

Terms of Service
Last revised: 3/6/24

TERMS OF SERVICE

These Terms of Service (“Terms”) establish the terms for the provision, use, and/or purchase of an Enterprise SaaS Service located at <https://app.stageslearning.com> (the “Service”). These Terms create an agreement between you (the “Customer,” “User,” “you,” or “your,”) and Stages Publishing, Inc. dba Stages Learning (the “Provider,” or “Stages Learning”) (collectively referred to as the “Parties”) and govern your access to and use of the Service.

By accessing or using the Service, you agree to be bound by these Terms and the Privacy Policy available here: <https://www.stageslearning.com/privacy-policy/>

BY ACCESSING OR USING THE SERVICE, YOU ACKNOWLEDGE AND AGREE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THESE TERMS. YOU REPRESENT AND WARRANT THAT YOU ARE AT LEAST EIGHTEEN YEARS OLD, HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ENTER INTO THIS AGREEMENT (ON BEHALF OF YOURSELF OR, AS APPLICABLE, AN INDIVIDUAL THAT YOU REPRESENT). IF YOU ARE ENTERING INTO THIS AGREEMENT OR OTHERWISE ACCESSING OR USING THE SERVICE ON BEHALF OF, OR WITHIN YOUR CAPACITY AS A REPRESENTATIVE, AGENT, OR PARENT OF AN INDIVIDUAL, YOU: (i) AGREE THAT THE TERMS “USER,” “YOU” AND “YOUR” AS USED HEREIN APPLY TO YOU AND THE INDIVIDUAL; (ii) REPRESENT AND WARRANT THAT YOU HAVE THE POWER, RIGHT, AUTHORITY, AND CAPACITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF SUCH INDIVIDUAL; AND (iii) AGREE THAT YOU AND THAT INDIVIDUAL HAVE JOINT AND SEVERAL LIABILITY HEREUNDER.

THESE TERMS LIMIT YOUR LEGAL REMEDIES AND PROVIDER’S LIABILITY TO YOU AND INCLUDE A CLASS ACTION WAIVER AND ARBITRATION CLAUSE. IF YOU DO NOT AGREE, DO NOT USE THE SERVICE

THE SERVICE

Enterprise SaaS. Stages Learning provides the Stages Learning Line Digital Education Platform, which facilitates learning for individuals on the autism spectrum and others with cognitive disabilities and/or language development challenges. The Service is offered under a software-as-a-service model. Under this model, the core features and functionality provided by the Service are provided – not as software that is licensed to the customer and then either installed within the Customer’s IT environment (on-premise software model) or installed on the Customer’s behalf on the Provider’s managed servers (an application service provider model) – but rather as a cloud-based site at which the Customer accesses the features and functionality provided by the Service (the “SaaS”). Any individual taking in the Service lessons or courses shall be referred to as a “Learner.”

Third Party Technology. Third party technology is integrated into the Service for such features as authentication and key management. Certain third-party technology may be subject to additional terms or conditions, which will be posted or linked on the Service in connection with such features (“Supplemental Terms”). Customer agrees that use of such features shall be governed by the Supplemental Terms which form a separate agreement between Customer and the third-party technology provider.

PERFORMANCE OF THE SERVICE

Documentation. Service documentation is provided as an online resource, available at <https://info.stageslearning.com/stages-learning-line> (the “Documentation”).

General Performance Standard. For the full term of the Customer’s subscription, the Service will perform as described in the Documentation (the “General Performance Standard”).

Process and Remedy for Failure of the General Performance Standard. If the Service fails to meet the General Performance Standard, the Customer may seek a remedy by providing a reasonably detailed notice of the failure, after which the Provider will have 30 days to correct the failure. If the Provider cannot do so, then the Customer may terminate its subscription for the Service immediately upon notice and receive a prorated refund for its prepaid but unused fees, measured from the date of the failure notice.

