



Service Agreement for Online Learning Environment and Professional Services

Effective January 15, 2012
Revised April 1, 2016
Revision 3



Agreement Terms and Conditions

This Services Agreement (this "Agreement") is made effective as of the **Official Signed Date** referenced on the Power Learning, Inc. Services Order document by the referenced **Client Name** (herein refer to as CLIENT) and **Power Learning, Inc.**, an Illinois company. In this Agreement, the party who is contracting to receive the services shall be referred to as CLIENT, and the party who will be providing the services shall be referred to as POWER LEARNING.

1. **OPPORTUNITY.** POWER LEARNING will provide technology services (collectively, the "Services") as defined in the POWER LEARNING Services Order document.
2. **PAYMENT FOR SERVICES.** POWER LEARNING will invoice CLIENT at the conclusion of the technology setup, along with expenses, if incurred, (in accordance with Exhibit A). All invoices are due upon receipt. All invoices shall contain, at a minimum, the following information: POWER LEARNING'S legal name, address, phone number, federal identification number, and description of technology product or service purchased. Failure to pay invoice within 15 days may result in suspension of technology access.
3. **TERM/TERMINATION.** This Agreement will be in effect for 12 months after the signed authorization of this service agreement unless terminated earlier by mutual consent or by either party as set forth in this Section. Either party may terminate the Agreement in the event that the other party has materially breached the Agreement and such breach has not been cured (or, if the breach is not capable of being cured, discontinued with appropriate changes to ensure that it is not repeated) within thirty (30) days of written notice of breach from the other party. Either party may terminate this Agreement immediately if the other party terminates or suspends its business as a result of bankruptcy, insolvency or similar event.
4. **RELATIONSHIP OF PARTIES.** It is understood by the parties that POWER LEARNING is an independent contractor with respect to CLIENT, and not an employee of CLIENT. CLIENT will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of POWER LEARNING. POWER LEARNING shall be responsible for reporting all Federal, State and local income and other taxes which may be due with respect with any amounts paid to POWER LEARNING.
5. **CONFIDENTIALITY.** Neither party will at any time or in any manner, either directly or indirectly, use for it personal benefit, or divulge, disclose, or communicate in any manner any information that is proprietary to the other party. Each party will protect such information and treat it as strictly confidential. This provision shall continue to be effective after the termination of this Agreement. Upon termination of this Agreement, the receiving party will

destroy or return to the disclosing party all records, notes, documentation and other items that were used, created, or controlled by the receiving party during the term of this Agreement.

6. ENTIRE AGREEMENT. This Agreement, including the attached Scope of Work, contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written.
7. SEVERABILITY. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
8. RESPONSIBILITIES. POWER LEARNING shall use its best efforts to provide learning technology services in accordance with the terms hereof, to keep CLIENT advised of the status of such services, to permit any representative duly authorized in writing by CLIENT to review and observe from time to time said technology services as are susceptible to such review, to provide CLIENT with such reports, descriptions, outlines, procedures and the like, as are appropriate to the nature of the services contemplated and to keep records of hours worked, which records CLIENT's duly authorized representative may examine upon reasonable notice to POWER LEARNING. If POWER LEARNING is granted a privileged account on CLIENT's system(s), it is subject to audit by CLIENT at any time. CLIENT shall use its best efforts to supply in a timely manner the internal resources needed to assist in defining scope, planned infrastructure changes, and critical business processes.
9. DELIVERABLES. Upon completion of services, CLIENT will have the right to use the deliverables of the Services, as defined in the Scope of Work. While providing services under this Agreement, POWER LEARNING will have access to CLIENT Intellectual Property. In addition, new Intellectual Property items may be defined or created by POWER LEARNING professionals during this engagement. Rights to all CLIENT Intellectual Property extensions or enhancements and all new Intellectual Property items defined during provision of the services defined in this agreement shall be the property of CLIENT. POWER LEARNING shall sign all documents necessary to protect the rights of CLIENT in such Intellectual Property. POWER LEARNING retains the right to use methods or processes developed during this engagement in accordance with other provisions of this Agreement.
10. THIRD PARTY MATERIALS. The parties understand that any work product delivered under this Agreement may include certain third-party hardware and/or software products. It is acknowledged by CLIENT that the cloud-based software use to deliver learning content is owned and supported by Oracle. CLIENT shall have 24/7 access to all content loaded or created within their provisioned Oracle

cloud technology. CLIENT shall also have access and ownership to all data collected within their provisioned Oracle cloud technology. POWER LEARNING makes no warranties or representations hereunder, express or implied, as to the quality, capabilities, operations, performance or suitability of any third-party hardware or software including the ability to integrate with any software developed for CLIENT, and the quality, capabilities, operations, performance and suitability of such third-party hardware or software lies solely with CLIENT and the vendor or supplier of that hardware or software.

