
CatchOn, Inc. Master Service Agreement

This master services agreement (this “Agreement”) is entered into by and between CatchOn, Inc., 618 Grassmere Park Drive, Suite 12, Nashville, Tennessee 37211 (“CatchOn”), and Customer (who also may be referred herein as Licensee) for good and valuable consideration as set forth hereby agree as follows:

1. Services Provided by CatchOn

Subject to the terms and conditions of this Agreement and the applicable Order Form between CatchOn and Customer, CatchOn shall provide Customer with certain services as defined on the Order Form (“Services”), and CatchOn hereby grants to Customer a right to access and use the CatchOn Services on a non-exclusive, non-transferable and non-sublicensable basis, for Customer’s own internal business purposes only, for the Term of the Agreement. As used herein, the term “Services” includes all services, software, products and deliverables provided by CatchOn to Customer, including but not limited to professional services and online services.

2. Conditions to Grant of License to Use CatchOn Software

The license(s) granted under this Agreement are expressly conditioned on the Customer’s compliance with the Acceptable Use Policy (“AUP”) posted at www.catchon.com/legal and each of the following conditions:

- a. Only a Customer staff member who has been provided with a user ID and password is authorized as an "Authorized User" to use CatchOn’s Services from any point of access to the Internet.
- b. Authorized users may use CatchOn Services with codes provided by CatchOn, to gain entry into CatchOn Services for which they have been licensed, but neither the Customer nor any authorized users may copy any portion of the CatchOn Services’ content except for purposes of creating training materials for internal Customer use to train users to operate the Services.
- c. The Customer may not copy or distribute any portion of the CatchOn Services or allow any Authorized Users to copy any portion of the CatchOn Services, unless expressly permitted in writing by CatchOn.
- d. Only Customer and Customer’s authorized users are permitted to access CatchOn Services. Customer shall ensure that all use by authorized users of CatchOn Services shall be pursuant to the terms and conditions of this Agreement.
- e. Licensee may not resell, transfer, assign, sublicense, pledge, lease, rent or share CatchOn Services or Customer’s rights to access CatchOn Services hereunder or disclose any portion of CatchOn Services content to any third party, unless expressly permitted under this Agreement or with prior written permission from CatchOn.
- f. Licensee shall not (a) change, modify, disassemble, decompile, “unlock,” reverse engineer or in any manner decode the Services; (b) attempt to disable or circumvent any of the licensing mechanisms within the Services, if any; (c) prepare any derivative work of the Services or remove any product identification, copyright, trademark or other notice from the Services; or (d) violate any other usage restrictions contained in the Services documentation.

3. Term and Payment

This Agreement shall become effective on the date indicated as the Service Commencement Date on the Order Form and shall remain in full force and effect until the Service Expiration Date on the Order Form.

Customer shall pay all sales, use and excise taxes, and all other taxes, duties, and, if applicable, levies on imports or exports relating to, or under, this Agreement, unless Customer is exempt from the payment of such taxes and provides evidence of such exemption. All amounts in this Agreement and any addendum included are in U.S. dollars and payable in U.S. dollars.

4. Termination

Termination for Cause: In the event of a material breach of a provision of this agreement, the non-breaching party shall provide written notice of said breach to the breaching party. If the other party fails to cure said breach within 30 days of written notice of said breach, the non-breaching party shall have the right to terminate the Agreement. Either party may exercise this right of termination for cause in the event of a material breach by the other party. In the event of such termination for CatchOn's breach, CatchOn shall refund to Licensee any prepaid, unused fees.

Termination without Cause: In the event of early termination of the Agreement by Customer without cause, the Customer agrees that damages to CatchOn caused by such a breach would be difficult to estimate. Accordingly, the parties agree that liquidated damages equal to the value of one year's Services is a reasonable forecast of just compensation and shall be assessed in such a case.

Either party may terminate this Agreement in the event the other party is declared insolvent or bankrupt, or any assignment of its property is made for the benefit of creditors or otherwise.

Upon the termination of this Agreement, Licensee shall immediately stop using the Services.

5. Indemnity

If a third party asserts a claim against Licensee asserting that Licensee's use of the Services in accordance with this Agreement violates that third-party's patent, trade secret or copyright ("Infringement Claim"), then CatchOn will, at its own expense: (a) defend or settle the Infringement Claim; and (b) indemnify Licensee for any damages finally awarded against Customer, but only if: Licensee promptly notifies CatchOn of any Infringement Claim, CatchOn retains sole control of the defense of any Infringement Claim and all negotiations for its settlement or compromise, and Licensee provides all reasonable assistance requested by CatchOn. CatchOn's obligations above will not apply if the Infringement Claim is based on (i) the use of the Services in combination with products not supplied or approved by CatchOn in writing. If CatchOn believes the Services may violate a right, then CatchOn will, at its expense: (a) modify the Services, or (b) procure the right to continue using the Services, and if (a) or (b) are not commercially reasonable, terminate Licensee's right to use the Services and issue a refund of any prepaid fees. This section contains Licensee's exclusive remedies and CatchOn's sole liability for Infringement Claims.