Disclaimers including the UCC and Implied Warranties. The Parties agree that these Terms are not a contract for the sale of goods, as those terms are defined under the Uniform Commercial Code, and that their intent is for the Uniform Commercial Code to not apply to this Agreement and the course of action it contemplates. PROVIDER IS NOT A HEALTHCARE PROVIDER OR COVERED ENTITY. PROVIDER MAKES NO CLAIMS ABOUT THE IDENTITY, LEGITIMACY, OR AUTHENTICITY OF THIRD PARTIES ON OR THROUGH THE SERVICE. THE PROVIDER DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

No Endorsement. Reference to any product, event, publication, service, or other of any third party by name, trade name, trademark, service mark, company name or otherwise, does not constitute or imply the endorsement or recommendation of such by Provider.

USE OF THE SERVICE

Use of the Service by the Customer. The Customer will only access the Service through its Documented access points and will only use the Service for its Documented purpose and subject to the limits established in this Agreement or any ordering documents (such as limits on Service scope, user counts, duration, or volume).

Customer Responsibility. You are responsible for protecting your account username and password, and for all activities that occur under your account. You should immediately notify us

of any unauthorized use of your account and if any information you provide relating to your account becomes inaccurate, incomplete or otherwise false or misleading.

Consent to Electronic Communications. You agree that we may send communications via email, including marketing communications. You may opt out of certain types of electronic communications through your account or by following the unsubscribe instructions in any communication you receive from Provider. However, you understand certain transactional messages (such as account and terms updates) may be unaffected if you choose to opt-out of marketing communications. To stop receiving these emails you may need to terminate your account.

FUTURE FUNCTIONALITY

Future Functionality. The Provider may make future improvements to the Service, which may include creating new features that are outside of the scope of Customer's subscription or sunseting features that are within the scope of Customer's subscription. The Customer will receive, at no additional charge, all future features and functionality that are sold to new customers as an element of the SKU purchased by the Customer. If the Provider sunsets material features within the scope of Customer's subscription, it will provide any successor features at no additional charge or, if no such successor features are available, then the Customer may terminate its subscription using the termination for breach procedure. Customer subscriptions are not contingent on the delivery of future features.

UPTIME & ISSUE MANAGEMENT

Uptime & Issue Management. The Service will be designed and managed to a reasonable uptime expectation. The Customer will have access to systems for reporting technical support issues to the Provider, and the Provider will maintain reasonable response and resolution times for reported issues.

SECURITY AND PRIVACY CONTROLS

Security and Privacy Controls. The Service will be hosted on enterprise-grade cloud infrastructure that provides industry-standard security and privacy controls. The Provider will further maintain and adhere to a security and privacy policy that provides for no less than industry standard processes and controls for the development and maintenance of the Service and for the collection, processing, and storage of data.

Privacy Policy. All data that meets the definition of Personal Information or Protected Health Information as provided in the Privacy Policy will be processed according to the terms established in the Privacy Policy.

PROFESSIONAL SERVICES

Professional Services. If the Service is complemented by professional services, such as implementation, customer support, customer success, and consulting services. All professional services will be provided according to industry standards.

BUSINESS CONTINUITY AND DISASTER RECOVERY

Continuity and Recovery Investments. The Provider will maintain business continuity and disaster recovery plans, infrastructure, and processes that conform to the industry standards for enterprise SaaS providers.

Force Majeure. A party's failure to perform will be excused for up to 10 business days when directly caused by an intervening event of a magnitude or unpredictability that renders performance impractical despite that party's continuity and recovery investments.

PROTECTION AGAINST UNWANTED CODE AND LICENSES

Protection Against Unwanted Code and Licenses. The Service will not expose the Customer to (i) malicious software code, such as code that is designed to secretly penetrate Customer's IT infrastructure or to create vulnerabilities within that infrastructure that can be exploited for such purpose or (ii) licensing terms that would require the Customer's technology to be disclosed or distributed to the public (such as "copyleft" open source licensing terms).

TERM AND TERMINATION

Term. This agreement is effective as of the date on which you clicked "I ACCEPT," or otherwise started using the Service. This Agreement will terminate naturally 30 days after the last day of the term set on the Customer's subscription or when you cease using the Service and terminate your account.

Termination for Breach of the Agreement. If a party breaches this Agreement, and if the breach is capable of being cured and is not a breach of the Intellectual Property, Confidentiality, or Use of the Service by the Customer, then the non-breaching party, prior to terminating for breach, will provide notice of breach and intended termination of (i) any one or more ordering documents or (ii) this Agreement and all ordering documents. If the breach is not cured within 30 days of the date of such notice, then the intended termination will become automatically and immediately effective.

