



Liberty Common <> Learnmetrics Service Agreement

Liberty Common School | May 10, 2018

Proposal prepared for: **Casey Churchill | Liberty Common School**

Proposal prepared by: rickie@learnmetrics.com

This Learnmetrics Service Agreement (“Agreement”) is made and entered into between You (“Liberty Common School”) and Learnmetrics, and is effective as of the date of acceptance by You.

1. MODIFICATION

This Agreement may only be amended in a writing executed by both parties.

2. INTELLECTUAL PROPERTY RIGHTS

Except as expressly set forth herein, Learnmetrics (and its licensors, where applicable) will retain all intellectual property rights relating to the Services or any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by You relating to the Services, and You hereby make all assignments necessary to achieve the foregoing. Learnmetrics reserves all rights not expressly granted to You hereunder.

As part of the Services, You may, directly or indirectly, provide Learnmetrics with access to certain information about or related to You and/or the school or district

You are affiliated with (“School”), including without limitation personally identifiable and/or performance data regarding the students and staff thereof (all of the foregoing, “Data”). You hereby grant Learnmetrics a revocable, perpetual, non-exclusive, worldwide, royalty-free right and license to use the Data solely in connection with providing and improving its products and Services; provided, however, Learnmetrics will not disclose any Data to a third party in any manner that personally identifies any individual person or School, except as You’ve requested or authorized Learnmetrics in writing to do so through the Services. For avoidance of doubt, the foregoing sentence shall allow Learnmetrics to include aggregated Data (that does not identify You, Your school, or any personally identifiable information of Your students or staff individually) in reports provided to other customers.

In connection with the Services, Learnmetrics may, or may permit You to, generate reports using or in connection with the Data (“Reports”). For avoidance of doubt, Reports are part of the Services and are

owned by Learnmetrics, and You hereby make all assignments necessary to achieve the foregoing. The Services may allow You to make Data and/or Reports available to other users of the Services (such groups or individuals you've selected through the Services, "Users"). You hereby grant such Users an irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to use and exercise all rights in such Data and Reports.

You may request, through Account Administration or a separate writing executed by both parties (a "Statement of Work," which is incorporated herein by this reference), that Learnmetrics perform certain professional services in connection with the Services (the "Professional Services"). Anything conceived or reduced to practice in connection with the Professional Services is owned by Learnmetrics. Any work product resulting from the Professional Services that is provided to You by Learnmetrics is part of the Services. You hereby grant Learnmetrics all rights, licenses, and permissions necessary and/or useful in connection with its performance of the Professional Services.

The Family Educational Rights and Privacy Act ("FERPA") requires U.S. Schools that receive certain federal funds get prior written consent from a parent or guardian of a minor student before disclosing any educational records regarding such student ("Educational Records") to third parties. You hereby designate Learnmetrics (including its employees, contractors, and agents) as an "other school official" under FERPA, who have a "legitimate educational interest" in using and accessing such Educational Records. Learnmetrics warrants and represents that it is familiar with the requirements of FERPA and the United States Department of Education regulations promulgated thereunder. Learnmetrics will comply with such requirements to the extent they are applicable to the Services and Learnmetrics performance hereunder and will ensure compliance with such requirements by its subsidiaries, affiliates, contractors, and subcontractors.

3. PRIVACY & DATA

Learnmetrics takes your privacy seriously. Learnmetrics will only use the Reports and Data it receives (directly or indirectly) from You hereunder to exercise its rights and/or fulfill its obligations hereunder, including without limitation to exercise the Intellectual Property Rights above. We will not use the Data or Reports for any purpose that is not disclosed in these Terms, including, without limitation, for any targeted advertising.

If you want to delete Data you have provided to Learnmetrics, you may do so through the Website or by submitting an email request to support@learnmetrics.com giving us your name and contact information and the data you would like us to delete. Learnmetrics will confirm that the request has come from a verified administrator from your School or Organization. Once confirmed, your data will be removed from our Services within 1 business day and permanently deleted within 5 business days using industry standard data deletion practices.

Notwithstanding anything to the contrary herein, the Data you provide to Learnmetrics is, and always will remain, your property and under your control. When you stop using the Services, we will delete all student records in our possession using industry standard data deletion practices.

You are responsible for the content of your Data. You can retrieve an individual student's information using the Services dashboard. If you get a request from a student or a parent/guardian to change or delete any student data, you must make the changes to the source data within your systems. The Service refreshes data on a regular basis. If we are contacted by students, parents or guardians, we will direct their inquiries to you.

4. ACCOUNTS AND REGISTRATION

To access the Service you must register for an account (the "Account"). When you register for an Account, you may be required to provide us with some information about yourself (such as your e-mail address or other contact information) and making some representations and warranties with respect to your authority for providing student information from your Subscribing Organization (the "User Information"). You agree that the User Information that you provide to us is and will be, to the best of Your knowledge, accurate and up-to-date at all times. You understand that we are relying on the truthfulness of your User Information and your User Information is provided pursuant to these Terms as a legally binding agreement. When you register, you will also be asked to provide a password. You are responsible for maintaining the confidentiality of your password. You agree to accept responsibility for all authorized activities that occur under your Account. If you have reason to believe that your Account is no longer secure for any reason (for example, in the event of a loss, theft or unauthorized disclosure or use of your password), then you agree to promptly notify us at support@learnmetrics.com.

5. SERVICES

Subject to all terms and conditions of this Agreement, Learnmetrics grants You a limited, non-exclusive, non-sublicensable, royalty-free, non-transferable license to access and use the Services that You have selected in connection therewith, through the online registration and account maintenance processes ("Account Administration"), for Your internal, non-commercial, educational purposes. The Services are subject to modification, restriction, or suspension from time to time at Learnmetrics' sole discretion, for any purpose deemed appropriate by Learnmetrics (including if You exceed any agreed upon usage caps Learnmetrics opts to place on certain Services).

6. BY USING THE SERVICE YOU AGREE NOT TO:

6.1 rent, lease, loan, sell, resell, sublicense, distribute or otherwise transfer the licenses granted herein or visual interfaces, graphics, design, compilation, information, computer code (including source code or object code), products, software, services, and all other elements of the Service provided by Learnmetrics;

6.2 post, upload, or distribute any defamatory, libelous, or inaccurate Information or other content;

6.3 post, upload, or distribute any Information or other content that is unlawful or that a reasonable person could deem to be objectionable, profane, offensive, indecent, pornographic, harassing, threatening, embarrassing, distressing, vulgar, hateful, racially or ethnically offensive, or otherwise inappropriate;

6.4 impersonate any person or entity, falsely claim an affiliation with any person or entity, or access the Service accounts of others without permission, forge another persons digital signature, misrepresent the source, identity, or content of information transmitted via the Service, or perform any other similar fraudulent activity;

6.5 delete the copyright or other proprietary rights on the Service or any Information;

6.6 make unsolicited offers, advertisements, proposals, or send junk mail or spam to other users of the Service. This includes, but is not limited to, unsolicited advertising, promotional materials, or other solicitation material, bulk mailing of commercial advertising, chain mail, informational announcements, charity requests,

and petitions for signatures;

6.7 use the Service for any illegal purpose, or in violation of any local, state, national, or international law, including, without limitation, laws governing intellectual property and other proprietary rights, and data protection and privacy, or the collection, storage, transmission, or access of educational records;

6.8 defame, harass, abuse, threaten or defraud users of the Service, or collect, or attempt to collect, personal information about users or third parties without their consent;

6.9 use the Service for any commercial purpose other than the internal business purposes of maintaining and administering school records without our consent;

6.10 remove, circumvent, disable, damage or otherwise interfere with security-related features of the Service or Information, features that prevent or restrict use or copying of any content accessible through the Service, or features that enforce limitations on the use of the Service or Information;

6.11 reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Service or any part thereof (including any app), except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation;

6.12 modify, adapt, translate or create derivative works based upon the Service or any part thereof, except and only to the extent the foregoing restriction is expressly prohibited by applicable law; or

6.13 intentionally interfere with or damage operation of the Service or any user's enjoyment of it, by any means, including uploading or otherwise disseminating viruses, adware, spyware, worms, or other malicious code.

