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You should only download templates as you need them and are using them in a project. "Stockpiling" templates is not allowed. If, upon our review and sole discretion, your account is determined to be "stockpiling" then we will cancel it.

Also, if you purchased a 1-user license, then only one designer is allowed to access and download templates. Also, only 1 designer is allowed to use the templates to create content. If you want other designers/developers to have access then they should obtain licenses as well.

## **Overview**

By using our product and subscribing to our Template Library, you agree to the following terms:

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You may only use these downloaded assets while operating under a current subscription to the library. Once your subscription has expired and/or is canceled you must immediately delete any downloaded assets that are not currently embedded in existing content. You do NOT need to remove assets from content that is currently part of a course/content. You may continue to edit and maintain templates that are currently in existing content.

Any new features, enhancements, tools or resources that augment the current Library, shall be subject to the Terms of Use. Continued use of the Library after any such change shall constitute your consent to such changes. Violation of any of the terms below will result in the termination of your account.

## Use of Library by You

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You must provide your legal full name, a valid email address, and any other information required by ELB Learning in order to complete the signup process.

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You must be at least 17 years of age to use this Service.

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Accounts registered by “bots” or other automated methods are not permitted.

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Though highly unlikely, ELB Learning reserves the right at anytime and from time to time to modify or discontinue, temporarily or permanently, the Library or any part thereof, with a 30-day notice. You agree that ELB Learning shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Library. Any unexpended or unearned subscription fees paid by the customer at the time of cancellation shall be refunded immediately upon termination or discontinuance.

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Technical support is provided at no charge to paying accounts. It may not be provided to accounts in the free trial stage, at ELB Learning's discretion.

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You may not sublicense, assign, or transfer this license to anyone else without prior written consent from ELB Learning.

## **Payment, Upgrading, Downgrading Terms**

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All fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes.

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For any upgrade or downgrade in plan level, the credit card that you provided will be automatically charged the new rate on your next billing cycle. You will be asked to verify this charge before hand.

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Downgrading your Service may cause the loss of content, features, or capacity of your Account. ELB Learning does not accept any liability for such loss.

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You understand that the technical processing and transmission of the Service, including your content, may be transferred unencrypted and involve transmissions over various networks and changes to conform and adapt to technical requirements of connecting networks or devices.

## **Renewals**

Monthly and annual renewals will automatically be billed to the credit card on file. If you desire to terminate your service, then you must send an email to [support@elblearning.com](mailto:support@elblearning.com). (Refer to the section, "Cancellation and Termination" for more information). If the credit card on file is no longer valid ELB Learning will attempt to contact the contact person on the user account. If the service is not paid for within 5 business days of the renewal date the service/account will be suspended until payment is made.

## **Cancellation and Termination**

You are solely responsible for properly canceling your account. To cancel your account, send an email to [support@elblearning.com](mailto:support@elblearning.com). You agree that ELB Learning has no responsibility or liability for the deletion or

failure to store any content maintained or transmitted by the Service, or to provide any particular type or amount or quality of storage. If you cancel the Service before the end of your current paid up month, your cancellation will take effect immediately and you will not be charged again. **Upon your cancellation, no credits are given for unused days in a monthly plan or months unused in an annual plan.**

ELB Learning, in its sole discretion, has the right to suspend or terminate your account and refuse any and all current or future use of the Service, or any other ELB Learning service, for any reason at any time. Such termination of the Service will result in the deactivation or deletion of your Account or your access to your Account, and the forfeiture and relinquishment of all content in your Account. In the event of Service termination or cancellation, provisions of these Terms of Service related to the following shall survive: Indemnity, Privacy, Proprietary Rights, Appropriate Content, Exclusion of Warranties and Limitation of Liability. For the protection and safety of all of our customers, ELB Learning reserves the right to refuse service to anyone for any reason at any time, with or without notice.

### **Login and Users**

If you purchase a “single designer” license your login may only be used by one person—a single login shared by multiple people is not permitted. Each person that is downloading and/or building content using the assets should have a unique user account.

### **Terms of Account Security and Legal Activities**

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Your use of the Service is at your sole risk. The service is provided on an “as is” and “as available” basis.

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You are responsible for maintaining the security of your account and password. ELB Learning cannot and will not be liable for any loss or damage from your failure to provide ELB Learning with accurate information or to comply with security obligations.

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You agree to immediately notify ELB Learning of any unauthorized use of your password or account, or any other breach of security.

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You are responsible for your own conduct. You are also responsible for all content posted and activity that occurs under your account, even when content is posted by others who have accounts under your account.

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You may not use the Service for any illegal or unauthorized purpose. You must not, in the use of the Service, violate any laws in your jurisdiction (including but not limited to copyright laws, trademark laws, patent laws, other intellectual property or industrial property laws, privacy laws, data export laws, and laws regarding libel and defamation).

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You agree not to engage in any activity that interferes with or disrupts the Service, or the servers and networks connected with the Service.

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You agree not to reproduce, duplicate, copy, sell, trade, resell, or exploit for any commercial purposes, any portion of the Service, use of the Service, or access to the Service without the express prior written permission of ELB Learning.

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You must not modify, adapt or hack the Service or modify another website so as to falsely imply that it is associated with the Service, ELB Learning, or any other ELB Learning service. You must not upload, post, host, or transmit unsolicited email, SMSs, or “spam” messages.

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You must not transmit any worms or viruses or any code of a destructive nature.

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If your bandwidth usage/ downloads significantly exceeds the average bandwidth usage (as determined solely by ELB Learning) of other ELB Learning customers on your same account level, we reserve the right to immediately disable your account or throttle your file hosting until you can reduce your bandwidth consumption.

Verbal, physical, written or other abuse (including threats of abuse or retribution) of any ELB Learning customer, employee, member, or officer will result in immediate account termination.

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You understand that ELB Learning uses third party vendors and hosting partners to provide the necessary hardware, software, networking, storage, and related technology required to run the service. ELB Learning does not warrant that (i) the service will meet your specific requirements, (ii) the service will be uninterrupted, timely, secure, or error-free, (iii) the results that may be obtained from the use of the service will be accurate or reliable, (iv) the quality of any products, services, information, or other material purchased or obtained by you through the service will meet your expectations, and (v) any errors in the service will be corrected.

### **Indemnification**

You agree to indemnify, defend, and hold harmless ELB Learning, its officers, directors, employees, agents, licensors and suppliers (collectively the "Service Providers") from and against all losses,

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### **Proprietary Rights**

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You agree not to access the Library by any means other than through the interface that is provided by ELB Learning for use in accessing the Service. It is ELB Learning's policy to respond to notices of alleged infringement that comply with the United States' Digital Millennium Copyright Act or other applicable law. To learn more or to submit a notice, please contact [ELB Learning](#) on the website.

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Entire Agreement. The Terms of Service (including any policies, guidelines or amendments that may be presented to your form time to time) constitute the entire agreement between you and ELB Learning and govern your use of the Service, superseding any prior agreements between you and ELB Learning for the use of the Service. You also may be subject to additional terms and conditions that may apply when you use or purchase certain other services, third-party content or third-party software.

Choice of Law and Forum. The Terms of Service and the relationship between you and ELB Learning shall be governed by the laws of the State of Utah without regard to its conflict of law provisions. You and

ELB Learning agree to submit to the personal and exclusive jurisdiction of the courts located within or nearest to Utah County, Utah.

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

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

No Third Party Beneficiaries. You agree that, except as otherwise expressly provided in these Terms of Service, there shall be no third party beneficiaries to the Terms of Service.

Notices. You agree that ELB Learning may provide you with notices, including those regarding changes to the Terms of Service, by email, regular mail, or postings on the Service. Your notices to ELB Learning must be sent by an email, which is acknowledged by a reply from ELB Learning, or by a courier service which provides delivery confirmation.

