Actively Learn to locate the material;
- Information reasonably sufficient to permit Actively Learn to contact you, such as an address, telephone number, and, if available, an electronic mail;
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner or its agent and is not permitted under the law as a "fair use" by educators for educational purposes; and
- A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

To notify us, please contact our copyright agent as follows: Copyright Agent, Actively Learn, 220 2nd Avenue S, Seattle, WA, 98104, email: [info@activelylearn.com](mailto:info@activelylearn.com). For clarity, only DMCA notices should go to the Copyright Agent; any other feedback, comments, requests for technical support, and other communications should be directed to Actively Learn customer service. You acknowledge that if you fail to comply with all of the requirements of this Section, your DMCA notice may not be valid.

## 7. Actively Learn Premium Service

Actively Learn Services are available either as a free service or as a paid service. The paid service is available as a "Premium Service." The Premium Service can be purchased with a check or current valid credit card (collectively, "Payment Method"), which is also required to purchase certain third-party copyright content in either our free or Premium Service.

Premium Services designed for individual users (currently the "Personal" and "Team" plan) can only be used by a single individual. Sharing of these accounts is prohibited.

### ***Billing***

By starting your applicable Premium Service, you are expressly agreeing that we are authorized to charge you one-time, monthly or annually, depending on your billing plan, at the then current rate, and any other charges you may incur in connection with your use of the applicable Premium Service. Please note that prices and charges are subject to change with notice. As used in these Terms, "billing" shall indicate either a charge or debit, as applicable, to your account. The fee will

be billed at the beginning of the paying portion of your membership. If you are on a Premium Service with a recurring billing plan (currently the "Personal" plan), you must use a valid credit card for your Payment Method and a fee will be billed to that Payment Method each month thereafter or each year thereafter, unless and until you cancel your membership. You will be billed on the calendar day corresponding to the commencement of your paying membership. Membership charges are fully earned upon payment. In the event your paying membership began on a day not contained in a given month, we would bill your Payment Method on the last day of such month. For example, if you started a monthly Premium Service on January 31st, your next payment date is February 28th and your Payment Method would be billed on that date. You acknowledge that the amount billed each month may vary from month to month for reasons that may include differing amounts due to purchases you--or in the case of School Premium Service, your agents--make of third party copyright content made available in Actively Learn Services, and you authorize us to charge your Payment Method for such varying amounts, which may be billed monthly in one or more charges. For certain Payment Methods, the issuer of your Payment Method may charge you a foreign transaction fee or related charges. Check with your bank and credit card issuers for details.

Service fees and charges are fully earned upon payment. PAYMENTS ARE NONREFUNDABLE AND THERE ARE NO REFUNDS OR CREDITS FOR PARTIALLY USED PERIODS. At any time, and for any reason, we may provide a refund, discount, or other consideration to some or all of our customers ("Credits"). The amount and form of such credits, and the decision to provide them, are at our sole and absolute discretion. The provision of credits in one instance does not entitle you to credits in the future for similar instances, nor does it obligate us to provide credits in the future, under any circumstance. We may change the fees and charges in effect, or add new fees and charges from time to time, but we will give you advance notice of these changes by email. If you want to use a different Payment Method or if there is a change in Payment Method, such as your credit card validity or expiration date, you may edit your Payment Method information by emailing us at [help@activelylearn.com](mailto:help@activelylearn.com). If your Payment Method reaches its expiration date and you do not edit your Payment Method information or cancel your account (see, "Cancellation" below), you authorize us to continue billing that Payment Method and you remain responsible for any uncollected amounts.

#### ***Ongoing Services for Premium Services with recurring billing plans (currently the "Personal" Plan)***

The Premium Service will continue unless and until you cancel your service or we terminate it. You must cancel your service before it renews for the next applicable period in order to avoid billing of the next month's or year's fees to your Payment Method. We will bill the fee to the Payment Method you provide to us during registration (or to a different Payment Method if you change your account information). Fees are fully earned upon payment.

#### ***Cancellation***

You may cancel the Premium Service at any time. WE DO NOT PROVIDE REFUNDS OR CREDITS FOR ANY PARTIAL-MONTH or PARTIAL-YEAR SERVICE PERIODS. To cancel, in settings click change plan or simply email us at [help@activelylearn.com](mailto:help@activelylearn.com).