11. POWER LEARNING PROPERTY. Notwithstanding the foregoing or any other provision in this Agreement, POWER LEARNING shall have all ownership (including intellectual and copyright) rights in and to all of the following and CLIENT shall not acquire any ownership interest (including any intellectual or copyright rights) of any kind in or to any of the following: (i) all information residing in POWER LEARNING owned databases; (ii) the name "POWER LEARNING" and all variations thereof and all trade names, trademarks and logos associated with the name "POWER LEARNING"; and (iii) all other intellectual property of POWER LEARNING not specifically developed for the CLIENT which may have been used in connection with the services and/or incorporated in the deliverables made for CLIENT.
12. SOFTWARE UTILIZATION. Through the expiration or termination of the Agreement, POWER LEARNING grants to CLIENT a limited, non-transferable, non-exclusive right to access and use the Software and Documentation for CLIENT'S exclusive use. The Software shall be made available to CLIENT as a service. Oracle will host and retain physical control over the Software and make such computer programs and code available only through the Internet for access, use and operation by CLIENT through a web-browser. Unless otherwise agreed to by POWER LEARNING or Oracle in writing, no provision under this Agreement shall obligate POWER LEARNING or Oracle to deliver or otherwise make available any copies of computer programs or code from the Software to CLIENT, whether in object code or source code form. Customer agrees that it shall not, except where applicable law prohibits such restrictions, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Software or Documentation, or access the Software or Documentation in order to build a similar or competitive product or service (or contract with a third party to do so). CLIENT may not remove or alter any of the logos, trademark, patent or copyright notices, confidentiality or proprietary legends or other notices or markings within the Software or Documentation.
13. HOSTING SERVICES AND TECHNICAL SUPPORT. Oracle shall host and maintain the Software and all Customer System Data, and provide technical support, data back-up, and disaster recovery services in accordance with Oracle's then-current policies and practices, which may be acquired from CLIENT'S POWER LEARNING contact ("Support Services"). Oracle reserves the right to make changes to the

policies, procedures and practices regarding Support Services and to make changes to its hosting and technical infrastructure, provided such changes do not materially degrade the overall level of the Support Services provided to Oracle and POWER LEARNING clients. All Oracle [cloud hosting policies](#) may be found on the Oracle website. These policies are set forth and non-negotiable.

14. UTILIZATION LIMITATIONS. If applicable, the Ordering Document will set forth a maximum employee count and the Software may not be used by or for the benefit of Customer and Affiliate employee populations (e.g., the employee populations of business units, geographies or legal entities to which the Software has been made available) in excess of the maximum employee count. For purposes of this clause, an employee is any distinct individual included in the payroll system of Customer or an Affiliate. If applicable, the Ordering Document will set forth a user limit or other allowed usage metric and use of the Software will be limited to the number and type of users listed in such Ordering Document or such other allowed usage metric listed in the Ordering Document. When a user limit is imposed, a user means an individual human being. User rights may be transferred in the event of termination or job change but may not be shared or used concurrently by more than one person at a time. Login credentials may not be shared or concurrently used by more than one person. Customer agrees to submit to reasonable audit of its compliance with any usage limits upon reasonable notice by Oracle not more than once per calendar year.
15. MUTUAL NON-SOLICITATION COVENANT. For a period of 12 months after the effective date of this Agreement, CLIENT will not directly solicit, induce or attempt to induce any current employee of POWER LEARNING active in the provision of services to terminate his or her employment or contract with POWER LEARNING for purposes of employment with CLIENT, its agents or contractors. The same consideration shall apply regarding the solicitation of CLIENT employees by POWER LEARNING. Notwithstanding the foregoing, neither party shall be precluded from hiring any employee, agent or contractor who (i) initiates discussions regarding such employment without any direct or indirect solicitation by the other party, (ii) responds to any public advertisement, or (iii) is contacted by a professional recruiter conducting a general search.
16. WARRANTY. The Products and/or Services to be delivered and/or performed by POWER LEARNING are in the nature of technology delivery, administration, and data reporting. POWER LEARNING shall deliver and perform the Products and/or Services in a professional, workmanlike manner, in accordance with standards generally accepted in the industry and in accordance with all applicable laws and regulations. Accordingly, POWER LEARNING warrants that its employees, agents and contractors possess the experience, knowledge, skills and competence necessary to deliver and perform the Products and/or Services. POWER LEARNING does not, however, warrant the results of such Products and/or Services. EXCEPT FOR THE FOREGOING WARRANTY, POWER LEARNING MAKES

NO FURTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, AMONG OTHERS, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE.

17. LIMITATION OF LIABILITY. POWER LEARNING entire liability for any cause whatsoever arising hereunder shall be limited to direct damages in an amount not to exceed the amounts paid to POWER LEARNING hereunder. In no event shall POWER LEARNING be liable for any incidental, indirect or consequential damages, including among others, lost profits, lost data or loss of use. POWER LEARNING shall not be held responsible for any delay or failure in performance hereunder caused in whole or in part by fire, flood, wind, storm, lightning, or similar act of God, or by embargo, acts of sabotage, terrorism, riot or civil unrest, internet outages, or mandatory compliance with any governmental act, regulation or request ("Force Majeure Events"). If a Force Majeure Event occurs and disrupts the services to be provided under this Agreement, the Agreement shall be deemed extended by the length of the Force Majeure Event.
18. INJUNCTIVE RELIEF FOR BREACH. The parties acknowledge and agree that a breach of any of the promises or agreements contained herein will result in an irreparable and continuing damage to the non-breaching party for which there will be no adequate remedy at law and that, in the event of such breach, the non-breaching party shall be entitled to injunctive relief or a decree to specific performance and such other and further relief as may be proper.
19. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois.