

WestNet LMS - HOSTED (SAAS) Terms of Service

This Agreement is made by and between Client ("Partner") and **WestNet Inc. d.b.a. WestNet Learning** ("WestNet Learning ") on Date of consent of site request. The parties may also be referred to individually as "Party," or together as the "Parties."

Whereas, WestNet Learning is the licensor of certain SaaS LMS site for use in Learning,

Whereas, Partner desires to utilize the WestNet Learning SaaS (hosted) LMS for use in Partner's Learning activities,

Now Therefore, the Parties agree as follows.

1. LICENSE

- A. License. WestNet Learning hereby grants Partner and its Customers a non-exclusive right to access and use the WestNet Learning LMS product ("SaaS Software") as defined in the attached LMS features PDF subject to the terms and conditions of this Agreement. WestNet Learning will provide the SaaS Software through the Learning Site for remote access and use by Partner and its Customers.
- B. Supplemental Products. WestNet Learning may offer additional products which work in conjunction with the WestNet Learning LMS product ("Supplemental Products"). Licensing for Supplemental Products must be purchased by Partner prior to their utilization. Unless specified otherwise in the purchase documentation, licensing for Supplemental Products is on a per LMS basis. In some cases the Supplemental Product functionality exists in the base product code, however, this inclusion does not preclude the need to obtain a license – e.g., e-Commerce. The price of applicable Supplemental Products shall be pursuant to terms negotiated between the parties and set forth in separate purchase documentation mutually agreed upon by the parties for each Supplemental Product.
- C. Customer. "Customer" shall be defined as an individual, employee or independent contractor that purchases services or products from Partner in connection with use of the LMS site. Partner is licensed to use the SaaS Software in the manner(s) listed below which have been initialed by WestNet Learning- this being defined as the "Purpose."
- D. WL Initials

____ JS ____ 1. Delivery of Partner owned content to Customers

____ JS ____ 2. Delivery of WestNet Learning and 3rd party owned content to Customers, which
content is aggregated and distributed by Partner under agreement with the content
owner

____ JS ____ 3. Delivery of Customer owned content, solely to Customer and/or Customer's
extended enterprise of vendors and/or customers _____

4. Other – Explain.

- E. Non-Exclusivity. This Agreement is non exclusive, and does not constitute a grant of any specific market or geographical area.

2. SUPPORT SERVICES

The following support services to the Partner detail the WestNet Learning Service Plan, in which the Partner is a participant for the duration of this Agreement ("Coverage Period"), for the WestNet Learning LMS product covered under this Agreement, and are included in the pricing set forth in the Fees/Royalties section:

- A. Ongoing Support. Partner may contact WestNet Learning Support Staff with product questions and request guidance via email at support@westnetlearning.com during Plan Coverage Period.

- B. WestNet Learning will offer support to users of the Learning Site:

The LMS site will have a WestNet Learning support access in the Admin section of the site . Users requiring support will be able to access the link and will have the following options for support.

Service Packs. If required, WestNet Learning will periodically release "Service Packs" that correct or improve SaaS software performance. These are made available to Partner at no charge.

- C. Point Releases. Periodically, WestNet Learning will release "Point Releases" to the software. These Point Releases can contain software corrections, improvements and/or possible new feature introductions. The changes to the software are typically more substantial than a Service Pack and therefore warrant an increment in the version sub-number (i.e. Version 2.0 to Version 2.1). These Point Releases are made available to Partner at no charge.
- D. Support Staff Hours. The WestNet Learning Support Staff is available from 9-5 MST (M-F, excluding WestNet Learning holidays). eTicket and email support 24/7 with response within 2 hours.
- E. Training. WestNet Learning offers online training. During the first year after upgraded to a Paid Service Plan, the licensee is given three (3) free seats in training via web conference sessions. The licensee can utilize these seats to accomplish Support/ Admin Representative training (defined below). The Partner may contact its WestNet Learning Sales Representative or Service Staff for scheduling training and for prices on additional training offerings.

Partner agrees to the following terms relative to maintaining the Service Plan set forth in this section.

- F. Support Representative. Should Partner upgrade to a Paid plan Partner then agrees to identify and certify a "Support Representative." This individual will be the primary support contact for all WestNet Learning Service Plan interaction. To be certified, the Support Representative must successfully complete both Instructor and System Administrator webinar training classes.

3. GENERAL

- A. Conduct. Neither Party shall undertake any acts injurious to the business or good will of the other Party.
- B. Independent Entities. Partner and WestNet Learning are independent contractors under this Agreement, and nothing herein shall be construed to create a partnership, joint venture, franchise or agency relationship between Partner and WestNet Learning. Neither Party has any authority to enter into agreements of any kind on behalf of the other Party.
- C. Insurance. WestNet Learning shall maintain during the term of this Agreement: [1] all required workers' compensation or similar insurance at state statutory limits with an A- rated carrier; and [2] comprehensive general liability insurance at least \$1 million per occurrence with an A- rated carrier. WestNet Learning shall promptly supply Partner with proof of such insurance.

Taxes. Partner shall be responsible for any sales or use taxes imposed on the SaaS Software licensed hereunder. However, WestNet Learning must pay taxes based on WestNet Learning income.
- D. Corrupt Practices. Each Party represents that it will not make any payment or transfer anything of value, directly or indirectly, to any government official or employee; to any officer, director, employee, or representative, or agent of any actual or potential Customer; or to any other person or entity if such payments would violate applicable laws.

4. TRADEMARKS

- A. Definition. "WestNet Learning Trademarks" means any and all current or future company names, product names, marks, logos, designs, trade dress and other designations or brands used by WestNet Learning in connection with its products and services and all marks similar thereto.
- B. License. WestNet Learning grants Partner the right to use the WestNet Learning Trademarks solely for the purpose of the SaaS Software, provided that Partner: [1] uses the appropriate WestNet Learning Trademarks for the corresponding SaaS Software; [2] identifies all WestNet Learning Trademarks are registered trademarks of WestNet Learning; [3] take reasonable steps to modify all objectionable uses of the WestNet Learning Trademarks; [4] complies with the then current WestNet Learning Trademark and Logo Policies. WestNet Learning reserves the right to revoke or limit the use of WestNet Learning Trademarks at any time upon reasonable notice. Non-Compliance with WestNet Learning Trademark and Logo Policies shall be considered a material breach of this Agreement.
- C. Ownership. Partner acknowledges that WestNet Learning is the sole owner of the WestNet Learning Trademarks and nothing herein shall grant to Partner any right or interest in the WestNet Learning Trademarks. Partner shall not register, or attempt to register, any WestNet Learning Trademarks or any marks confusingly similar thereto in any jurisdiction. If any third party claim is made or suit is brought against Partner alleging that a product licensed by WestNet Learning, including the SaaS Software, infringes any U.S. or Canadian patent, copyright, trademark, or trade secret, then WestNet Learning agrees to: (i) defend the claim or suit at its expense, as long as WestNet Learning is notified promptly in writing and is given authority and information required to defend; (ii) pay all costs, expense and all damages awarded to a third party against Partner, provided that WestNet Learning will not be responsible for any cost, expense, or compromise made by Partner without WestNet Learning Learning's consent, which will not be unreasonably withheld or unduly delayed

Limitations. Except as stated above, Partner is granted no right, title, license or interest in the WestNet Learning Trademarks. Partner acknowledges WestNet Learning rights in the WestNet Learning Trademarks and agrees that any and all use of the WestNet Learning Trademarks by Partner shall inure to the sole benefit of WestNet Learning. Partner agrees that it shall take no action inconsistent with WestNet Learning ownership of the WestNet Learning Trademarks and agrees not to challenge WestNet Learning rights in or attempt to register any of the WestNet Learning Trademarks, or any other name or mark owned or used by WestNet Learning or any mark confusingly similar thereto. If at any time Partner acquires any rights in, or any registration or application for, any of the WestNet Learning Trademarks by operation of law or otherwise, it will immediately, upon request by WestNet Learning and at no expense to WestNet Learning, assign such rights, registrations, or applications to WestNet Learning, along with any and all associated goodwill.

- D. Notification. Partner shall promptly notify WestNet Learning of any use by any third party of WestNet Learning Trademarks or any use by such third parties of similar marks which may constitute an infringement or passing off of WestNet Learning Trademarks. WestNet Learning reserves the right, in its sole discretion, to institute any proceedings against such third party infringers and Partner shall refrain from doing so itself. Partner agrees to use commercially reasonable efforts to cooperate fully with WestNet Learning in any action taken by WestNet Learning against such third parties, provided that all expenses of such action including Partners fees and expenses for its cooperation, shall be borne by WestNet Learning and all damages which may be awarded or agreed upon in settlement of such action shall accrue to WestNet Learning.

5. USER FEES AND ECOURSE LICENSES

- User Fees.

- Annual fee for 10 user licenses for the Free plan for initial term of 30 days (or any extension of free plan) is \$0
- Should Client “Partner” upgrade to a paid plan then Client “Partner” agrees to pay according to the terms of the specific paid plan after upgrading.

- A. Records. Each party shall, during this Agreement, and for a period of one year after the termination of this Agreement, or longer if so stipulated in any related contractual documents, or the parties respective records retention policy, maintain records relating to the contracts, invoices, accounts, and other transactions relating to the SaaS Software.
- B. Late Payments. Late payments or lack of payment when due, of any undisputed fees by Partner to WestNet Learning shall be considered a material breach of this Agreement.

6. DATA PROTECTION

- A. Partner Data.** For the purpose of this Agreement, "Partner Data" shall mean any materials, data and information provided by Partner or its Customers to WestNet Learning in the course of using the SaaS Software. As between the Parties, all Partner Data is owned or licensed by Partner. WestNet Learning shall (i) treat all Partner Data as Confidential Information in accordance with the confidentiality provisions under Section 8; (ii) use such Partner Data only as necessary to perform its obligations hereunder and not for any independent marketing or other activities; (iii) transmit such Partner Data only via secure means; and (iv) comply with all applicable privacy laws.
- B. Data Protection.** WestNet Learning shall maintain a data security program that includes appropriate technical, organizational and security measures designed to prevent the destruction, loss, unauthorized access or alteration of Partner Data in the possession of WestNet Learning and during WestNet Learning's electronic transmission and storage thereof (collectively, "Data Safeguards"). The Data Safeguards shall comply with any requirements or standards required by law. In the event WestNet Learning discovers or is notified of a breach or potential breach of security relating to Partner Data, WestNet Learning shall immediately (i) notify Partner of such breach or potential breach and (ii) investigate and, in the case of an actual breach remediate the effects of the breach. In the event of a breach attributable to an act or omission of WestNet Learning, as part of such remediation, WestNet Learning shall (y) take all actions at its cost and expense necessary to comply with laws relating to the notification of individuals or entities whose information may have been disclosed or accessed in connection with the breach, and (z) provide Partner with reasonable assurance that such breach shall not recur.

7. WARRANTY, SERVICE LEVEL AND LIMITATIONS

A. SaaS Software Warranty and Service Level.

WestNet Learning undertakes that the services outlined in this agreement will be performed in accordance with reasonable skill and care.

In addition, WestNet Learning specifically states that it is not responsible for any delays, delivery failures, or other damage other than as otherwise stated in this agreement, resulting from the transfer of data over communications networks and facilities, beyond the control of WestNet Learning, including the internet.

Service Level Agreement ("SLA") is a policy governing the use of the SaaS Service under the terms of this agreement. ("WestNet Learning") and users of WestNet Learning SaaS services ("Partner").

SERVICE COMMITMENT

WestNet Learning will use commercially reasonable efforts to make the SaaS software available with an Annual Uptime Percentage (defined below) of 99.9 during any calendar year (the "Service Commitment"). In the event the SaaS software does not meet the Service Commitment, Partner will be eligible to receive a Service Credit as described below.

DEFINITIONS

"Error Rate" means: (i) the total number of internal server errors returned by the SaaS software as error status "InternalError" or "ServiceUnavailable" divided by (ii) the total number of requests during that annual period. We will calculate the Error Rate for the SaaS account as a percentage for the calendar year. The calculation of the number of internal server errors will not include errors that arise directly or indirectly as a result of any of the SLA Exclusions (as defined below).

"Annual Uptime Percentage" is calculated by subtracting from 100% the average of the Error Rates from the 12 month cycle.

A "Service Credit" is a dollar credit, calculated as set forth below, that we may credit back to an eligible WestNet Learning SaaS account.

SERVICE CREDITS

Service Credits are calculated as a percentage of the total charges paid by Partner for WestNet Learning SaaS for the calendar year in which the error occurred in accordance with the schedule below.

Annual Uptime Percentage	Service Credit Percentage
Equal to or greater than 95.00% but less than 99.9%	2.5%
Equal to or greater than 90.9% but less than 94.99%	5%

WestNet Learning will apply any Service Credits (applicable for Paid plans only) directly to Partner SaaS Account. Service Credits shall not entitle Partner to any refund or other payment from WestNet Learning. A Service Credit will be applicable and issued only if the credit amount for the applicable calendar year is greater than one dollar (\$1 USD). Service Credits may not be transferred or applied to any other account. Unless otherwise provided in this agreement, Partner's sole and exclusive remedy for any unavailability or non-performance of the SaaS LMS Service or other failure by us to provide SaaS LMS Service is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLA or termination of Partner's use of the WestNet Learning SaaS software.