Assignment. ELB Learning may assign this contract, in whole or in part, at any time with or without notice to you. You may not assign this contract, or any part of it, to any other party. Any attempt by you to do so is void. Instead, you may cancel your access to the Service. The other party may then establish a Service account and enter into a contract with ELB Learning.

Miscellaneous. The section headings in the Terms of Service are for convenience only and have no legal or contractual effect. Questions about the Terms of Service should be sent to Andrew at ELB Learning dot com.

If you have licensing questions please [contact us](#).

### **Icon Library Subscribers**

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### **Customizable Courseware**

#### **IMPORTANT READ CAREFULLY:**

This End User License Agreement (the "Agreement"), is between "You" (the user of the CUSTOMIZABLE COURSEWARE if purchased on an individual basis); or the company purchasing licenses on behalf of its employees and "ELB Learning" means ELB Learning. In the event this license is purchased by a company on behalf of its employees, the person agreeing to the terms and conditions set forth herein



represents that they are authorized to bind the company and that such company is liable for the acts and omissions of all of its employees. You agree that use of the Customizable Courseware in any regards constitutes agreement to all terms listed herein. By agreeing to these terms, you are also agreeing to the ELB Learning Privacy Policy.

You understand that ELB Learning can change the general terms of service, separate Buyer and Seller terms, and/or the privacy policy by posting changes to the website at <http://library.elblearning.com/terms>. Your ongoing use of the ELB Learning Customizable Courseware indicates that you accept any changes to these terms.

BY DOWNLOADING THIS CUSTOMIZABLE COURSEWARE AND BY USING THIS CUSTOMIZABLE COURSEWARE, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND CREATE A BINDING CONTRACT BETWEEN YOU AND ELB LEARNING.

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DEFINITIONS. The following definitions and/or terms shall only apply if the requisite products are expressly named and licensed via the email which contained the link to this Agreement:

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"Library License" shall mean a license model which allows You to select a defined number of courses (the "Library") for a specified organization size. You are entitled to updates, upgrades, and additions to the course or any of it's modules. Additionally, with respect to a license term of greater than one year, the library and source files may remain with You upon renewal of the yearly subscription with. Library and all title and rights contained therein are the sole property of ELB Learning regardless of the percentage of change or customization that occurs within the courses after purchase the Term of this license. In the event that ELB Learning updates a course contained in Your Library License during an annual term, You will be able to download all new course material with no additional fee.

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If the Customizable Courseware is licensed by a company on behalf of its employees, You shall ensure that only employees expressly licensed shall access the Customizable Courseware. You shall maintain records of all use and copying of the Customizable Courseware and assignment of all login identifications used to access the Customizable Courseware. ELB Learning shall have the right to examine such records and to audit Your access to verify compliance with this agreement.

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3.

**TERM AND TERMINATION.** This license agreement is in effect for your lifetime. This license is non transferrable and resides with you or your company.

4.

TAXES. The license fees due for the Customizable Courseware do not include taxes. You shall be responsible for payment of all applicable taxes, however designated or incurred, in connection with this agreement, including without limitation, state and local excise, sales, withholding and use taxes and any other applicable governmental assessments. If You fail to pay the applicable tax, then ELB Learning may pay such tax on Your behalf and seek reimbursement from You.

5.

CONFIDENTIALITY. The Customizable Courseware contains confidential trade secret information belonging to ELB Learning, and you may use the Customizable Courseware only pursuant to the license set forth herein. In addition, you may not disclose the Customizable Courseware to any third party.

6.

PUBLICITY You agree, if requested, to supply your logo for inclusion on the ELB Learning website and printed marketing materials; to provide a customer testimonial for use on the ELB Learning website and printed marketing materials; and to provide such other marketing measures as separately agreed between the parties in writing.

7.

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10.

GOVERNING LAW. This License is governed by the laws of the state of Utah, without reference to its conflict of laws provision. Both parties submit to the exclusive venue of the courts sitting in Utah County, Utah.

11.

COMPLIANCE WITH LAWS. You will comply with all applicable international, federal, state and local laws and regulations in use of the Customizable Courseware hereunder, including, without limitation, all US export regulations. You may not assign this Agreement in whole or in part, without the advanced written consent of ELB Learning.

12.

NO WAIVER. The failure or delay by either party in exercising any right or remedy hereunder shall not operate as a waiver of such right, power or remedy. Waiver by either party of any default shall not waive any prior, concurrent or subsequent defaults by the other party.

13.

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### **Authoring Tools — Lectora and CenarioVR — Subscribers**

1.

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6.



User Conduct. You may use the Website for lawful purposes and in accordance with these Terms. You specifically agree to not use the Website:

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In any way that violates any applicable federal, state, local or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries) (“Laws”).

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For the purpose of exploiting, harming or attempting to exploit or harm minors in any way, by exposing them to inappropriate content, asking for personally identifiable information or otherwise.

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To send, knowingly receive, upload, download, use or re-use any material which does not comply with these Terms, our Privacy Policy, or the Laws.

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To transmit, or procure the sending of, any advertising or promotional material, including any “junk mail”, “chain letter” or “spam” or any other similar solicitation.

.

To impersonate or attempt to impersonate ELB Learning, an ELB Learning employee, another user or any other person or entity (including, without limitation, by using e-mail addresses or user names associated with any of the foregoing.

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To engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the Website, or which, as determined by us in our sole discretion, may harm ELB Learning or users of the Website or expose us or them to liability.

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In any manner that could disable, overburden, damage, or impair the Site or interfere with any other party's use of the Website, including their ability to engage in real-time activities through the Website.

.

Use any robot, spider or other automatic device, process or means to access the Website for any purpose, including monitoring or copying any of the Materials on the Website.

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Use any manual process to monitor or copy any of the Materials on the Website or for any other unauthorized purpose without written consent.

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Use any device, software or routine that interferes with the proper working of the Website.

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Introduce any viruses, Trojan horses, worms, logic bombs or other similar technologies to render the Website inoperative or inhibit the Website's functionality in any way whatsoever.

.

Attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the Website, the server on which the Website is stored, or any server, computer or databased connected to the Website.

7.

Monitoring and Enforcement: Termination. We have the right to:

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Remove or refuse to post any of Your Content for any or no reason in our sole discretion.

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Take any action with respect to any of Your Content that we deem necessary or appropriate in our sole discretion, including if we believe that Your Content violates the Terms of Use, infringes any Intellectual Property Right or other right of any person or entity, threatens the personal safety of users of the Website or the public or could create liability for ELB Learning.

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Disclose your identity or other information about you to any third party who claims that Your Content violates their rights, including their Intellectual Property Rights or their right to privacy.

.

Take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the Website.

.

Terminate or suspend your access to all or part of the Website for any or no reason, including without limitation, any violation of these Terms.

Without limiting the foregoing, we have the right to fully cooperate with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone posting any materials on or through the Website. YOU WAIVE AND HOLD HARMLESS ELB Learning AND ITS AFFILIATES, LICENSEES AND SERVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY ELB Learning PARTIES DURING OR AS A RESULT OF ITS INVESTIGATIONS AND FROM ANY ACTIONS TAKEN AS A CONSEQUENCE OF INVESTIGATIONS BY EITHER ELB Learning OR LAW ENFORCEMENT AUTHORITIES.

We do not undertake to review all material before it is posted on the Website, and cannot ensure prompt removal of objectionable material after it has been posted.

We therefore assume no liability for any action or inaction regarding transmissions, communications or content provided by any user or third party. We have no liability or responsibility to anyone for performance or nonperformance of the activities described in this section.

8.

Copyright Policy. ELB Learning respects the Intellectual Property Rights of others and expects its users to do the same. If you believe any posts on the Website violate your copyright, please see our Copyright Policy.

9.