7. TRADEMARKS

The Learnmetrics name and logo and all related names, logos, product and service names, designs and slogans are trademarks of Company or its licensors. You must not use such marks without the prior written permission of Company. All other names, logos, product and service names, designs and slogans on the

Company Site are the trademarks of their respective owners. Learnmetrics will not use any of Your trademarks, trade names, logos or other brand marks without Your prior written consent. No party shall issue any press release or make any other public announcement regarding the entry of the parties into this Agreement or the provision of the Services or Software without the prior written consent of the other party.

This Agreement does not give either party ownership rights or interests in the other party's trade name or trademarks.

8. SECURITY

The security of Data is of the utmost importance to Learnmetrics. Every Learnmetrics employee participates in training on the importance of and methods for protecting student records. Training consists of how to remain compliant with federal and state regulations (e.g . FERPA), Learnmetrics policies, and general security posturing to protect student data (including techniques such as Two Factor Authentication, Drive Encryption, creating and managing strong passwords, etc). Developers peer-review code to make sure changes adhere to best practices for security. Administrators are knowledgeable of security practices and harden the infrastructure with necessary patches, monitor security resources for advisories and vulnerabilities, and scan the environment and application to ensure that student information remains secure.

Learnmetrics has procedures in place that are designed to stop threats that may expose personally identifiable information, restore Services to full functionality, document and take proactive steps to ensure the incident cannot be repeated. Learnmetrics will also preserve necessary evidence for investigation by security professionals and law enforcement as appropriate. In the unlikely event of an unauthorized disclosure of records, Learnmetrics will follow its Security Incident Response Procedure(which is hereby incorporated by reference), which articulates how to report the problem to internal and external stakeholders. The notification process includes any information that can identify which customers and students may have been impacted, the data that may have been accessed, and steps to prevent the incident from happening again as appropriate.

9. FEES AND PAYMENT

You understand and agree that fees applicable to the Services and those incurred in connection with the

Professional Services as set forth in the applicable Statement of Work. All fees are quoted in United States dollars.

Certain Services carry subscription fees ("Subscription Fees"). Subscription Fees will be due on an annual basis (the "Subscription Term"). Before the beginning of each Subscription Term during the term of this Agreement, Learnmetrics will invoice You (or, if You've provided a credit card number through Account Administration, will bill that credit card) for the applicable Subscription Fees due for the following Subscription Term. Invoices for Subscription Fees must be paid by the beginning of the Subscription Term or within thirty (30) days after Your receipt thereof, whichever is later.

Fees for Professional Services shall be paid within thirty (30) days after Your receipt of an invoice therefor, or as otherwise set forth in the applicable Statement of Work.

Unless otherwise agreed by You and Learnmetrics in writing, all fees are non-refundable for any reason, including without limitation if this Agreement terminates prior to the end of a Subscription Term for which You have pre-paid Subscription Fees. All amounts due hereunder shall be paid in United States Dollars within the United States. Conversion of foreign currency to United States Dollars shall be made at the conversion rate existing in the United States (as reported in the Wall Street Journal) on the first working day of the calendar month during which the applicable payment is due.

If the payment information You have provided is incorrect, incomplete, You are late paying any invoice, or Learnmetrics is otherwise unable to complete a transaction or collect timely payment due to Your error or omission, any payment due hereunder that is so delayed shall bear interest at the rate of one percent (1%) per month or the highest rate allowed by applicable law, whichever is less.

10. TERM AND TERMINATION; SUSPENSION

This Agreement shall remain in full force and effect while You use the Service in strict accordance with the terms, conditions, and limitations of this Agreement. Either party may terminate this Agreement for any reason or for no reason upon written notice to the other party (email sufficing). Learnmetrics will notify You in writing of Your material non-compliance with these terms and may suspend Your access to the Services and the performance of any Professional Services if Learnmetrics reasonably believes in its sole discretion that

You have materially breached any of the terms of this Agreement and You have not cured such breach within a reasonable amount of time. If we terminate this Agreement (except in the event of a material breach of the Agreement by You), we will refund to you a prorated portion of your fees based on the date of termination.

Upon termination of this Agreement for any reason, Learnmetrics will, upon Your request, use commercially reasonable efforts to provide You with limited assistance to transition the Data stored on the Services to a third party or other repository designated by You. Learnmetrics will not be obligated to provide any such transition assistance (a) at any time following the two (2) month anniversary of the effective date of termination, or (b) in excess of fifteen (15) man hours, in the aggregate.