DEFINITIONS

To receive a Service Credit, client Partner must submit a request by sending an e-mail message to support@westnetlearning.com. To be eligible, the credit request must (i) include your account email address in the subject or body of the e-mail message; (ii) include, in the body of the e-mail, the dates and times of each incident of non-zero Error Rates that you claim to have experienced; (iii) include your server request logs that document the errors and corroborate your claimed outage (any confidential or sensitive information in these logs should be removed or replaced with asterisks); and (iv) be received by us within ten (10) business days after the end of the calendar year in which the errors occurred. If the Monthly Uptime Percentage applicable to the year of such request is confirmed by us and is less than 99.9, then we will issue the Service Credit to you for the next annual SaaS LMS billing cycle. Your failure to provide the request and other information as required above will disqualify you from receiving a Service Credit.

SLA EXCLUSIONS

The Service Commitment does not apply to free plans or any unavailability, suspension or termination of SaaS LMS Service, or any other LMS Service performance issues: (i) that result from Service Suspensions ;

(ii) caused by factors outside of our reasonable control, including any force majeure event or Internet access or related problems beyond WestNet Learning control; (iii) that result from any actions or inactions of you or any third party; (iv) that result 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); or (v) arising from our suspension and termination of your right to use SaaS Service in accordance with this agreement. If availability is impacted by factors other than those used in our calculation of the Error Rate, we may issue a Service Credit considering such factors in our sole discretion.

- B. **Limitation of Liability.** EXCEPT FOR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER AND DAMAGES ARISING UNDER SECTION 8 (CONFIDENTIALITY), IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE OR CHARACTER, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL, LOST PROFITS OR LOST REVENUES, IRRESPECTIVE OF WHETHER SUCH PARTY KNEW OR SHOULD HAVE KNOWN OR HAD BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, EXCEPT FOR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER AND DAMAGES ARISING UNDER SECTION 8 (CONFIDENTIALITY), IN NO EVENT SHALL EITHER PARTY'S LIABILITY UNDER THIS AGREEMENT EXCEED THE GREATER OF \$50,000.00 OR THE AMOUNT OF FEES PAID AND AMOUNTS DUE AND OWING (AND SUBSEQUENTLY PAID WHETHER AFTER THE EVENT GIVING RISE TO SUCH LIABILITY) BY PARTNER TO WESTNET LEARNING HEREUNDER DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY.
- C. **Partner Actions.** WestNet Learning shall have no obligation to any third party under any warranty given by Partner, its agents or employees. Partner shall not make any representation or warranty with respect to the WestNet Learning products.
- D. **Indemnification.** Each Party agrees to defend, indemnify and hold harmless the other Party from and against any and all losses, liability, claims, damages, penalties, costs, fees (including attorneys' fees) and expenses arising from or in connection with such Party's gross negligence or willful misconduct.

8. CONFIDENTIALITY

- A. **Confidential Information.** It is understood that this Agreement entails confidential information to be utilized exclusively by and between the Parties in accordance with this Agreement. For the purpose of this Agreement, "Confidential Information" shall mean all confidential and proprietary information of a Party disclosed to the other Party, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the Partner Data, any information or documentation concerning either Party's business or future products or plans that are learned by the other Party during the performance of this Agreement, or information Party desires to protect against unrestricted disclosure or competitive use. During the term of this Agreement, WestNet Learning and Partner will have access to and become acquainted with Confidential Information of each other. Each Party agrees not to disclose any Confidential Information received from the other in any form to any employees who do not have a specific need to use such information or to any outside party (including contractors) without the prior written consent of the other Party. All employees or contractors who receive such Confidential Information must be bound by written agreement not to disclose such information to any other party. Each Party acknowledges that the

unauthorized disclosure or use of Confidential Information of the other Party would cause irreparable harm and significant injury to the other Party that may be difficult to compensate. Accordingly, each Party agrees that the other Party will have the right to seek and obtain temporary and permanent injunctive relief in addition to any other rights and remedies it may have. The obligations of confidentiality shall not apply to information which [1] is in public domain at the time of disclosure, [2] has been released by the other Party without restrictions, [3] has been lawfully obtained by the disclosing Party from a third party under no obligation of confidentiality, or [4] is independently developed by employees of the receiving Party without access to the Confidential Information.