Refunds Upon Termination. Upon termination, the Provider will issue a prorated refund to the Customer for prepaid but unused fees for a period measured from (i) in the case of termination for breach, the date of the breach notice or (ii) (when explicitly provided for herein) in the case of termination for convenience, the date of termination.

Payments Upon Termination. Upon termination, the Customer will issue a prorated payment for all amounts owed for a period measured up to (i) in the case of termination for breach, the

date of the breach notice or (ii) (when explicitly provided for herein) in the case of termination for convenience, the date of termination.

Survival of Terms. Rights and obligations established under these Terms that must survive termination in order to have their customarily intended effect (such as rights and obligations related to confidentiality, indemnification, limitation of liability and damages, data and intellectual property, Arbitration, and Class Action Waiver) will so survive.

INVOICES AND PAYMENTS

Fees and Invoices. Customer will pay the subscription fees listed on their account in accordance with those subscription terms. If applicable, the Provider will invoice the Customer for fees as stated in an ordering document executed between the parties, and the Customer will pay the fees according to those terms. If the Customer reasonably disputes some portion of the fees owed, it will pay all undisputed amounts and provide notice of the grounds for the dispute.

Taxes. The Customer is responsible for any duties, customs, fees, or taxes due on account of its use of the Service, including any withholding taxes based on the classification of the Service being rendered, excluding any taxes imposed by the United States on Provider's income. If Customer is required by law to withhold any amount from the Provider Fees, then the Customer will pay Provider such Fees as if no withholding were required and shall separately remit the withholding amount to the appropriate governmental authorities and provide evidence of such payment to Provider.

DATA OWNERSHIP AND USE

Customer Data. All data that is either (i) transmitted to the Service by or on behalf of the Customer or (ii) is added to a Customer-facing dataset within the Service through the use of the Service by or on behalf of the Customer (collectively, "Customer Data") is and will remain the property of the Customer. Provider has no obligation to screen, edit or monitor Customer Data, but reserves the right to delete, remove or suspend Customer Data it deems inappropriate or in violation of these Terms.

Personal Information. All data that meets the definition of Personal Information is and will remain the property of the User and processed according to the Privacy Policy.

Aggregated and Anonymized Data. Customer Data that has been modified so as to be attributable neither to the Customer nor to any personally identified individual or that is aggregated so as not to be attributable to a single person ("Aggregated and Anonymized Data"), will be the property of the Provider.

Usage Data. Data generated by the Service as a record of its use, such as system logs, is and will remain the property of the Provider, and the Provider may retain and continue to use Usage Data after the termination of this Agreement.

INTELLECTUAL PROPERTY

The SaaS. The SaaS (including, for example, its algorithms, calculations, organization, look and feel, and the underlying software code) is and will remain the sole property of the Provider, and the Provider is and will remain the sole owner of all intellectual property embodied or practiced by the SaaS. The Customer is hereby granted a non-exclusive, limited license to access the SaaS through its documented access points and to use its documented functionality, for the duration of the term and to the limits of the scope described in an Order.

Reports. Documents generated by the Service and made available for download by the Customer through the Service (each, a "Report") may be retained and used by the Customer for any purpose, subject to the Customer's confidentiality commitments. The Provider grants the Customer a non-exclusive, limited, perpetual license to (with regard to copyrights embodied by the Report) copy, prepare derivative works of, display, transmit, perform, and distribute the Report and (with regard to patents practiced through use of the Report) to use the Report, in all instances only as may be necessary for the Customer to utilize the Report.

Feedback. Suggestions for improvements to any element of the Service that are provided by the Customer will be provided without restriction and will not operate to grant the Customer an ownership interest in any intellectual property embodied or practiced by the Service. If a conveyance of intellectual property rights (such as an assignment or license) is required to achieve this result, the Customer will grant such a conveyance.

Reservation of Rights. Each party reserves all intellectual property rights not expressly granted in this Agreement.

CONFIDENTIAL INFORMATION

Relationship to NDA. If the Parties have previously executed a nondisclosure agreement, then the terms related to confidential information established in this Agreement will supersede that nondisclosure agreement as of the Effective Date.