Upon termination of this Agreement, Your right to use and/or access the Services shall terminate, and Learnmetrics will cease performance of any Professional Services. The following provisions shall survive termination of this Agreement: Sections 2, 9 (as it relates to payment obligations incurred prior to termination), and 10-17 (inclusive). Notwithstanding the foregoing, after termination of this Agreement, You may continue to use Reports created by You, using only Your own Data, that You have downloaded prior to the effective date of termination, solely in accordance with all restrictions herein.

11. WARRANTIES; WARRANTY DISCLAIMER

THE SERVICE IS PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS, WITHOUT WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED. THE LEARNMETRICS ENTITIES SPECIFICALLY (BUT WITHOUT LIMITATION) DISCLAIM (i) ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT; (ii) ANY WARRANTIES ARISING OUT OF COURSE-OF-DEALING, USAGE, OR TRADE; (iii) ANY WARRANTIES THAT THE INFORMATION OR RESULTS PROVIDED IN, OR THAT MAY BE OBTAINED FROM USE OF, THE SERVICE WILL MEET YOUR REQUIREMENTS OR BE ACCURATE, RELIABLE, COMPLETE, OR UP-TO-DATE; AND (iv) ANY WARRANTIES WHATSOEVER REGARDING ANY PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL ADVERTISED, MADE AVAILABLE, OR REFERRED TO YOU THROUGH THE SERVICE. YOU ASSUME ALL RISK FOR ALL DAMAGES, INCLUDING DAMAGE TO YOUR COMPUTER SYSTEM, MOBILE DEVICE OR LOSS OF DATA THAT MAY RESULT FROM YOUR USE OF OR ACCESS TO THE SERVICE. ANY CONTENT, MATERIALS, INFORMATION OR SOFTWARE DOWNLOADED, USED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK. SOME

JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES IN SOME CIRCUMSTANCES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

12. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR (i) ANY DAMAGES RESULTING FROM A PARTY'S BREACH OF ITS PRIVACY OR FERPA OBLIGATIONS HEREUNDER, (ii) A PARTY'S INDEMNIFICATION OBLIGATIONS, OR (iii) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY (OR ITS LICENSORS OR SUPPLIERS) BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES RESULTING FROM YOUR ACCESS TO OR USE OF, OR INABILITY TO ACCESS OR USE, THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR ANY OTHER LEGAL THEORY, WHETHER OR NOT THE THE PARTIES HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE. YOU SPECIFICALLY ACKNOWLEDGE THAT THE LEARNMETRICS ENTITIES ARE NOT LIABLE FOR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF YOU AND THAT THE RISK OF INJURY FROM THE FOREGOING RESTS ENTIRELY WITH YOU. FURTHER, THE LEARNMETRICS ENTITIES WILL HAVE NO LIABILITY TO YOU OR TO ANY THIRD PARTY FOR ANY THIRD-PARTY CONTENT UPLOADED ONTO OR DOWNLOADED FROM THE SITE OR THROUGH THE SERVICE BY YOU.

EXCEPT FOR (i) ANY DAMAGES RESULTING FROM A PARTY'S BREACH OF ITS PRIVACY OR FERPA OBLIGATIONS HEREUNDER, (ii) A PARTY'S INDEMNIFICATION OBLIGATIONS, OR (iii) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING FROM OR RELATED TO THE USE OF THE SERVICE EXCEED THE GREATER OF (i) THE AMOUNTS YOU HAVE PAID TO LEARNMETRICS FOR ACCESS TO AND USE OF THE SERVICE GIVING RISE TO SUCH LIABILITY IN THE TWELVE (12) MONTHS PRIOR TO THE CLAIM, OR (ii) \$100. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN LEARNMETRICS AND YOU.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY IN CERTAIN CIRCUMSTANCES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

13. INDEMNIFICATION

You agree that you will be personally responsible for your use of the Service, and you and your Subscribing Organization agree to defend, indemnify and hold harmless Learnmetrics and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (collectively, the “Learnmetrics Entities”) from and against any and all third party claims, liabilities, damages, losses and expenses, including reasonable attorneys’ and accounting fees and costs, arising out of or in any way connected with (i) your misuse of the Service; (ii) your material violation of the Terms or any representation, warranty, or agreements referenced herein, or any applicable law or regulation; or (iii) your violation of any third party intellectual property right, publicity, confidentiality, property or privacy right. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with our defense of such claim.

