

# Terms of Service

DISCLAIMER: UNLESS A SEPARATE AGREEMENT IS IN PLACE THIS TERMS OF SERVICE TAKES PRECEDENCE

## 1. Definitions

The following terms shall have the meaning set out below; all other capitalized terms not otherwise defined in this Section shall have the meaning set forth in the Agreement:

- (a) **“Confidential Information”** means, with respect to a party hereto, all information or material which: is (A) marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking, (B) known by the parties to be considered confidential, proprietary, or is confidential under federal or state law or (C) which should be known or understood to be confidential or proprietary by an individual exercising reasonable commercial judgment in the circumstances. Confidential Information of Castle shall include, without limitation, the Software, the Documentation, and any information with respect to the Services that Castle may provide to Customer from time to time, including without limitation, all information disclosed by Castle relating to the security of its facilities, computer systems and products. Confidential Information does not include information to the extent that such information: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party hereunder; (ii) was previously known to the receiving party as evidenced by its written records; (iii) is rightly received by the receiving party from a third party who is not under an obligation of confidentiality; or (iv) is independently developed by the receiving party without reference to or use of the other party's Confidential Information and which such independent development can be established using evidence that would be acceptable to a court of competent jurisdiction. Confidential Information of Castle shall include, without limitation, the Services, the Software, Documentation, and any information with respect to the Services that Castle may provide to Customer from time to time, including without limitation, the terms and conditions of this Agreement and all information disclosed by Castle relating to the security of its facilities, computer systems and products.
- (b) **“Data”** means all data that is provided by Customer to Castle and all other content transmitted, posted, received or created through Customer's use of the Services or the Software.
- (c) **“Documentation”** means user guides, operating manuals, education materials, product descriptions and specifications, technical manuals, supporting materials, and other information relating to the Software or used in conjunction with the Software, whether distributed in print, magnetic, electronic, or video format, in effect as of the date the Software are provided to the Customer.
- (d) **“Services” and “Software Services”** each means the web-based service(s) commonly referred to as a “Software as a Service” (SaaS) solution to be provided by or on behalf of Castle under this Agreement that includes hosting, monitoring, operating and maintaining the Software as a service at a site owned or controlled by Castle and the delivery of non-exclusive access via the Internet to Customer to use the Software, as a service, granted to Customer pursuant to Section 2 hereof. The Services shall also include storing all data entered and maintained by Users through use of the Services.
- (e) **“Software”** means the software product(s) that are owned by Castle, delivered as a SaaS solution (i.e. web-based Services) and listed in Schedule “A”.
- (f) **“Support Services”** means those support services to be provided by the Castle Support team as further described in Schedule “D” to this Agreement.
- (g) **“Third Party Components”** means software, hardware, or services that are not owned by Castle but which are required for the Services and Software Services to be made available to the Customer.
- (h) **“User”** means an employee or agent of Customer that has been authorized by the Customer in writing to access and use the Services.