Disclaimer of Warranties. YOU EXPRESSLY UNDERSTAND AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW:

THE SITE, SERVICES AND MATERIALS ARE PROVIDED BY ELB Learning "AS IS," WITHOUT WARRANTY OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, ELB Learning MAKES NO WARRANTY THAT (I) THE SITE, SERVICES OR MATERIALS WILL MEET YOUR REQUIREMENTS OR WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (II) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SITE, SERVICES OR MATERIALS WILL BE EFFECTIVE, ACCURATE OR RELIABLE; (III) THE QUALITY OF THE SITE, SERVICES OR MATERIALS WILL MEET YOUR EXPECTATIONS; OR THAT (IV) ANY ERRORS OR DEFECTS IN THE SITE, SERVICES OR MATERIALS WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM ELB Learning OR THROUGH OR FROM USE OF THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TERMS.

ELB Learning SPECIFICALLY DISCLAIMS ANY LIABILITY WITH RESPECT TO ANY ACTIONS RESULTING FROM YOUR USE OF OR PARTICIPATION IN ANY SERVICES AND YOUR USE OF MATERIALS. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH USE OF THE SERVICES IS ACCESSED AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL. ELB Learning ASSUMES NO

LIABILITY FOR ANY COMPUTER VIRUS OR SIMILAR CODE THAT IS DOWNLOADED TO YOUR COMPUTER FROM ANY OF THE SERVICES.

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ELB Learning DOES NOT CONTROL, ENDORSE OR ACCEPT RESPONSIBILITY FOR ANY MATERIALS OR SERVICES OFFERED BY THIRD PARTIES ACCESSIBLE THROUGH LINKED SITES. ELB Learning MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER ABOUT, AND SHALL NOT BE LIABLE FOR, ANY SUCH THIRD PARTIES, THEIR MATERIALS OR SERVICES. ANY DEALINGS THAT YOU MAY HAVE WITH SUCH THIRD PARTIES ARE AT YOUR OWN RISK.

In addition to the foregoing:

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Managers, hosts, participants, moderators, and other third parties are not authorized ELB Learning spokespersons, and their views do not necessarily reflect those of ELB Learning. To the maximum extent permitted by Laws, ELB Learning will have no liability related to user content arising under Intellectual Property Rights, libel, privacy, publicity, obscenity or other Laws. ELB Learning also disclaims all liability with respect to misuse, loss, modification or unavailability of any of Your Content or any other user content.

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ELB Learning will not be liable for any loss that you may incur as a result of someone else accessing your account, account information, and/or password, either with or without your knowledge.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, THE LIMITATION OR EXCLUSION OF IMPLIED WARRANTIES, OR LIMITATIONS ON HOW LONG AN

IMPLIED WARRANTY MAY LAST, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. IF YOU ARE A RESIDENT OF NEW JERSEY, PLEASE SEE THE SECTION 11 BELOW.

10.

Limitation of Liability. IN NO EVENT SHALL ELB Learning, ITS OFFICERS, DIRECTORS, EMPLOYEES, PARTNERS OR SUPPLIERS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING THOSE RESULTING FROM LOSS OF USE, DATA OR PROFITS, WHETHER OR NOT FORESEEABLE OR IF ELB Learning HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR BASED ON ANY THEORY OF LIABILITY, INCLUDING BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORTIOUS ACTION, OR ANY OTHER CLAIM ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF OR ACCESS TO THE SITE, SERVICES OR MATERIALS. NOTHING IN THE TERMS SHALL LIMIT OR EXCLUDE ELB Learning LIABILITY FOR GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF ELB Learning OR ITS EMPLOYEES, OR FOR DEATH OR PERSONAL INJURY.

ELB Learning'S AGGREGATE LIABILITY AND THAT OF ITS AFFILIATES AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO ONE HUNDRED UNITED STATES DOLLARS (\$100) OR THE AGGREGATE AMOUNT PAID BY YOU FOR ACCESS TO THE SERVICE, WHICHEVER IS LARGER. THIS LIMITATION WILL APPLY EVEN IF ELB Learning HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE LIMITATIONS AND EXCLUSIONS IN THIS SECTION APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW IN YOUR JURISDICTION. SOME JURISDICTIONS PROHIBIT THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. ACCORDINGLY, THE LIMITATIONS AND EXCLUSIONS SET FORTH ABOVE MAY NOT APPLY TO YOU. IF YOU ARE A RESIDENT OF NEW JERSEY, PLEASE SEE THE SECTION 11 BELOW.

11.

Legal Notice for New Jersey Residents Under the New Jersey Truth-in-Consumer Contract, Warranty and Notice ACT ("TCCWNA"), N.J.S.A. 56:12-14 et seq., consumers may not be offered any written contract which includes any provision that violates any clearly established legal right of a consumer, or responsibility of a seller, as established by state or federal law. Consequently, and for the avoidance of doubt, no provision in these Terms shall apply to any consumer in New Jersey if the provision violates any such clearly established legal right or responsibility, including, but not limited to, grounds for redress under or in the event of: (i) a seller's tortious actions (e.g., negligence, failure to exercise a basic standard of care, failure to avoid creating an unreasonable risk of harm); (ii) the New Jersey Products Liability Act, N.J.S.A. 2A:58C-1, et seq. (i.e., the statutorily imposed duty to refrain from manufacturing and selling dangerous products, with the possibility of punitive damages for violations thereof); (iii) the New Jersey

Punitive Damages Act, N.J.S.A. 2A:15-5.9, et seq. (i.e., the statutory right to pursue punitive damages in the event of harm caused by actual malice, wanton and willful disregard, reckless indifference); (iv) the New Jersey Uniform Commercial Code (i.e., a comprehensive statutory regime governing the rights and duties of buyers and sellers with respect to contracts for the sale of goods, with the possibility of damages for economic and property harm); and (v) a seller's failure to reasonably protect against harm arising from certain criminal acts of third parties (e.g., computer hacking and identity theft, as regulated by the Federal Trade Commission and the Federal Communications Commission, and as governed by the New Jersey Identity Theft Protection Act, N.J.S.A.56:8-161, et seq., and the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-3, et seq.). In addition, under the TCCWNA, no consumer contract may state that any of its provisions is or may be void, unenforceable or inapplicable in some jurisdictions without specifying which provisions are or are not void, unenforceable or inapplicable in New Jersey. With respect to these Terms, in the sections on Disclaimer of Warranties and Limitations of Liability, the provisions concerning the exclusion or limitation of certain damages is not applicable in New Jersey with respect to punitive damages, loss of data, and loss of or damage to property.

12.

Indemnity and Liability. You agree to indemnify and hold ELB Learning and its subsidiaries, affiliates, officers, agents, employees, co-branders or other partners, and licensors harmless from any claim or demand, including reasonable attorneys' fees, due to or arising out of Your Content, your use of the Services or Materials, your connection to the Services or Materials, the actions of any member of your group, your access to or use of the Website or any of our affiliates' websites and your connections therewith, any claim that Your Content caused damage to a third party, any dealings between you and any third parties advertising or promoting via the Services or Materials, your violation of the Terms, or your violation of any rights of another, including any Intellectual Property Rights.

13.

Governing Law; Jurisdiction. Website Disputes

"Website Disputes" include: (a) any claim you may have against ELB Learning in connection with the Website, (b) any claim ELB Learning may have against you in connection with the Website, and (c) any action to enforce the Terms or to object to the Terms.

All other disputes are "Non-Website Disputes". Any claim arising from your purchase of a ELB Learning product or service is a Non-Website Dispute. Any claim arising from the content of any offer or advertisement on the Website is a Non-Website Dispute.



Website Dispute resolution – arbitration, jury trial waiver, and class action waiver.

Neither You nor we will be able to sue in court in connection with a Website Dispute. All Website Disputes must be resolved through individual (non-class) arbitration. You indicate your acceptance to these Terms, including this agreement to arbitrate, by continuing to use the Website after having the opportunity to review these Terms.