Learnmetrics shall defend, indemnify and hold harmless

Customer and its affiliates from and against any and all third party claims, losses, and liabilities (including, without limitation, reasonable attorneys’ fees and costs), regardless of the form of action, arising out of or in connection with a claim that the Services used within the scope of this Agreement infringes upon a patent, copyright, or other proprietary or intellectual property right. Learnmetrics will pay all costs, expenses, settlements, damages and attorney fees attributable to such claim against the Customer, provided that the Customer promptly notifies Learnmetrics in writing of the claim or notice of claim, and that Learnmetrics has complete control of the defense and/or settlement of such claim (provided that Learnmetrics may not settle any claim unless it unconditionally releases Customer of all liability). If the Service(s) are adjudged to so infringe, or in Learnmetrics’ opinion is likely to become the subject of such a claim, Learnmetrics shall, at its option, either: (i) modify that Service to make it non-infringing, (ii) obtain a license for Customer’s continued use of the Services, or (iii) terminate Customer’s subscription for that Service upon 30 days’ written notice and refund Customer any fees paid for that Service. Learnmetrics shall not be required to indemnify Customer in the event the alleged infringement: (a) is based on information furnished by Customer, or (b) arises from Customer’s material breach of its obligations set forth in this Agreement.

14. NO CLASS ACTIONS

YOU AND LEARNMETRICS AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Learnmetrics agree otherwise, the applicable court or trier of law may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If this Section 14 is found to be unenforceable, then the entirety of this Section 14 shall be null and void and, but the other Sections and terms and conditions of the Terms will remain in full force and effect.

15. GOVERNING LAW AND JURISDICTION

These Terms, whether interpreted in a court of law or in arbitration, shall be governed by the laws of the State of Illinois as they apply to agreements entered into and to be performed entirely within Illinois by Illinois residents, and without regard to conflict of law principles. To the extent that any lawsuit or court proceeding is permitted hereunder, you and Learnmetrics agree to submit to the personal and exclusive jurisdiction of the state courts and federal courts located within the Cook County, Illinois for the purpose of litigating all such claims or disputes.

16. MISCELLANEOUS

The Terms and any other agreements expressly incorporated by reference herein, constitute the entire and exclusive understanding and agreement between you and Learnmetrics regarding your use of and access to the Service. Neither party may assign or transfer the Terms or respective rights hereunder, in whole or in part, by operation of law or otherwise, without the other party's prior written consent. The failure to require performance of any provision shall not affect our right to require performance at any time thereafter, nor shall a waiver of any breach or default of the Terms constitute a waiver of any subsequent breach or default or a waiver of the provision itself. Use of paragraph headers in the Terms is for convenience only and shall not have any impact on the interpretation of particular provisions. In the event that any part of the Terms is held to be invalid or unenforceable, the unenforceable part shall be given effect to the greatest extent possible and the remaining parts will remain in full force and effect.

17. INSURANCE

Learnmetrics represents and warrants that it will maintain in place and effective during the term of the Agreement the minimum insurance coverage(s) required for Your suppliers, as outlined in the attached Exhibit 1 and incorporated into this Agreement.

18. WCAG

Any web content used or developed for You or for the Services provided to You herein must comply with current WCAG 2.0 Level AA Guidelines wherever applicable.

19. SECURITY AGREEMENT

The Security Agreement, as outlined in the attached Exhibit 2, are hereby incorporated into this Agreement by reference.

20. QUESTIONS

If you have questions regarding these Terms of Service, contact us at 1-312-971-3245 or support@learnmetrics.com.

Pricing

Learnmetrics Insight Annual Cost Per Site

\$5,000.00

\$5,000.00 x 1 year

Total

TOTAL:	\$5,000.00
---------------	-------------------

EXHIBIT 1

Currently Held Supplier Insurance Requirements

Learnmetrics shall procure and maintain during the life of this contract, at its sole cost and expense, commercial general liability insurance to protect Learnmetrics from claims for damages of personal injury and property damage. Coverage shall include products and completed operations and contractual liability insuring the obligations assumed by Learnmetrics under this Agreement. Learnmetrics shall maintain minimum limits of liability of at least:

Minimum Limits of Insurance

1. Commercial General Liability policy on an occurrence form:

\$1,000,000 each occurrence bodily injury and property damage,

\$1,000,000 personal and advertising injury,

\$1,000,000 products and completed operations aggregate,

\$2,000,000 general aggregate.