- B. Survival. The Parties' foregoing obligations to protect the confidentiality of Confidential Information shall survive any termination of this Agreement until such time as all Confidential Information of the disclosing Party becomes public or is made generally available through no action or inaction of the receiving Party.

9. TERM AND TERMINATION

- A. Term. This Agreement shall enter into effect on the date client Partner requests LMS site, and is effective for an initial term as outlined for the plan client Partner is registered for or has upgraded to. Thereafter, the agreement will automatically renew (excluding Free Plans), unless Partner notifies WestNet Learning in writing via email at support@westnetlearning.com least 30 days before the the next billing of the Paid plan client Partner is registered for.
- B. Termination. Either Party may terminate this Agreement [1] in the event the other Party materially breaches any provision of this Agreement, provided that non-breaching Party has given a breaching party notice of such material breach and there has been a failure to cure such material breach within thirty (30) days after receipt of notice; [2] in the event that the other uncured Party is the subject of a proceeding in bankruptcy, is placed in receivership, or enters into an arrangement for the benefit of its creditors. [3] In the event of any unavailability or non-performance of LMS system according to the requirements outlined in this contract not cured within 30 days of notification. Without limiting any remedies available to Partner, in the event that Partner terminates this Agreement pursuant to this Section 9.B, then WestNet Learning shall issue to Partner a pro-rata refund of any pre-paid fees for the remainder of the applicable term (excluding monthly paid plans).
- C. Rights. Upon termination of this Agreement for any reason, all rights granted to Partner shall immediately cease use of all SaaS Software, and each Party shall return to the other or destroy all copies of all Confidential Information of the other Party.
- D. No Compensation. Neither Party shall be liable to the other for damages, losses, or expenses of any kind or character on account of the termination of this Agreement, whether such damage, loss, or expense may arise from the loss of prospective Customers of Partner, or expenses incurred or investments made in connection with the establishment, development, or maintenance of Partner's business. Termination or expiration shall not affect any claim, demand, or liability of any party created or arising hereunder prior to such time.

10. FORCE MAJEURE

- A. Definition. "Force Majeure" shall mean any event or condition not insurable, or not reasonably

within the control of either Party which prevents in whole or in material part the performance by one of the Parties of its obligations hereunder or which renders the performance of such obligations so difficult or costly as to make such performance commercially unreasonable.

- B. Notice. Upon giving notice to the other Party, a Party affected by an event of Force Majeure shall be released without any liability on its part from the performance of its obligations under this Agreement, except for the obligation to pay any amounts due and owing hereunder, but only to the extent and only for the period that its performance of such obligations is prevented by the event of Force Majeure. The other Party may likewise suspend the performance of all or part of its obligations hereunder, including the obligation to pay any amounts owing during the event of Force Majeure, to the extent that such suspension is commercially reasonable.

11. ASSIGNMENT

- A. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other Party. Notwithstanding the foregoing, either Party may assign this Agreement, together with all rights and obligations hereunder, without the consent of the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its stock or assets that relate to this Agreement. Any attempt by a Party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, and their respective successors and permitted assigns.

12. MISCELLANEOUS

- A. Amendment. This Agreement shall not be deemed or construed to be modified, amended, rescinded, canceled or waived, in whole or in part, except by written amendment signed by the Parties hereto.
- B. Unenforceability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision shall be considered severable from this Agreement and the remaining provisions shall continue in full force and effect. The Parties will expend their best efforts to correct the provision in order to implement the closest intent of the Parties.
- C. Waiver. No failure by either Party to take any action or assert any right hereunder shall be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.
- D. Remedies. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either Party shall not constitute a waiver of the right to pursue other available remedies.
- E. Governing Law. The Agreement shall be governed by and construed in accordance with the laws of the state of Colorado, USA without regard to its conflicts of laws rules.

- F. Notices. Notices permitted or required to be given hereunder shall be deemed sufficient if given [1] by registered or certified mail, postage prepaid, return receipt requested, addressed to the addresses specified herein or such other addresses as the respective Parties may designate by like notice from time to time. Any notice shall be deemed effective when received by the addressee.

Notice to WestNet Learning shall be made to:

support@westnetlearning.com

Notice to Client Partner shall be made to that Partners email address as set forth in the LMS site request received by WestNet Learning on LMS site request from Client Partner.

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