## 2. Restrictions on Use

- (a) Except as expressly provided herein, Customer may not give away, rent, lease or otherwise sell, re-sell, sublicense, distribute or transfer the license rights granted under this Agreement or otherwise use the Software Services except as expressly permitted by this Agreement without the prior written consent of Castle.
- (b) Customer agrees that it will not reverse engineer, decompile, translate or otherwise attempt to derive, or permit or help others to derive the source code relating to all or any part of the Software or Software Services, or attempt to otherwise convert or alter the Software or Software Services into human readable code, except to the extent applicable law expressly prohibits the foregoing restriction.
- (c) Customer may duplicate Documentation, at no additional charge, for Customer's internal use so long as all required proprietary markings are retained on all duplicated copies.
- (d) No third party, other than duly authorized agents or employees of Customer authorized pursuant to Section 2 hereunder, shall have access to or use of the Software Services.
- (e) Customer shall not copy, frame or mirror any part or content of the Services, other than copying or framing on Customer's own intranets or otherwise for Customer's own internal business purposes.
- (f) Customer shall not access the Services in order to (i) build a competitive product or service; (ii) copy any features, functionality or graphics of the Software; or (iii) knowingly allow access to any competitor of Castle.
- (g) The Customer shall not transmit, upload, post, distribute, store or otherwise publish, through use of the Services, any data, material or Information that: (i) contains a software virus, Trojan horse, worm or other harmful or deleterious computer code, files or programs that may adversely affect any hardware or software, or that intercepts or misappropriates any data or information; (ii) is threatening, defamatory, libelous, harassing, profane, is an invasion of privacy, offensive, obscene or harmful; (iii) infringes or otherwise violates any patent, copyright, trademark, trade secret or other intellectual property or proprietary right of any third party; (iv) violates any law, statute, ordinance or regulation; or (v) includes unsolicited bulk e-mails, advertisements or solicitations.
- (h) Customer shall not knowingly transmit any data to the system used by Castle to provide the Services that contains software viruses or other harmful or deleterious computer code, files or programs.
- (i) Customer shall not interfere with or disrupt services or networks connected to the system used to provide the Services and shall not attempt to gain unauthorized access to the Services or such services or networks connected to the system used to provide the Services.
- (j) Customer shall not use the Services to store or transmit any material that is infringing, libelous, an invasion of privacy, obscene, offensive, harmful, illegal or would otherwise violate or infringe the rights of any third party.
- (k) Customer shall not provide the results of using the Services for the purposes of monitoring its availability, performance, functionality, benchmarking or competitive analysis to any third party.
- (l) In addition to its termination rights under Section 16, Castle may restrict or limit Customer's access to the Services if Castle reasonably determines that Customer has engaged in or is likely to engage in (whether knowingly or unknowingly) any prohibited conduct described herein and such conduct, in Castle's reasonable opinion poses any risk of any kind or nature to Castle or its service providers' network, business or other customers. As promptly as practicable after becoming aware of Customer's engagement in any such prohibited conduct, Castle will use reasonable efforts to notify Customer of the restriction or limitation to Customer's access to the Services and will promptly restore Customer's access after Castle has had reasonable assurance that such conduct has been permanently discontinued. In addition to and without limiting the foregoing, Castle reserves the right to refuse to post or to remove in whole or in part any information or materials provided or submitted by or on behalf of Customer in connection with its use of the Services that Castle determines, in its reasonable discretion, are either in violation of this Agreement or pose any risk of any kind or nature to Castle or its service provider's network, business or other customers.

- (m) Furthermore, in respect of the hosting environment, the Customer agrees that it may not and nor may it attempt to (a) modify, alter, tamper with, repair, or otherwise create derivative works related to the hosting environment), (b) reverse engineer, disassemble, or decompile anything available or that forms part of the hosting environment or apply any other process or procedure to derive the source code of any software included in the hosting environment, (c) access or use the hosting environment in a way intended to avoid incurring fees or exceeding usage limits or quotas, or (d) resell or sublicense the hosting environment.