### **8. Modifications to Service**

Actively Learn reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, Actively Learn Services (or any part thereof) with or without notice. You agree that Actively Learn shall not be liable to you or to any third party for any modification, suspension or discontinuance of Actively Learn Services. Actively Learn will not suspend or

discontinue Premium Service prior to the completion of the term or any paid portion of an applicable agreement to provide Premium Service.

## **9. Termination of Free Service**

You may discontinue your use of free Actively Learn Services at any time. You agree that Actively Learn may at any time and for any reason, including a period of account inactivity, terminate your access to Actively Learn Services, terminate the Terms, or suspend or terminate your account. In the event of termination, your account will be disabled and you may not be granted access to Actively Learn Services, your account or any files or other content contained in your account. Sections of these Terms relating to Termination, Indemnity, Disclaimer of Warranties, Limitations of Liability, Exclusions and Limitations and those relating to choice of law, severability and statute of limitations shall survive expiration or termination.

## **10. General Practices regarding Use and Storage**

You agree that Actively Learn has no responsibility or liability for the deletion or failure to store any Content and other communications maintained or transmitted by Actively Learn Services. For the Premium Service, we retain real-time database backups which allow us to restore the application database if Content or other communications are temporarily lost.

You acknowledge that Actively Learn may have set no fixed upper limit on the number of transmissions you may send or receive through Actively Learn Services or the amount of storage space used; however, we retain the right, at our sole discretion, to create limits at any time with or without notice.

Upon the termination of your use of Actively Learn Services, including upon receipt of a certificate or other legal document confirming your death, Actively Learn will close your account and you will no longer be able to retrieve content contained in that account.

## **11. Actively Learn Proprietary Rights**

You acknowledge and agree that Actively Learn Services and any necessary software used in connection with Actively Learn Services ("Software") contain proprietary and confidential information that is protected by applicable intellectual property and other laws and treaties.

Except as expressly authorized in writing by Actively Learn you agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on any Software that is protected by Actively Learn intellectual property rights.

Subject to the Terms, Actively Learn grants you a personal, non-transferable and non-exclusive right and license to use the object code of its Software; provided that you do not (and do not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the Software, unless such activity has been expressly authorized by Actively Learn in writing. You agree not to use modified versions of the Software, including (without limitation) for the purpose of obtaining unauthorized access to Actively Learn Services. You agree not to access Actively Learn Services by any means other than through the interface that is provided by Actively Learn for use in accessing Actively Learn Services except as specifically authorized in a separate written agreement.

Except as expressly authorized by Actively Learn in writing, you agree not to use, copy, imitate, or incorporate any trademark, service mark, trade dress, company name, or product name in a way that is likely to cause confusion among consumers. You also agree not to remove, obscure, or alter Actively Learn's or any third party's copyright notice, trademarks, or other proprietary rights notices affixed to or contained within or accessed in conjunction with or through the Actively Learn Services or Software.

## **12. Non-Commercial Use**

You agree not to reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purposes, any portion of Actively Learn Services, use of Actively Learn Services, or access to Actively Learn Services except as otherwise expressly provided in the Terms of Service or as specifically authorized in a separate written agreement.

## **13. Links**

Actively Learn Services may provide, or Actively Learn Services account holders or third parties may provide, links to other World Wide Web sites or resources in Base Content, Instructional Content, or otherwise. Actively Learn has no control over such sites and resources and you acknowledge and agree that Actively Learn is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any advertising, products, or other materials on or available from such sites or resources. You further acknowledge and agree that Actively Learn shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such goods or services available on or through any such site or resource.

## **14. Indemnity**

You agree to hold harmless and indemnify Actively Learn, and its subsidiaries, affiliates, officers, agents, employees, advertisers, licensors, suppliers or partners (collectively "Actively Learn and Partners") from and against any third party claim arising from your direct and intentional use of Actively Learn Services, violation of the Terms or any other actions connected with use of Actively Learn Services, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs and attorneys' fees, of every kind and nature. For a public entity purchasing Premium Service, the extent of these indemnification obligations may be limited by applicable state law. In such a case, Actively Learn will provide you with written notice of such claim, suit or action.