General Definition of Confidential Information. "Confidential Information" is defined to include all information, regardless of the medium through which it is conveyed, that is provided by one party to the other in relation to this Agreement and that a reasonable industry participant would deem likely to be confidential.

Exclusions from Confidential Information. Confidential Information is defined to exclude information that the receiving party acquired through means other than a disclosure by the disclosing party, unless the receiving party knew or should have known that the availability of such information was due to misappropriation or misuse.

Use and Protection of Confidential Information. A receiving party will use the Confidential Information of the disclosing party only as necessary to perform its obligations and exercise its rights under this Agreement and will use reasonable care to protect such Confidential

Information. At the termination of this Agreement, or upon the disclosing party's request, the receiving party will destroy the disclosing party's Confidential Information that is then in its possession.

Legally Compelled Disclosure. If the receiving party reasonably anticipates that it will be legally required to disclose Confidential Information, it will use its best efforts: (i) to timely notify the disclosing party; (ii) to limit the disclosure, such as by seeking a protective order in relation to the Confidential Information disclosed.

Trade Secrets. The receiving party's obligation to maintain the confidentiality of information marked as the disclosing party's trade secrets will survive the termination of this Agreement, enduring until such time as the information no longer satisfies the requirements of a trade secret.

Stipulation Regarding Preliminary Injunctions and Temporary Restraining Orders. The parties stipulate that the unauthorized use or disclosure of Confidential Information would result in immediate and irreparable injury, loss, or damage to the disclosing party.

INDEMNIFICATION

Definition of Indemnification. To "Indemnify" is defined to mean (i) to defend against all third-party claims (construed broadly, so as to include, for example, complaints and causes of action both when filed and when threatened) and regulatory actions (construed broadly, so as to include investigations and disciplinary actions by any government entity with the power to investigate or impose a penalty of any kind) and (ii) to pay all amounts (construed broadly, so as to include, for example settlements, judgments, fines, and attorneys fees awarded under all available theories of liability and damages) owed to such third-party claimants or regulators.

Procedure. A party seeking to be Indemnified will provide timely notice to the Indemnifying party, although untimely notice will relieve the Indemnifying party of its obligations only to the extent that the delay has prejudiced its ability to defend the claim. The Indemnifying party will have the right to control the defense, including the right to reach a settlement with the claimant; however, the Indemnified party will have a right to participate through its own counsel at its own expense and the Indemnifying party will not enter into a settlement that requires the Indemnified party to pay any amount or admit to any liability without the written consent of that Indemnified party.

The Customer's Indemnifiable Claims. The Provider will Indemnify Customer for:

- i) infringement of a patent or copyright, provided that the infringement arises through the Customer's licensed use of the Service, either alone or (when the Provider would be liable for indirect or contributory infringement) in combination with other technology or processes
- ii) the Provider's intentional misconduct or reckless conduct (even when not a breach of the Agreement)

The Provider's Indemnifiable Claims. The Customer will Indemnify the Provider for:

- i) the Customer's violation of law
- ii) the Customer's intentional or reckless conduct (even when not a breach of the Agreement)

LIMITATION OF LIABILITY

Standard Limitations on Types of Liability. Except for a Party's obligation to Indemnify or liability arising out of a Party's intentional or reckless conduct, each party will be liable to the other for direct damages only. As such, the following types of damages will be excluded, regardless of the underlying theory of recovery: indirect damages, consequential damages, special damages, punitive damages, lost profits, lost reputation, and the cost of replacement services.

Standard Limitation on Total Amount of Liability. Except for a Party's obligation to Indemnify or liability arising out of a Party's intentional or reckless conduct, neither party's total liability to the other (aggregated across all claims and causes of action) will exceed the fees paid or payable by the Customer in the subscription year (or, if fees are assessed on a basis other than a subscription, the calendar year) in which transpired the events on which the claim is based, or if not such fees exist, one hundred US Dollars (\$100).

CLASS-ACTION WAIVER

Waiver of Class or Consolidated Actions. ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THESE TERMS MUST BE ARBITRATED OR LITIGATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS BASIS. CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR LITIGATED JOINTLY OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. Notwithstanding any other provision of these Terms, disputes regarding the interpretation, applicability, or enforceability of this waiver may be resolved only by a court and not by an arbitrator. If this waiver of class or consolidated actions is deemed invalid or unenforceable, neither you nor we are entitled to arbitration; instead all claims and disputes will be resolved in a court as set forth in these Terms.