### 3. Customer Responsibilities

- (a) **Cooperation by Customer.** Customer acknowledges that the success and timeliness of the implementation process shall require the active participation and collaboration of Customer and its staff and agrees to act reasonably and cooperate fully with Castle to achieve the Completion of Services related to any Professional Services provided by Castle. To enable Castle to provide effective Support Services, the Customer will establish auto remote access based on remote access procedures compatible with Castle' practices.
- (b) **Customer Equipment.** Customer agrees that it shall be responsible, at its sole expense, for providing all Internet access, including but not limited to obtaining, installing and maintaining all equipment, hardware, network, Internet or direct telecommunications connections and software applications (e.g. web browser) at Customer's facilities required for Users to access and use the Services. Castle shall not be responsible for the operation of any Internet, network or other communication services. Customer further acknowledges that access to and the operation of the Services requires Customer's and Users' hardware to be of sufficient quality, condition and repair, and Customer agrees to and/or to ensure that Users' maintain their applicable hardware in the appropriate quality, condition and repair at its sole cost and expense. These requirements may also be necessary in order to facilitate the achievement of Completion of Services related to any Professional Services supplied by Castle.
- (c) **Passwords.** Customer agrees to comply with all Castle security policies and procedures as provided to it and amended from time to time. Customer and its Users shall be responsible for keeping any and all passwords and user ID's assigned to it its Users secret and confidential. Customer agrees that it is and shall remain solely and completely liable for any communications or other uses that are made using Customer's or its Users' passwords and user ID's, as well as any obligation that may result from such use. Customer agrees to notify Castle in writing to change Customer or User's password(s) for any reason, including without limitation if it believes that a password has been stolen or might otherwise be misused. Customer agrees to notify Castle immediately of any unauthorized use of any password or user ID or any other breach of security suspected by Customer.
- (d) **Users.** The Customer is responsible for: (i) the actions of Users using the Services in accordance with this Agreement including access to the hosting environment; (ii) ensuring that Users agree to any further terms and conditions as may be provided by Castle from time to time for Users; and (iii) informing Castle of any information about Users' actions that may affect either the Services or third party data contained in or used by the Services, or Castle' ability to provide the Services as contemplated by this Agreement. Additionally, the Customer and its Users will be required to adhere to any required Third Party Component provider's policies as set out in this Agreement or otherwise made known to Customer.
- (e) **Compliance with Laws.** Customer represents and warrants to Castle that it and its Users will at all times be in compliance with all applicable local, state, provincial, federal and international laws including but not limited to those laws regarding restrictions on exports, defamation, libel, harm to reputation, invasion of privacy, misuse or failure to protect personal information, violation of secrecy, confidentiality, unfair competition and other situations which could generate liability.
- (f) **Data Security.** Customer acknowledges and agrees that use of or connection to the Internet is inherently insecure and provides opportunity for unauthorized access by a third party to Customer's and its Users' (as well as Castle') computer systems, networks and any and all information stored therein. Customer is solely responsible for ensuring that (i) Customer's computer systems are secure and protected from unwanted interference (such as "hackers" and viruses), (ii) all transmissions are screened for viruses or other harmful code prior to transmission to Castle' servers; and (iii) Data is encrypted.

CASTLE DOES NOT GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY, AND NON-CORRUPTION OF ANY INFORMATION TRANSMITTED OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. WE SHALL NOT BE RESPONSIBLE FOR ANY ADVERSE CONSEQUENCES WHATSOEVER OF CUSTOMER'S OR ITS USERS'

CONNECTION TO OR USE OF THE INTERNET, AND CASTLE SHALL NOT BE RESPONSIBLE FOR ANY USE BY CUSTOMER OR ANY USER OF CUSTOMER'S INTERNET CONNECTION IN VIOLATION OF ANY LAW, RULE OR REGULATION.

#### 4. Warranty and Warranty Disclaimer

- a) **Limited Warranty.** Castle warrants to Customer that the Services shall be performed at a level and shall substantially conform to the specifications, as stated in Castle' manuals and other documentation provided to Customer, provided that all use of the Services is for the purposes and in the environment for which they were designed and in accordance with such specifications. Customer's sole remedy in the event the Services do not conform to the foregoing limited warranty is for Castle to use commercially reasonable efforts to correct such non-conformance and the right to terminate this Agreement in accordance with Section 16(b).
- b) **Warranty Disclaimer.** TO THE GREATEST EXTENT PERMITTED BY LAW, EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET OUT IN SECTION 13(A), THE SERVICES, THE SOFTWARE, THE SOFTWARE SERVICES, THE PROFESSIONAL SERVICES AND ANY OTHER PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED TO CUSTOMER "AS IS" AND THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THEM OR ANY OTHER PRODUCT, SERVICE OR MATERIAL PROVIDED HEREUNDER OR IN CONNECTION HEREWITH.

CASTLE, ITS LICENSORS AND SUPPLIERS DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING THE SOFTWARE, THE SOFTWARE SERVICES, THE SERVICES, THE PROFESSIONAL SERVICES AND ANY OTHER PRODUCTS, SERVICES AND MATERIALS PROVIDED HEREUNDER OR IN CONNECTION HEREWITH, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

CASTLE DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR THE SOFTWARE SERVICES SHALL OPERATE ERROR FREE OR UNINTERRUPTED, SHALL MEET ANY OR ALL OF CUSTOMER'S PARTICULAR REQUIREMENTS, THAT ALL ERRORS OR DEFECTS IN THE SERVICES OR SOFTWARE SERVICES CAN BE FOUND OR CORRECTED.