Actively Learn agrees to hold harmless and indemnify You from and against any third party claim arising from negligence or willful misconduct of Actively Learn, violation of the Terms or any other actions connected with Actively Learn Services, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs and attorneys' fees, of every kind and nature. In such a case, you will provide Actively Learn with written notice of such claim, suit or action.

## **15. Service Level Commitment for the Premium Service**

For the Premium Service only, Actively Learn provides a 99.9% guaranteed uptime Service Level Commitment for the Actively Learn Services. This Service Commitment does not apply to downtime: (i) that is caused by factors outside of our reasonable control, including any force majeure event or Internet access or related problems outside of Actively Learn's service infrastructure; (ii) that results from any actions or inactions of you or any third party; or (iii) that

results from your equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within our direct control). In the event of downtime, your sole remedy is a service credit for the downtime period calculated on a pro rata basis.

## **16. Disclaimer of Warranties**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

- YOUR USE OF ACTIVELY LEARN SERVICES IS AT YOUR SOLE RISK. ACTIVELY LEARN SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ACTIVELY LEARN AND PARTNERS EXPRESSLY DISCLAIM ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- ACTIVELY LEARN AND PARTNERS DO NOT WARRANT THAT (i) ACTIVELY LEARN SERVICES WILL MEET YOUR REQUIREMENTS, (ii) ACTIVELY LEARN SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF ACTIVELY LEARN SERVICES WILL BE ACCURATE OR RELIABLE, (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH ACTIVELY LEARN SERVICES WILL MEET YOUR EXPECTATIONS, OR (v) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED.
- ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF ACTIVELY LEARN SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.
- NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM ACTIVELY LEARN OR THROUGH OR FROM ACTIVELY LEARN SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS.

## **17. Limitation of Liability**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT ACTIVELY LEARN AND PARTNERS SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF ACTIVELY LEARN OR PARTNERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) RESULTING FROM: (i) THE USE OR THE INABILITY TO USE ACTIVELY LEARN SERVICES; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM ACTIVELY LEARN SERVICES; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON ACTIVELY LEARN SERVICES; OR (v) ANY OTHER MATTER RELATING TO ACTIVELY LEARN SERVICES.

## **18. Exclusions and Limitations**

NOTHING IN THIS AGREEMENT IS INTENDED TO EXCLUDE OR LIMIT ANY CONDITION, WARRANTY, RIGHT OR REMEDY WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED



WARRANTY, RIGHT OR LIABILITY WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED.

## **19. General Provisions**

### ***Entire Agreement***

The Terms (including any policies, guidelines or amendments that may be presented to you from time to time such as Program Policies and Legal Notices) constitute the entire agreement between you and Actively Learn and govern your use of Actively Learn Services, superseding any prior agreements between you and Actively Learn for the use of Actively Learn Services. You also may be subject to additional terms and conditions that may apply when you use or purchase certain other Actively Learn Services, affiliate services, third-party content or thirdparty software.

### ***Choice of Law and Forum***

The Terms and the relationship between you and Actively Learn shall be governed by the laws of the State of Washington without regard to its conflict of law provisions except when the Premium Service is purchased by a public entity that is bound by the choice of law and forum of their home state.

### ***Waiver and Severability of Terms***

The failure of Actively Learn to exercise or enforce any right or provision of the Terms shall not constitute a waiver of such right or provision. If any provision of the Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Terms remain in full force and effect.

### ***Statute of Limitations***

You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of Actively Learn Services or the Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred.

### ***No Third Party Beneficiaries***

You agree that, except as otherwise expressly provided in the Terms, there shall be no third party beneficiaries to the Terms.

### ***Notice***

You agree that Actively Learn may provide you with notices, including those regarding changes to the Terms, by email, regular mail, or postings on Actively Learn Services.

The section headings in the Terms of Service are for convenience only and have no legal or contractual effect.

*Last Updated: June 15, 2017 (see [changes from prior version dated Jan 17, 2016](#))*

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