You and we intend for this to be an agreement for arbitration that can be enforced under the Federal Arbitration Act (FAA), 9 U.S.C.A. §§ 1–16.

You and we waive any rights to maintain other available resolution processes for Website Disputes, such as a court action or administrative proceeding, to settle disputes. You and ELB Learning waive any right to a jury trial for Website Disputes.

Instead of suing in court, we each agree to settle Website Disputes only by arbitration. The rules in arbitration are different. There's no judge or jury, and review is limited, but an arbitrator can award the same damages and relief, and must honor the same limitations stated in the agreement as a court would.

Any Website Dispute shall be determined by arbitration in Utah before one arbitrator. The arbitration shall be administered by JAMS pursuant to JAMS' Streamlined Arbitration Rules and Procedures, available at <http://www.jamsadr.com/rules-streamlined-arbitration/>. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. If for any reason, JAMS cannot or will not provide this arbitration, the parties may ask any court of competent jurisdiction to select an arbitrator from a list provided by the parties.

To the extent a party commences any action which includes both Website Disputes and Non-Website Disputes, consideration of the Non-Website Disputes shall be stayed until the Website Disputes are fully arbitrated. Then, any Website Disputes will be considered the federal courts of the United States or the courts of the State of Utah situated in Utah County.

You agree that you will not file a class action against ELB Learning and its affiliated companies, or participate in a class action against ELB Learning and its affiliated companies, in any Website Dispute. You agree that you will not file or seek a class arbitration, or participate in a class arbitration against ELB Learning and its affiliated companies, in any Website Dispute.

All matters relating to the Website and these Terms and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), shall be governed by and construed in accordance with the laws of the State of Utah without giving effect to any choice or conflict of law provision or rule.

Except as otherwise stated herein, You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

14.

Waiver and Severability. No waiver of by ELB Learning of any term or condition set forth in these Terms shall be deemed a further or continuing waiver of such term or condition or a waiver of any other term or condition, and any failure of the Company to assert a right or provision under these Terms shall not constitute a waiver of such right or provision.

If any provision of these Terms is held by a court or other tribunal of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be eliminated or limited to the minimum extent such that the remaining provisions of the Terms will continue in full force and effect.

15.

Your Comments and Concerns. This website is operated by ELB Learning.

All notices of copyright infringement claims should be sent to the copyright agent designated in our Copyright Policy in the manner and by the means set forth therein.

All other feedback, comments, requests for technical support and other communications relating to the Website should be directed to: info@elblearning.com. You have no obligation to provide ELB Learning with ideas, suggestions, documentations and/or proposals ("Feedback"). However, if you submit Feedback to ELB Learning, to the extent you retain any Intellectual Property Rights in such Feedback, you hereby grant ELB Learning a nonexclusive, royalty-free, fully paid-up, perpetual, irrevocable, transferable, unlimited license under all of your Intellectual Property Rights to use for any purpose.

**Rockstar Learning Platform Subscribers**

1.

## Privacy Policy

At ELB Learning, we take our responsibility to protect your personal information very seriously. That is why we would like you to be aware of our policies and procedures for collecting, disclosing, and safeguarding the information that our customers and former customers provide to us.

2.

## What Information We Collect

We gather two types of information about users through the Site:

**Information relating to your use of our Site.** When users come to our Site, we may track, collect and aggregate information indicating, among other things, which pages of our Site were visited, the order in which they were visited, when they were visited, and which hyperlinks were “clicked.” We also collect information from the URLs from which you linked to our Site. Collecting such information may involve logging the IP address, operating system and browser software used by each user of the Site. We may be able to determine from an IP address a user’s Internet Service Provider and the geographic location of his or her point of connectivity.

We also use (or may use) cookies and web beacons when you visit our Site. For more information on our use of cookies and web beacons, please refer to our [Cookie Policy](#).

**Personally Identifiable Information provided directly by you or via third parties.** We collect Personally Identifiable Information that you provide to us when you register for an account, update or change information for your account, purchase products or services, complete a survey, sign-up for email updates, participate in our public forums, send us email messages, and/or participate or other services on our Site. We may use the Personally Identifiable Information that you provide to respond to your questions, provide you the specific course and/or services you select, and send you email messages about Site maintenance or updates.

**Account Registration.** If you register for an account on our Site, you may be required to provide us with Personally Identifiable Information such as your name and email address.

**Updates.** ELB Learning may offer you the ability to receive updates either via email or by posting on portions of the Site only accessible to registered users. In order to subscribe to these services, you may be required to provide us with Personally Identifiable Information such as your name and email address.

**Participation in Online Courses.** ELB Learning offers users the opportunity to participate in an online course on or through the Site. If you desire to participate in a course, you will be asked to provide us with certain information necessary to conduct such a course. This information may include, among other things, your name and email address.

If you participate in an online course, we may collect from you certain user-generated content, such as assignments you submit to instructors, peer-graded assignments, peer feedback. We also collect course data quizzes, standalone quizzes, exams, and surveys. You should not include any Personally Identifiable Information or other information of a personal or sensitive nature, whether relating to you or another person, on assignments, exams, or surveys, except for information required to participate or submit such assignments, exams, or surveys.

**Identity Verification.** ELB Learning may offer you the ability to verify your identity for selected classes. In order to enroll for these services, you may be required to provide us or our third-party identity verification vendor with Personally Identifiable Information such as your name, address, date of birth, a headshot taken using a webcam, and a photo identification document. Additionally, if you apply for financial aid in connection with these services, you may be required to provide information regarding your income.

**Communications with ELB Learning.** We may receive Personally Identifiable Information when you send us an email message or otherwise contact us.

**Third Party Sites.** We may receive Personally Identifiable Information when you access or log-in to a third party site, e.g., Facebook, from our Sites. This may include the text and/or images of your Personally Identifiable Information available from the third party site.

**Surveys.** We may receive Personally Identifiable Information when you provide information in response to a survey operated by us. This may include details about your race, your education history, and your employment.

**Third Party Credit Card Processing.** ELB Learning provides you with the ability to pay for services using a credit card through a third party payment processing service provider. Please note that our service provider – not ELB Learning– collects and processes your credit card information.

3.

### How We Use the Information

Information relating to your use of our Site. We use information relating to your use of the Site to build higher quality, more useful services by performing statistical analyses of the collective characteristics and behavior of our users, and by measuring demographics and interests regarding specific areas of our Site. We may also use this information to ensure the security of our services and the Site.

**Personally Identifiable Information provided directly by you or via third parties.** Except as set forth in this Privacy Policy or as specifically agreed to by you, ELB Learning will not disclose any of your Personally Identifiable Information. In addition to the other uses set forth in this Privacy Policy, we may disclose and otherwise use Personally Identifiable Information as described below.

**Providing the Site and our services.** We use Personally Identifiable Information which you provide to us in order to allow you to access and use the Site and in order to provide any information, products or services that you request from us.

**Updates.** We use Personally Identifiable Information collected when you sign-up for our various email or update services to send you the messages in connection with the Site and our Services. We may also archive this information and/or use it for future communications with you, where we are legally entitled to do so.

**Identity Verification.** For services that require identity verification, we use the Personally Identifiable Information that we collect for verifying your identity, and for authenticating that submissions made on the Site were made by you. This service may be provided through a third-party identity verification vendor.

**Communications with ELB Learning.** When you send us an email message or otherwise contact us, we may use the information provided by you to respond to your communication and/or as described in this Privacy Policy. We may also archive this information and/or use it for future communications with you where we are legally entitled to do so.

**Disclosure to ELB Learning Operations and Maintenance Contractors.** We use various service providers, vendors and contractors (collectively, “Contractors”) to assist us in providing our products and services to you. Our Contractors may have limited access to your Personally Identifiable Information in the course of providing their products or services to us, so that we in turn can provide our products and services to you. These Contractors may include vendors and suppliers that provide us with technology, services, and/or content related to the operation and maintenance of the Site. Access to your Personally Identifiable Information by these contractors is limited to the information reasonably necessary for the contractor to perform its limited function for us.

**Government Authorities, Legal Rights and Actions.** ELB Learning may share your Personally Identifiable Information with various government authorities in response to subpoenas, court orders, or other legal process; to establish or exercise our legal rights or to protect our property; to defend against legal claims; or as otherwise required by law. In such cases we reserve the right to raise or waive any legal objection or right available to us. We also may share your Personally Identifiable Information when we believe it is appropriate to investigate, prevent, or take action regarding illegal or suspected illegal activities; to protect and defend the rights, property, or safety of ELB Learning, the Site, our users, customers, or others; and in connection with our Terms of Service and other agreements.

**Disclosure to Acquirers.** ELB Learning may disclose and/or transfer your Personally Identifiable Information to an acquirer, assignee or other successor entity in connection with a sale, merger, or reorganization of all or substantially all of the equity, business or assets of ELB Learning to which your Personally Identifiable Information relates.

4.

#### International Privacy Practices

ELB Learning Sites are primarily operated and managed on servers located and operated within the United States. In order to provide our products and services to you, we may send and store your Personally Identifiable Information (also commonly referred to as personal data) outside of the country where you reside or are located, including to the United States. Accordingly, if you reside or are located outside of the United States, your Personally Identifiable Information may be transferred outside of the country where you reside or are located, including to countries that may not or do not provide the same level of protection for your Personally Identifiable Information. We are committed to protecting the privacy and confidentiality of Personally Identifiable Information when it is transferred. If you reside or are located within the EEA and such transfers occur, we take appropriate steps to provide the same level of protection for the processing carried out in any such countries as you would have within the EEA to the extent feasible under applicable law.

5.

## Changing Our Privacy Policy

Please note that we review our privacy practices from time to time, and that these practices are subject to change. Any change, update, or modification will be effective immediately upon posting on our Site. We will notify you of any material change to this Privacy Policy by posting a notice on our Site's homepage for a reasonable period of time following such update, and by changing the effective date (located at the top of this page). Be sure to return to this page periodically to ensure familiarity with the most current version of this Privacy Policy.

6.

## Contact Us

Please contact us with any questions or comments about this Privacy Policy, transfer of your personal information from the EEA to the U.S., our other terms of service, or your consent choices by email at [info@elblearning.com](mailto:info@elblearning.com) or at the physical address below.

### **ELB Learning**

732 E 930 S Suite # 100  
American Fork, UT 84003  
801.796.2767

## **Terms of Service**

These Terms of Service ("Terms"), together with the Online Order Form and Acceptable Usage Policy, govern the provision of ELB Learning services and Client's use of said services as set forth in the respective Online Order Form (collectively, "Services"). As used in these Terms of Service, "Agreement" means, collectively, (1) these Terms of Service, together with (2) the Acceptable Usage Policy and (3) Online Order Form. If a conflict exists between these Terms of Service and the Online Order Form, the terms of the respective Order Form and/or the mutually agreed upon Schedules will take precedence.

Client and ELB Learning agree to the Terms of Service as follows:

1.

The services shall consist of the Rockstar Learning Platform ("RLP") application access, including the necessary multimedia hosting and distribution services as detailed in the Order Form (collectively, "Services") providing content management and distribution services through client-designated site. The

Services, these Terms, Acceptable Usage Policy and any Service Level Agreement schedules provided shall be defined collectively as the "Agreement". After acceptance of your order, ELB Learning shall invoice Client for all requested setup or integration fees. Thereafter, ELB Learning shall invoice Client monthly for the Rockstar Learning Platform subscription fees as indicated in the Order Form. Client shall pay all undisputed invoices within 30 days of its receipt of same. Any outstanding invoice over 60 days are subject to a 1% interest fee on the total balance. Any Client with an outstanding invoice more than 90 days is subject to a service interruption. Sufficient measures will be taken to resolve all outstanding balances in order to avoid a Client service interruption.

2.

The Agreement shall commence as of the Effective Date and remain in effect for the Term stated in Section 3.0, of the approved Statement of Work. Agreement will automatically renew at the end of the term. Client may cancel the Agreement at the end of the term, for any reason, with written notice to ELB Learning, sixty (60) days' prior to the renewal date. Client shall be obligated to pay for all Services provided by ELB Learning to Client to such date of termination.

3.

Client's use of the Services is governed by the attached ELB Learning "Acceptable Usage Policy" ("AUP"). ELB Learning may at its sole discretion change, update and revise the AUP. Notice of change will be sent to the primary email address contacts in ELB Learning's Client database. ELB Learning may terminate or suspend this Agreement at any time in the event that Client should breach any provision of the AUP, as further provided therein.

4.

ELB Learning shall indemnify, defend, and hold harmless Client and its directors, officers, employees, agents, successors and assigns from and against any and all suits, actions, proceedings, claims, liabilities, losses, damages, judgments, costs, penalties and expenses (including, without limitation, their reasonable attorneys' fees) (collectively, "Losses") arising out of or in connection with: (a) a third party claim that Services and/or any portion of them violates or infringes upon any patent, copyright trade secret or other proprietary rights of any third party; and (b) ELB Learning gross negligence and/or willful misconduct. Client shall indemnify, defend, and hold harmless ELB Learning and its directors, officers, employees, agents, successors and assigns from and against any and all Losses arising out of or in connection with: (a) a third party claim that Client's unauthorized use of the Services and/or any portion of them violates or infringes upon any patent, copyright trade secret or other proprietary rights of any third party (and such claim(s) would not have occurred but for such unauthorized use); (b) Client's gross negligence and/or willful misconduct, and (c) Client's breach of any of the provisions of the AUP or the Agreement. Either party seeking indemnification ("Indemnified Party") shall provide the other party



("Indemnifying Party") with prompt written notice of any claim or claims for indemnification hereunder, and the Indemnifying Party shall have the right to control and direct the investigation and defense thereof and related settlement negotiations. The Indemnified Party shall reasonably cooperate with the Indemnifying Party in connection with the foregoing. The Indemnified Party may, at its sole option and at its own expense, participate in the claim or action with its own separate legal counsel, in which event the cost of such participation (including the cost of such separate legal counsel) shall be borne by the Indemnified Party. The exercise by an Indemnified Party of its option to participate in the claim or action and/or to select its own separate legal counsel shall in no way limit or modify the Indemnifying Party's obligations set forth above in this Section 4. This Section shall survive the termination or expiration of this Agreement and stay in effect for 6 years.

5.

Neither party to this Agreement shall be liable to the other party for consequential, incidental, punitive, special or indirect damages (including, but not limited to, lost profits, lost wages or lost savings) arising from, relating to, or in connection with this Agreement, even if such party has been advised of the possibility of or could have foreseen such damages, and each party's aggregate liability hereunder shall in no event exceed the total fees paid by Client to ELB Learning hereunder. In no event shall the liability of either party to the other for claims arising out of this Agreement exceed the fees paid to ELB Learning by Client hereunder. This limitation of liability applies regardless of the form of action, whether in contract, tort, or otherwise. Notwithstanding the foregoing, the limitations of liability set forth above in this section shall not apply to losses against which each party has agreed to indemnify the other under Section 4 hereof.

6.

All Confidential Information furnished by either party to the other pursuant to this Agreement shall be held strictly confidential shall only be used in connection with the provision of the Services and shall be protected from disclosure both during and after the term of this Agreement. The parties agree that all Confidential Information supplied by the other party, in whatever form, shall remain proprietary information of and property of the disclosing party. "Confidential Information" means all information disclosed by one party to the other, whether before or after the effective date of the Agreement, that the recipient should reasonably understand to be confidential, including: (i) all Client content uploaded, transmitted to or from, or stored on, the Rockstar Learning Platform private portal and public website, (ii) all ELB Learning, Rockstar Learning Platform and WordPress architecture, proprietary information and technology, including source code, object code and documentation, and (iii) any other information that is marked or otherwise conspicuously designated as confidential. Information that is independently developed by a party without reference to the other's Confidential Information, or that becomes available to a party other than through breach of the Agreement or applicable law, shall not be "Confidential Information" of the other party.