WITHOUT LIMITING THE FOREGOING, CASTLE DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH REGARD TO PRODUCTS OR SERVICES FROM THIRD PARTIES (INCLUDING WITHOUT LIMITATION THE THIRD PARTY COMPONENTS, THE HARDWARE, THE OPERATION OF THE INTERNET, NETWORK OR OTHER COMMUNICATION SERVICES) AND ASSUMES NO RESPONSIBILITY OR LIABILITY WITH RESPECT TO THE FOREGOING OR THE APPROPRIATENESS OF YOUR DATA MANAGEMENT SYSTEM OR THE ACCURACY OF DATA CONTAINED IN SUCH SYSTEM.

NO AGREEMENTS VARYING OR EXTENDING ANY EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT SHALL BE BINDING ON EITHER PARTY UNLESS IN WRITING AND SIGNED BY AN AUTHORIZED SIGNING OFFICER OF CASTLE.

#### 5. Limitations on Liability

TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER AGREES THAT THE ENTIRE LIABILITY OF CASTLE AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO THE SERVICES, THE SOFTWARE, THE SOFTWARE SERVICES, THE PROFESSIONAL SERVICES AND ANY OTHER PRODUCTS, MATERIALS OR SERVICES SUPPLIED BY CASTLE IN CONNECTION WITH THIS AGREEMENT FOR DAMAGES FOR ANY CAUSE AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING FUNDAMENTAL BREACH OR NEGLIGENCE, SHALL BE LIMITED TO ACTUAL DIRECT DAMAGES AND SHALL NOT EXCEED IN THE AGGREGATE THE ANNUAL SUBSCRIPTION FEES PAID IN THE THEN-CURRENT YEAR BY CUSTOMER TO CASTLE UNDER THIS AGREEMENT.

CUSTOMER FURTHER AGREES THAT IN NO EVENT SHALL CASTLE BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING FUNDAMENTAL BREACH OR NEGLIGENCE, FOR

ANY INDIRECT, PUNITIVE, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION FOR LOST PROFITS, LOSS OF REVENUE, FAILURE TO REALIZE ANTICIPATED SAVINGS, LOST OR DAMAGED DATA, LOSS OF GOODWILL, BUSINESS OPPORTUNITIES OR REPUTATION, OR ECONOMIC LOSS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGES, OR SUCH LOSSES OR DAMAGES ARE FORESEEABLE.

## 6. Ownership

- (a) **By Castle.** Castle its service providers and licensors are and shall at all times remain the owner of all copyright, trademarks, trade secrets, patents and any other intellectual property rights in and to the Services, Software, Software Services, Software as a Service solution, and related documentation, materials, logos, names and other support materials provided pursuant to the terms of this Agreement. Customer shall acquire no right whatsoever to all or any part of the Services, Software, Software Services or underlying software except the limited right to access and use the Software Services in accordance with the terms of this Agreement and Castle and its licensors reserve all rights not expressly granted to Customer. Customer must fully reproduce any copyright or other notice marked on any part of the documentation or other materials on all authorized copies and must not alter or remove any such copyright or other notice. Customer hereby grants to Castle a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services, Software, Software Services, and underlying software any suggestions, ideas, enhancement requests, recommendations or other feedback provided by Customer relating to the operation of the Services or Software.
- (b) **Customer Data.** As between Castle and Customer, all Data will remain the sole and exclusive property of Customer. Customer is solely responsible for ensuring the accuracy, quality, integrity, reliability, appropriateness and right to view and use the Data. Subject to the terms and conditions of the Agreement, Customer grants to Castle a world-wide, non-exclusive, royalty-free license to access the Data for the purpose of performing the Services. Access to the Data shall only be by Castle's employees and/or subcontractors whose job function requires access. Except as specified in this Agreement, Castle may not access the Data for any other purpose without the express written consent of Customer. Access to Data by any outside party shall only be in accordance with the terms of this Agreement or where required by law.

Customer grants to Castle a world-wide, non-exclusive, royalty-free license to aggregate or compile Data with the customer data of other customers using the Services so long as such aggregation or compilation omits any data that would enable the identification of Customer, its clients or any individual, company or organization ("Aggregated Data"). Castle shall have a worldwide, perpetual, royalty-free license to use, modify, distribute and create derivative works based on such Aggregated Data, including all reports, statistics or analyses created or derived therefrom. Additionally, Customer grants Castle the right to access Data to provide feedback to Customer concerning its use of the Services.