2. **Automobile liability:**

\$1,000,000 combined single limit per accident for bodily injury and property damage.

3. Worker's Compensation:

Coverage as required by law.

4. Employer's Liability:

\$500,000 Bodily injury by accident.

\$500,000 Disease-Each Employee.

\$500,000 Disease-Aggregate.

5. Technology Errors and Omissions Liability Insurance in a minimum amount of \$2,000,000 per occurrence and \$2,000,000 aggregate combined single limit, including coverage for unauthorized access, and violation of information handling. If this insurance is written on a "claims-made" basis, Learnmetrics shall maintain this insurance continuously through the term of the agreement and at least three years after its termination. If the "claims-made" coverage is terminated, Learnmetrics shall purchase "tail" or "extended reporting" coverage so that the period to report claims under this insurance shall be extended by at least three years.

EXHIBIT 2

This Exhibit is hereby incorporated and made part of the attached Agreement between Learnmetrics and You, and provides a list of system security requirements which are agreed to by both Parties.

1. **Your Designated Security Contact**

Contact: Casey Churchill

Email: cchurchill@libertycommon.org

Phone number:

(If a call to the above number results in a transfer to voicemail, leave a message and we'll call you back promptly)

Should You wish to change the Designated Security Contact, You must notify Learnmetrics in writing.

2. Security Incident Response

"Security Incident" is a security-relevant system event in which the system's security policy is disobeyed or otherwise breached.

In addition to their standard Security Incident Response Procedure, Learnmetrics will notify Your Designated Security Contact of any Security Incident relevant to the Your use of the provided services or Your data provided to Learnmetric.

If Your IT Security determines any security incident to be of sufficient severity, Your IT Security may request that Learnmetrics suspend access to the affected systems or data until the underlying cause of the incident is resolved to Your satisfaction.

3. Security Issue Management

"Security Vulnerability" is a flaw or weakness in a system's design, implementation, or operation and management that could be exploited to violate the system's security policy.

Learnmetrics will notify Your Designated Security Contact of newly discovered security vulnerabilities within any products or services supplied by Learnmetrics as part of this agreement within a commercially reasonable time following Learnmetrics becoming aware of them. This notification will be done via email communication which will include the details of the possible risk and an action plan for resolution of the vulnerability, as described below, if not already resolved.

In the event of a critical security vulnerability determined to be directly applicable to Your use of the contracted product(s) or service(s), Learnmetrics will contact Your Designated Security Contact by e-mail or telephone. Telephone notification does not supersede or relieve Learnmetrics from the obligation to provide the detailed e-mail notification described above.

If security issues are discovered or reasonably suspected by You, Learnmetrics shall assist You in performing an investigation to determine the nature of the issue. In the event that said investigation determines that an actual security vulnerability exists, Learnmetrics will develop an action plan for resolving the vulnerability as described below.

Learnmetrics will provide to You an action plan for resolution of security vulnerabilities. Each action plan should include the following information:

- **Problem statement(s), including early evaluation of possible resolution**
- **Confirmation, when possible, that Learnmetrics can reproduce the problem**
- **Problem status**
- **Actions required for resolution**
- **Who needs to perform the actions (where "who" may refer to Learnmetrics, You, third parties, etc.)**
- **Projected date for resolution.**

4. **Encryption**

Learnmetrics agrees that the supplied product(s) or service(s) either directly support, or minimally don't

conflict with Your policies that require that all network communications containing student records, protected health information, personally identifiable information, or system administration credentials will be encrypted using industry standard encryption mechanisms implemented through widely used and tested libraries and utilizing at least 128 bits of complexity for symmetric encryption or 2048 bits for asymmetric key based encryption.