7.

ELB Learning agrees not to use the name, trademark, logo, and/or service mark of Client and/or any of its subsidiaries without the prior written consent of Client in each instance. The Agreement is governed by the laws of the State of Utah (without regard to principles of conflicts of laws). The Agreement between the parties hereto contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes any and all prior and contemporaneous agreements, understandings, documents, negotiations, and/or discussions (whether oral or written) between the parties. Except as provided herein, no supplement, amendment, or modification to this Agreement shall be valid, enforceable, or binding upon the parties unless made in writing and signed by an authorized representative of both parties.

8.

Any provision of or obligation under the Agreement which contemplates performance or observance subsequent to any termination or expiration of the Agreement shall survive any such termination or expiration for 10 years, and shall continue in full force and effect. In addition, all provisions of this Agreement shall survive the termination or expiration of this Agreement to the fullest extent necessary to give the parties the full benefit of the bargain expressed herein and of the intent contemplated here under.

9.

All notices in connection with this Agreement shall be in writing and personally delivered, delivered via overnight mail with written receipt, or sent by certified mail, return receipt requested, (i) if to Client, at its address set forth above, (ii) if to ELB Learning, at 732 E 930 S Suite # 100, American Fork, UT 84003 with a copy to Kupfer & Associates PLLC, 5 Columbus Circle, Suite 800, New York, NY 10019, or (iii) to such other address as either may hereafter designate in writing in accordance with this Section. Any such notice shall be effective upon personal or overnight delivery or five (5) days after certified mailing.

### **Acceptable Usage Policy**

Client agrees when using, or accessing ELB Learning servers and services that the following terms and conditions of this policy will be met:

#### Web, FTP, Publishing Content Policies

a.

Content of a pornographic, sexually explicit, or violent nature.

b.

Content of an illegal nature (including stolen copyrighted material, warez or hacked software, serial numbers, or mail fraud).

c.

Pirated software sites.

Clients posting any of the above content on their sites will be notified using Client's current email address on file, and given a 48-hour grace period to make any corrective actions. If no corrective actions are taken, ELB Learning will suspend the services of the account until a resolution is met between ELB Learning and Client. A repeated violation of this Policy may result in immediate cancellation of service without refund of any fees.

Client is not permitted to knowingly allow another website, or hosting server, to internally link to content files stored on ELB Learning servers. Client may not use hosting account as a remote storage server, with the exception of content intended for online education.

#### Email Usage Policies

ELB Learning does not support unsolicited email messages sent by Clients of our services or system (also known as junk email or SPAM). Clients sending unsolicited email messages from our system provided ESP, will have all of their services suspended immediately without refund of any fees.

#### Illegal Activities

Clients found using our services or system for illegal activities, including but not limited to breaking into remote systems, credit card fraud, theft, vandalism, threats, or violence, will have their accounts immediately canceled without refund of any fees.

#### Copyright Policy

ELB Learning respects the rights of copyright holders and publishers and requires all users to confirm they own the copyright or have permission from the copyright holder to upload content. We comply with the Digital Millennium Copyright Act (DMCA) and will promptly remove content when properly notified. Repeat infringers' accounts will be terminated immediately and all uploaded media disposed of permanently.

#### Third-Party Sites

An ELB Learning and/or Client site may contain links to third party websites that are not owned or controlled by ELB Learning and/or Client. ELB Learning and/or Client has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party websites. In addition, ELB Learning and/or Client will not and cannot censor or edit the content of any third-party site. By using the Website, you expressly relieve ELB Learning and/or Client from any and all liability arising from your use of any third-party website.

This Acceptable Usage Policy (the "Policy") governs, in addition to the ELB Learning Terms and Conditions, the terms of use of the ELB Learning Services by any Client who has been granted permissible access to ELB Learning servers or services.

ELB Learning does not allow any of the following content, or links to such content, to be published using its servers or services:

### **Terms of Use (Website visitors, Freebie Template Customers)**

Note: If you are a subscriber then please refer to the Terms at the top of this page.

#### **"Free" Template Customers**

When you download our free templates library, we hereby grant to you a nonexclusive limited, nontransferable license to use the templates/images that you download for the following permitted uses: Advertising, training, and promotional projects, including printed materials, product packaging, presentations, film and video presentations, commercials, catalogues, brochures, promotional greeting cards, and promotional postcards.

Prohibited uses include the following: Design template applications intended for resale, whether on-line or not, including, without limitation, website templates, eLearning templates, flash templates, business card templates, electronic greeting card templates, and brochure design templates. You may not offer these templates for a price or for free on a website, blog, or social network.

#### **Copyright**

All material on this site is owned by ELB Learning. ALL RIGHTS RESERVED. The entire content included in this site, including but not limited to text, graphics, templates, and/or code is copyrighted as a collective work under the United States and other copyright laws, and is the property of ELB Learning.

Any other use, including but not limited to the reproduction, distribution, display or transmission of the content of this site is strictly prohibited, unless authorized by ELB Learning. You further agree not to change or delete any copyright notices from materials purchased from the site.

If you require more information or wish to dispute copyright infringement please contact [info@elblearning.com](mailto:info@elblearning.com).

#### **Typographical Errors**

## **Miscellaneous**

Your use of this site shall be governed in all respects by the laws of the state of Utah, U.S.A., without regard to choice of law provisions, and not by the 1980 U.N. Convention on contracts for the international sale of goods. You agree that jurisdiction over and venue in any legal proceeding directly or indirectly arising out of or relating to this site (including but not limited to the purchase of ELB Learning products) shall be in the state or federal courts located in Utah County, Utah. Any cause of action or claim you may have with respect to the site (including but not limited to the purchase of [www.elblearning.com](http://www.elblearning.com) products) must be commenced within one (1) year after the claim or cause of action arises. ELB Learning's failure to insist upon or enforce strict performance of any provision of these terms and conditions shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any of these terms and conditions. ELB Learning may assign its rights and duties under this Agreement to any party at any time without notice to you.

## **Use of Site**

Harassment in any manner or form on the site, including via e-mail, chat, or by use of obscene or abusive language, is strictly forbidden. Impersonation of others, including an ELB Learning or other licensed employee, host, or representative, as well as other members or visitors on the site is prohibited. You may not upload to, distribute, or otherwise publish through the site any content which is libelous, defamatory, obscene, threatening, invasive of privacy or publicity rights, abusive, illegal, or otherwise objectionable which may constitute or encourage a criminal offense, violate the rights of any party or which may otherwise give rise to liability or violate any law. You may not upload commercial content on the site or use the site to solicit others to join or become members of any other commercial online service or other organization.

## **Participation Disclaimer**

ELB Learning does not and cannot review all communications and materials posted to or created by users accessing the site, and is not in any manner responsible for the content of these communications and materials. You acknowledge that by providing you with the ability to view and distribute user-generated content on the site, ELB Learning is merely acting as a passive conduit for such distribution and is not undertaking any obligation or liability relating to any contents or activities on the site. However, ELB Learning reserves the right to block or remove communications or materials that it determines to be (a) abusive, defamatory, or obscene, (b) fraudulent, deceptive, or misleading, (c) in violation of a copyright, trademark or; other intellectual property right of another or (d) offensive or otherwise unacceptable to ELB Learning in its sole discretion.