In the event that Castle will have access to "education records" for the Customer's students as defined under the Family Educational Rights and Privacy Act (FERPA), Castle acknowledges that for the purposes of this Agreement it will be designated as a "school official" with "legitimate educational interests" in the Client's Education records, as those terms have been defined under FERPA and its implementing regulations, and Castle agrees to abide by the FERPA limitations and requirements imposed on school officials. Castle will use the Education records only for the purpose of fulfilling its duties under this Agreement, and will not share such Data with or disclose it to any third party except as provided for in this Agreement, where required by law, or authorized in writing by Customer.

### (c) Data and Privacy Policy of Customer

The Customer represents and warrants to Castle that:

- i. Data that is either provided to or acquired by Castle from Customer is owned exclusively by Customer and that the Customer has full right and title to provide the Data to Castle;
- ii. Data that is either provided to or acquired by Castle is subject to a privacy policy in effect as of the Effective Date and Customer's customers have provided to Customer their written consent for its collection, use and storage by Castle and its third-party service providers in accordance with this Agreement and in any jurisdiction in North America;



- iii. Customer complies with all applicable privacy legislation as of the Effective Date in the performance of its obligations hereunder in respect of any Data collected, used, transferred, created or disclosed pursuant to this Agreement; and
- iv. Customer will not provide Castle with data of any kind for which Castle either has no need or does not have the right to collect, use and store under the terms of this Agreement.

**(d) Third Party Components**

Except as stated explicitly in this Agreement, the Third Party Components are neither licensed to nor provided directly for use by the Customer but are provided tangentially either directly by Castle or in a manner to be procured by Customer. Customer has no rights in Third Party Components except for any rights specifically stated in this Agreement and the Customer agrees to abide by all requirements and restrictions set out by the Third Party Component provider as either detailed in this Agreement or otherwise made known to the Customer.

## **7. Confidential Information**

The parties agree to keep confidential any and all Confidential Information with respect to the other party which it has received or may in the future receive in connection with this Agreement and shall only disclose such Confidential Information of the other party (i) to its agents, employees or representatives who have a need to know such information, for the purpose of performance under this Agreement and exercising the rights granted under this Agreement, and who have entered into a non-disclosure agreement at least as protective of the other party's Confidential Information as this Agreement, or (ii) to the extent required by applicable law or during the course of or in connection with any litigation, arbitration or other proceeding based upon or in connection with the subject matter of this Agreement, provided that the receiving party shall give the disclosing party reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent. The parties each agree to hold the other party's Confidential Information in confidence and to take all reasonable steps, which shall be no less than those steps it takes to protect its own confidential and proprietary information, to protect the Confidential Information of the other party.

In addition to any other restrictions on Castle' use of the Data, the confidentiality obligations above apply except to the extent that both parties agree that the Data may be subject to privacy laws providing for the owners of the Data to review such Data or to challenge the collection and storage of the Data. Customer shall indemnify and reimburse Castle in relation to all reasonable fees and other disbursements paid by Castle to comply with such requests, whether by an individual or a government body, or to challenge such requests at either Castle' or Customer's request. Customer represents and warrants to Castle that as of the Effective Date no individual, government body or third party has requested a review of the Data or challenged the collection and storage of the Data to be stored in the Software.

## **8. Indemnity**

Customer is solely responsible for its Data, its use, and its Users' use, of the Services in any way, and all legal liability arising out of or relating thereto. Customer shall defend, indemnify and hold Castle and its third party service providers, if applicable, and each of their respective officers, directors, employees and agents (the "**Indemnities**") harmless from and against any and all losses, costs, damages and expenses (including reasonable attorney's fees) that the Indemnities may suffer in connection with any demands, claims, actions, suits or proceedings arising out of or in connection with (i) the use of the Services including but not limited to any Third Party Components by Customer or its Users; (ii) any breach by Customer or its Users of this Agreement; or (iii) Customer's Data, including but not limited to any third party claims that the inclusion, use, reference, incorporation of or linking to any third party materials or the Customer's Data violates such third party's copyright and/or other intellectual property, privacy or other rights, or that such use is illegal.