SUBSTANTIVE LAW AND FORUM FOR DISPUTES

Substantive Law. These Terms and all disputes or claims (including procedural issues) between the parties are governed by the laws of California, excluding California's conflict of laws rules.

Forum. Disputes will be decided in binding arbitration by a panel of three arbitrators, with the Customer and the Provider each selecting one member of the panel and those two members selecting the third member of the panel. Any state or federal court with jurisdiction may be used to (i) seek preliminary injunctive relief or (ii) enforce a judgment by the arbitrators.

AFFILIATES

Customer Affiliate Defined. A “Customer Affiliate” is defined as an entity that controls, that is controlled by, or that is under common control with the Customer.

Customer Affiliates Obligations and Rights. Customer Affiliates may utilize the Service under Orders executed by the Customer.

SUBCONTRACTORS

Subcontractor defined. A “Subcontractor” is defined as a third party that (i) provides personnel to the Provider, when such personnel have access to the Customer’s data or (ii) provides the professional services delivered to the Customer as a complement to the Service.

Performance Requirements. The Provider will only use Subcontractors who (i) the Customer has approved in writing; (ii) have passed industry standard quality and security reviews; and (iii) are bound to contracts that are reasonably calculated to ensure performance according to the Provider’s obligations under this Agreement. Notwithstanding the use of Subcontractors, the Provider will remain liable for any failure by a Subcontractor to perform according to the Provider’s obligations under this Agreement.

Approved Subcontractors. The Customer hereby provides a general approval of the use of Subcontractors.

ASSIGNMENT

Assignment by the Provider. The Provider may not assign this Agreement or any ordering document without the Customer’s written consent, and any attempted assignment made without such consent will be void. The Customer will not unreasonably withhold consent to an assignment that is (i) made to an Affiliate or (ii) made to a successor entity in the course of a merger or acquisition. Examples of reasonable grounds for withholding consent are (i) when the successor entity is a direct competitor of the Customer; (ii) when the successor entity and the Customer have litigated a dispute against each other; or (iii) when the Customer has a reasonable belief that the Affiliate or successor entity will be unable to perform its obligations under the Agreement.

Assignment by the Customer. The Customer may not assign this Agreement or any ordering document without the Provider’s written consent, and any attempted assignment made without such consent will be void. The Provider hereby provides written consent to an assignment that is (i) made to an Affiliate or (ii) made to a successor entity in the course of a merger or acquisition.

MISCELLANEOUS

Attorneys Fees and Costs. An authority that decides a dispute between the Customer and the Provider will have discretion to award the prevailing party attorneys fees and costs.

Insurance. Upon the Customer's reasonable request, the Provider will deliver to the Customer a copy of its current Certificates of Insurance. And the Provider will maintain insurance that is at least commensurate with the coverage described in such certificates.

No Waiver. A party's delay in exercising its rights under this Agreement will not be deemed a waiver of its rights, and a party's waiver of any right under this Agreement will not be deemed a waiver of any other right.

INTERPRETATION OF THE AGREEMENT

Complete Agreement. These Terms contain the complete agreement between the Parties in relation to its subject matter, superseding all prior or contemporaneous written or oral contracts. Excluding Provider's ordering document executed by both parties and Provider invoices, terms in a business form, purchase order ("PO"), or other ordering document used by either party will not amend or modify this agreement; any such documents are for administrative purposes only. Neither party enters into this agreement based on any representation not stated herein. Provider reserves the right to update these Terms at any time, without prior notice to you, and any changes will become effective immediately upon posting. Provider will notify you by e-mail via the primary email address specified on your account or through a notice on the website home page of any material changes to these Terms. Your continued use of our Service following posting of changes constitutes your acceptance of such terms. The effective date of these Terms, and the last revised date is identified at the top of the page.

Severability. If any part of this Agreement (including entire provisions or any part thereof) is determined to be unenforceable (for any reason) but the remainder of the Agreement contains lawful distinct objects, then the unlawful part of the Agreement will be severed and the lawful objects will remain enforceable.

If you have any questions about these Terms, please contact us via email at support@stageslearning.com.