## **Third-Party Links**

In an attempt to provide increased value to our visitors, ELB Learning may link to sites operated by third parties. However, even if the third party is affiliated with ELB Learning, ELB Learning has no control over these linked sites, all of which have separate privacy and data collection practices, independent of ELB Learning. These linked sites are only for your convenience and therefore you access them at your own risk. Nonetheless, ELB Learning seeks to protect the integrity of its website and the links placed upon it

and therefore requests any feedback on not only its own site, but for sites it links to as well (including if a specific link does not work).

In the event that an ELB Learning product is mistakenly listed at an incorrect price, ELB Learning reserves the right to refuse or cancel any orders placed for product listed at the incorrect price. We, ELB Learning, reserve the right to refuse or cancel any such orders whether or not the order has been confirmed and your credit card charged. If your credit card has already been charged for the purchase and your order is cancelled, ELB Learning shall issue a credit to your credit card account in the amount of the incorrect price.

## **K-12 Game Builder / Interaction Builder Subscribers**

### **Terms of Use**

By using the Interaction Builder, or any ELB Learning product or service (“Service”), you agree to the following terms and conditions (“Terms of Service”). ELB Learning reserves the right to update and change the Terms of Service from time to time without notice. You can review the most current Terms of Service at any time at: [Terms](#)

Any new features, enhancements, new tools or new resources that augment the current Service, shall be subject to the Terms of Service. Continued use of the Service after any such change shall constitute your consent to such changes. Violation of any of the terms below will result in the termination of your account.

### **Service Level Agreement**

ELB Learning’s policy is to respond to all ELB Learning customer cases within 48 hours. NOTE: “Hours” in this document refers to Open Business Hours. Our Open Business Hours are 9:00 a.m. to 5:00 p.m. Monday through Friday, Mountain Time (USA).

### **Overview**

You are purchasing a nonexclusive limited license to use the Interaction Builder tool/software. Content produced using the tool/software (SWFs) may be freely distributed royalty-free as long as it does not violate the terms of this agreement.

### **Use of Services by You**

You must provide your legal full name, a valid email address, and any other information required by ELB Learning in order to complete the signup process.

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You must be at least 17 years of age to use this Service.

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Accounts registered by “bots” or other automated methods are not permitted.

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Though highly unlikely, ELB Learning reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Service or any part thereof, with 30 days notice. You agree that ELB Learning shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Service. Any unexpended or unearned subscription fees paid by the customer at the time of cancellation shall be refunded immediately upon termination or discontinuance.

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Technical support is provided at no charge to paying accounts. It may not be provided to accounts in the free trial stage, at ELB Learning's discretion.

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You may not sublicense, assign, or transfer this license to anyone else without prior written consent from ELB Learning.

### **Payment, Upgrading, Downgrading Terms**

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All fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes.

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For any upgrade or downgrade in plan level, the credit card that you provided will be automatically charged the new rate on your next billing cycle.

Downgrading your Service may cause the loss of content, features, or capacity of your Account. ELB Learning does not accept any liability for such loss.

You understand that the technical processing and transmission of the Service, including your content, may be transferred unencrypted and involve transmissions over various networks and changes to conform and adapt to technical requirements of connecting networks or devices.

### **Renewals**

Annual renewals will automatically be billed to the credit card on file. If you desire to terminate your service, then you must send an email to support@elblearning.com. (Refer to the section, "Cancellation and Termination" for more information.

If the credit card on file is no longer valid ELB Learning will attempt to contact the contact person on the user account. If the service is not paid for within 5 business days of the renewal date the service/account will be suspended until payment is made.

### **Cancellation and Termination**

Your saved content will be saved for 3 months and will then be deleted. This information cannot be recovered once your content is deleted. You are solely responsible for maintaining adequate back-up copies of your content outside the Service.

You agree that ELB Learning has no responsibility or liability for the deletion or failure to store any content maintained or transmitted by the Service, or to provide any particular type or amount or quality of storage.

If you cancel the Service before the end of your current paid up month, your cancellation will take effect immediately and you will not be charged again. **No credits are given for unused days in a monthly plan or months unused in an annual plan.**

ELB Learning, in its sole discretion, has the right to suspend or terminate your account and refuse any and all current or future use of the Service, or any other ELB Learning service, for any reason at any time. Such termination of the Service will result in the deactivation or deletion of your Account or your access to your Account, and the forfeiture and relinquishment of all content in your Account. Provided that ELB Learning may not terminate this agreement without 30 days prior written notice to the customer and upon termination ELB Learning shall refund any unearned subscription fees paid by the customer.



In the event of Service termination or cancellation, provisions of these Terms of Service related to the following shall survive: Indemnity, Privacy, Proprietary Rights, Appropriate Content, Exclusion of Warranties and Limitation of Liability.

For the protection and safety of all of our customers, ELB Learning reserves the right to refuse service to anyone for any reason at any time, with or without notice.

### **Login**

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If you purchase a “single user” license your login may only be used by one person – a single login shared by multiple people is not permitted.

### **Terms of Account Security and Legal Activities**

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Your use of the Service is at your sole risk. The service is provided on an “as is” and “as available” basis.

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You are responsible for maintaining the security of your account and password. ELB Learning cannot and will not be liable for any loss or damage from your failure to provide ELB Learning with accurate information or to comply with security obligations.

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You agree to immediately notify ELB Learning of any unauthorized use of your password or account, or any other breach of security.

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You are responsible for your own conduct. You are also responsible for all content posted and activity that occurs under your account, even when content is posted by others who have accounts under your account.

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You may not use the Service for any illegal or unauthorized purpose. You must not, in the use of the Service, violate any laws in your jurisdiction (including but not limited to copyright laws, trademark laws, patent laws, other intellectual property or industrial property laws, privacy laws, data export laws, and laws regarding libel and defamation).

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You agree not to engage in any activity that interferes with or disrupts the Service, or the servers and networks connected with the Service.

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You agree not to reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purposes, any portion of the Service, use of the Service, or access to the Service without the express prior written permission of ELB Learning.

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You must not modify, adapt or hack the Service or modify another website so as to falsely imply that it is associated with the Service, ELB Learning, or any other ELB Learning service. You must not upload, post, host, or transmit unsolicited email, SMSs, or “spam” messages.

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You must not transmit any worms or viruses or any code of a destructive nature.

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If your bandwidth usage significantly exceeds the average bandwidth usage (as determined solely by ELB Learning) of other ELB Learning customers on your same account level, we reserve the right to immediately disable your account or throttle your file hosting until you can reduce your bandwidth consumption.

Verbal, physical, written or other abuse (including threats of abuse or retribution) of any ELB Learning customer, employee, member, or officer will result in immediate account termination.

### **Indemnity**

You agree to hold harmless and indemnify ELB Learning, and its subsidiaries, affiliates, officers, agents, and employees, advertisers or partners, from and against any third party claim arising from or in any way related to your use of the Service, violation of these Terms of Service or any other actions connected with use of the Service, including any liability or expense arising from all claims, losses, damages (actual and consequential), suits, judgments, litigation costs and attorneys' fees, of every kind and nature. ELB Learning will provide you with written notice of such claim, suit or action.

### **Privacy**

ELB Learning respects the confidential and proprietary nature of content uploaded to your account. Even so, by using the Service, you acknowledge and agree that ELB Learning may access, preserve, and disclose your account information and any content associated with that account if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to: (a) satisfy any applicable law, regulation, legal process or enforceable governmental request, (b) enforce these Terms of Service, including investigation of potential violations hereof, (c) detect, prevent, or otherwise address fraud, security or technical issues, or (d) protect against imminent harm to the rights, property or safety of ELB Learning, its users or the public as required or permitted by law. Provided that ELB Learning shall provide notice of any disclosure to the customer and provided further that nothing in this Agreement shall be construed as authorizing ELB Learning to disclose any proprietary information belonging to the customer to any third party for any reason. In the event any government agency demands that ELB Learning disclose such information, ELB Learning shall immediately provide notice to the customer of such demand and the customer shall keep ELB Learning advised of any steps the customer takes in connection with such demand. Nothing herein shall be construed as preventing ELB Learning from complying with any lawful government order demanding the disclosure of such information. You understand that the technical processing and transmission of the Service, including your content, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

### **Changes to Service and Pricing**

Although ELB Learning endeavors to maintain its prices indefinitely once a subscriber becomes a paying customer, ELB Learning reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Service (or any part thereof) with or without notice. Notwithstanding the foregoing, ELB Learning will endeavor to provide the customer with 30 days notice of any changes and the customer shall have the right to cancel the Service and receive a full refund of any unexpended subscription fees.