5. **Best Practices**

Learnmetrics agrees to provide secure products and services by following generally accepted industry best practices, including but not limited to:

- **Applying and providing all relevant security fixes in a timely manner**
- **Use of secure coding techniques and tools for development**
- **Using a source code control system that authenticates and logs the team member associated with all changes to the software baseline and all related configuration and build files**
- **Coding defensively and implementing management controls to prevent vulnerabilities such as those identified by the SANS Top 25 Software Errors and the OWASP Top Ten web application security vulnerabilities as well as testing to verify security against such well-known threats**

6. **Malicious Code**

Learnmetrics agrees that neither software provided to You nor software utilized by the Learnmetrics shall contain any code that does not support a software requirement and weakens the security of the application, including computer viruses, worms, time bombs, back doors, Trojan horses, Easter eggs, or all other forms of malicious code.

7. Security Breach Notification

Learnmetrics agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of Confidential Information or personally identifiable information or other event requiring notification. In the event of a breach of any of Learnmetrics's security obligations, or other event requiring notification under applicable law, Learnmetrics agrees to:

1. Notify Your Designated Security Contact by telephone and e-mail of such an event as soon as commercially reasonable but not later than within 24 hours of discovery, and
2. Assume responsibility for informing all such individuals in accordance with applicable law, and
3. Consult and coordinate with You to create mutually agreed upon text for any such notifications, and
4. Bear any/all costs related to breach or intrusion or unauthorized access to confidential or personally identifying information entrusted to Learnmetrics deemed to be the fault of Learnmetrics, and
5. Indemnify, hold harmless and defend You and Your trustees, officers, and employees from and against any claims, damages, or other harm related to such Security Breach Event.

8. Security of the Hosting Environment

"Hosting Environment" means the hardware, software, Internet access and bandwidth, and physical environment used to provide the contracted for services.

You recognize that Learnmetrics may engage one or more third party providers of data center hosting services to provide some or all of the Hosting Environment. However, it is Learnmetrics's responsibility to insure that any such third party complies with the terms of this agreement.

Learnmetrics agrees with the following in regard to the Hosting Environment used to provide the service(s) proposed to You:

- The Hosting Environment is designed, operated, and managed in accordance with generally accepted industry best practices for power, HVAC, fire detection and suppression, and physical

security.

- There has been no security incident related to the Hosting Environment within the past 12 months.
- Learnmetrics assumes responsibility for the physical security of the facilities provided as part of this agreement.
- Only authorized persons will be allowed physical access to these facilities, all physical access will be monitored and logged, and such access logs may be made available to You upon request and in the event of a Security Incident.
- Learnmetrics has implemented off-site backup practices and management policies which will prevent the loss or disclosure of any of Your data assets under their stewardship in the event of a disastrous disruption of service within the Hosting Environment.
- Any secondary locations used for business continuity or disaster recovery have security policies and practices in effect which are equivalent or better than those used within the primary, or production, Hosting Environment.
- That the security controls for the Hosting Environment are satisfactory to achieve the control objectives stated within the applicable security policy as represented by an unqualified opinion from the auditor for their most recent SSAE 16 Type 2 engagement.

9. Capacity Planning

Learnmetrics acknowledges it is its responsibility to determine whether the provided services, Hosting Environment, and their combination will meet Your capacity, performance, or scalability needs. You are responsible for notifying Learnmetrics of any changes in Your business environment or processes which You reasonably anticipate may result in a requirement for additional capacity to support changes in demand that may significantly increase Internet traffic, transaction volumes, data storage requirements, or otherwise increase system resource utilization.

10. Unrelated Use

Learnmetrics agrees that the Hosting Environment will be operated and managed in such a way that no other use of the Hosting Environment unrelated to that of Yours, e.g. any sharing of facilities with other of Learnmetrics's customers, may adversely impact the confidentiality, integrity, or availability of Your data residing within the Hosting Environment or the services being provided by Learnmetrics to You.

11. End of Agreement Data Handling

Learnmetrics agrees that upon termination of this Agreement it shall erase, destroy, and render unrecoverable all of Your data and certify in writing that these actions have been completed within 30 days of the termination of this Agreement or within 7 days of the request of an agent of University, whichever shall come first. At a minimum, a "Clear" media sanitization is to be performed according to the standards enumerated by the National Institute of Standards, Guidelines for Media Sanitization, SP800-88, Appendix A (see <http://csrc.nist.gov/>).

The following option(s) have been accepted:

Pricing	\$5,000.00
Total:	\$5,000.00

This proposal is signed on **May 14, 2018** by **keith churchill**

keith churchill