Prices of all Services, including but not limited to monthly subscription plan fees to the Service, are subject to change upon 30 days notice from us. Such notice may be provided at any time by posting the changes to the ELB Learning Site (<https://www.elblearning.com>) or the Service itself.

ELB Learning shall not be liable to you or to any third party for any modification, price change, suspension or discontinuance of the Service.

When a price change is made by ELB Learning, you can continue using the service through the end of your paid subscription period without paying any additional fees. Once your paid subscription period has passed, you will be charged the new price for the next period.

### **Proprietary Rights**

We claim no intellectual property rights over the material you provide through the Service. Your profile and materials uploaded remain yours. You or a third party licensor, as appropriate, retain all patent, trademark and copyright to any content you submit, post or display on or through the Service and you are responsible for protecting those rights, as appropriate.

You must not remove, obscure, or alter any proprietary rights notices (including for example copyright and trademark notices) which may be affixed to or contained within the Service.

You acknowledge and agree that the Service and any necessary software used in connection with the Service ("Software") contain proprietary and confidential information that is protected by applicable intellectual property and other laws and treaties. You further acknowledge and agree that content presented to you through the Service is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except as expressly authorized by ELB Learning or other proper third party rights holders, you agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Service, content accessed through the Service, or the Software, in whole or in part.

Subject to the Terms of Service, ELB Learning grants you a personal, nontransferable and nonexclusive right and license to use the object code of its Software; provided that you do not (and do not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the Software, unless such activity is expressly permitted or required by law. You agree not to modify the Software in any manner or form, or to use modified versions of the Software, including (without limitation) for the purpose of obtaining unauthorized access to the Service.

You agree not to access the Service by any means other than through the interface that is provided by ELB Learning for use in accessing the Service.

Your use of any Software provided by ELB Learning will be governed by these Terms of Service and any additional terms and conditions of the end user license agreement accompanying such Software.

ELB Learning may automatically check your version of the Software and may automatically download upgrades to the Software to update, enhance and further develop the Service, including providing bug fixes, patches, enhanced functions, missing plug-ins and new versions.

Aspects of the Service are copyrighted © ELB Learning. All rights reserved.

It is ELB Learning's policy to respond to notices of alleged infringement that comply with the United States' Digital Millennium Copyright Act or other applicable law. To learn more or to submit a notice, please contact ELB Learning on the website [www.elblearning.com](http://www.elblearning.com).

### **Appropriate Content**

We may, but have no obligation to, remove, refuse, move, or otherwise dispose of content and accounts containing content that we determine in our sole discretion is unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene or otherwise objectionable or violates any party's intellectual property or these Terms of Service.

While ELB Learning prohibits certain conduct and content on the Service, you understand and agree that ELB Learning cannot be responsible for the content posted on the Service and you may be exposed to materials, which you consider offensive or objectionable. You agree to use the Service at your own risk.

The Service may provide, or third parties may provide, links to other World Wide Websites or resources. Because ELB Learning has no control over such sites and resources, you acknowledge and agree that ELB Learning is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources. You further acknowledge and agree that ELB Learning shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.

ELB Learning acknowledges the customer's ownership of all content and any modifications to any software used in its eLearning courses. Content produced using the software (SWFs) may be freely distributed royalty-free.

### **Exclusion of Warranties and Limitation of Liability**

You understand that ELB Learning uses third party vendors and hosting partners to provide the necessary hardware, software, networking, storage, and related technology required to run the Service. ELB LEARNING DOES NOT WARRANT THAT (I) THE SERVICE WILL MEET YOUR SPECIFIC REQUIREMENTS, (II) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (III) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, (IV) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS, AND (V) ANY ERRORS IN THE SERVICE WILL BE CORRECTED.

YOU EXPRESSLY UNDERSTAND AND AGREE THAT ELBLEARNING SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF ELB LEARNING HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (I) THE USE OR THE INABILITY TO USE THE SERVICE; (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (IV) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; (V) OR ANY OTHER MATTER RELATING TO THE SERVICE.

NOTHING IN THIS AGREEMENT IS INTENDED TO EXCLUDE OR LIMIT ANY CONDITION, WARRANTY, RIGHT OR LIABILITY WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT OR BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, ONLY THE ABOVE LIABILITY LIMITATIONS AND WARRANTY EXCLUSIONS WHICH ARE LAWFUL IN YOUR JURISDICTION WILL APPLY TO YOU AND OUR LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

### **General Conditions**

Entire Agreement. The Terms of Service (including any policies, guidelines or amendments that may be presented to your form time to time) constitute the entire agreement between you and ELB Learning and govern your use of the Service, superseding any prior agreements between you and ELB Learning for the use of the Service. You also may be subject to additional terms and conditions that may apply when you use or purchase certain other services, third-party content or third-party software. Choice of Law and Forum. The Terms of Service and the relationship between you and ELB Learning shall be governed by the laws of the State of Utah without regard to its conflict of law provisions. You and ELB Learning agree to submit to the personal and exclusive jurisdiction of the courts located within or nearest to Utah County, Utah.

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

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

No Third Party Beneficiaries. You agree that, except as otherwise expressly provided in these Terms of Service, there shall be no third party beneficiaries to the Terms of Service.

Notices. You agree that ELB Learning may provide you with notices, including those regarding changes to the Terms of Service, by email, regular mail, or postings on the Service. Your notices to ELB Learning must be sent by an email, which is acknowledged by a reply from ELB Learning, or by a courier service which provides delivery confirmation.

Assignment. ELB Learning may assign this contract, in whole or in part, at any time with or without notice to you. You may not assign this contract, or any part of it, to any other party. Any attempt by you to do so is void. Instead, you may cancel your access to the Service. The other party may then establish a Service account and enter into a contract with ELB Learning.

You are solely responsible for properly canceling your account. To cancel your account, send an email to support@elblearning.com.

Miscellaneous. The section headings in the Terms of Service are for convenience only and have no legal or contractual effect. Questions about the Terms of Service should be sent to support@elblearning.com.

### **Stock Library Subscription Users**

#### **Important**

The Stock library is broken down into two distinct license groups. Group one contains photography, images, and graphics. The second group includes video and audio. Video and audio have distinct license terms from the photography, images, and graphics.

1.

Stock Image Subscribers will be held to the same terms of use as the eLearning Templates Subscription Users above. Additionally, Stock images can only be used in eLearning, Training and Development, Classroom Training, Instructor Lead Training, Web Based Training, Online Learning, Mobile Learning, Course Development, Webinars, Webcasts, Self Paced Learning, Live Online Learning, Pre-Recorded Classrooms, Educational Lectures, Instructional Design, K-12 and Higher Education, Educational Promotion, Learning Management Systems, Corporate Universities, and other training courses and nothing else." Licensee's users shall not print, sell or use the image for any marketing, advertising, logo, social media or any website purposes.

2.

Stock Video and Audio Subscribers will be held to the same terms of use as the eLearning Templates Subscription Users above. Additionally, the subscriber agrees to be bound by the Footage Firm Terms of use for video and audio found at [Audio Blocks Terms of Use](#)" and [Video Blocks Terms of Use](#)." The

subscriber also agrees to be bound by the Royalty Free License agreements found at [Audio Blocks License](#)" and [Video Blocks License](#)."