6. Ownership

CatchOn (and/or its suppliers or licensors) own all right, title and interest to the Services (and any derivative works based on the Services), including all proprietary rights and other intellectual property rights. CatchOn reserves all rights not expressly granted by it to Licensee under this Agreement.

CatchOn may from time to time request its users to evaluate, assess or provide feedback regarding the Services. Customer agrees that CatchOn will own the results of any such evaluations and feedback and may use such results in its sole discretion. Any improvements, new features, or new Services that may be created or developed by CatchOn based on user evaluations will be exclusively owned by CatchOn.

Customer shall retain ownership of any Customer data and content that was uploaded, collected or created by Customer as a result of Customer's use of CatchOn's Services. Customer acknowledges that it is solely responsible for all content and information appearing on the site and CatchOn has no responsibility for the accuracy, completeness or legality of said information.

7. Data Privacy and Sharing

- (a) The Parties acknowledge that the Customer is subject to the Family Educational Rights and Privacy Act (20 U.S.C. 12332(g)) (FERPA), which law and supporting regulations generally address certain obligations of an educational agency or institution that receives federal funds regarding disclosure of personally identifiable information in education records. As set forth in more detail below, the Parties agree that CatchOn is a "school official" under FERPA and has a legitimate educational interest in personally identifiable information from education records because CatchOn: (1) provides a service or function for which the Customer would otherwise use employees; (2) is under the direct control of the Customer with respect to the use and maintenance of education records; and (3) is subject to the requirements of FERPA governing the use and redisclosure of personally identifiable information from education records.
- (b) CatchOn may use de-identified product and usage data for product development, research, or other purposes. De-identified data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, identification numbers, dates of birth, demographic information, location information, and school identification. Further, CatchOn agrees not to attempt to re-identify de-identified data and not to transfer de-identified data to any party not authorized to receive such data pursuant to this provision unless that party agrees not to attempt re-identification.
- (c) At the request of Customer, CatchOn may share Customer data that includes personally identifiable information with customer authorized third parties with whom Customer has an existing business relationship. Customer shall sign a Data Release before any data is shared. CatchOn shall have no responsibility or liability with respect to such data due to such onward transfers.
- (d) Customer acknowledges and agrees that data collected by CatchOn from Customer's users may include data from users under the age of 13. Customer represents and warrants that Customer is in compliance with all laws and regulations applicable to such collection, including, without limitation, the Child Online Privacy and Protection Act (COPPA). Customer acknowledges that Customer shall be liable for the Customer data which Customer enters or processes on the CatchOn Services and warrants that Customer holds all the rights and authorizations necessary to make use of the Customer data and that it has paid any and all related fees and payments. Customer will defend, indemnify and hold harmless CatchOn against any legal action or claim alleging that the Customer data infringe the rights of third parties or violates applicable law.
- (e) CatchOn will retain information collected online from a child/student of Customer for only as long as is necessary to fulfill the purpose for which it was collected and delete the information using reasonable measures to protect against its unauthorized access or use.

8. Confidential Information

"Confidential Information" means all proprietary or confidential information that is disclosed to the recipient ("Recipient") by the discloser ("Discloser"), and includes, among other things (i) any and all information

relating to products or services provided by a Discloser, its related financial information, software code, flow charts, techniques, specifications, development and marketing plans, strategies, and forecasts; (ii) as to CatchOn, and its licensors, the Services and any third party software provided with the Services; and (iii) the terms of this Agreement, including without limitation, pricing information. Confidential Information does not include information that Recipient can show: (a) was rightfully in Recipient's possession without any obligation of confidentiality before receipt from the Discloser; (b) is or becomes a matter of public knowledge through no fault of Recipient; (c) is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or (d) is or was independently developed by or for Recipient. Recipient may not disclose Confidential Information of Discloser to any third party or use the Confidential Information in violation of this Agreement.

9. Warranties

CatchOn warrants that the CatchOn Services will perform substantially in accordance with its Documentation, provided that the CatchOn SaaS Service is used in accordance with the terms of this Agreement. If the CatchOn SaaS Service is non-compliant and if the Customer notifies such non-compliance to CatchOn, CatchOn shall endeavor to correct such non-compliance. Customer's sole and exclusive remedies for any breach of this warranty shall be to have CatchOn use commercially reasonable efforts to (i) correct the non-compliance at no additional charge for Customer; or (ii) terminate the applicable Order Form by giving written notice to CatchOn if CatchOn fails to correct the non-compliance within 30 days of receipt of written notice. In such an event, Customer shall be entitled to a full refund on a pro-rata basis of the subscription fees prepaid by Customer and unused under such Order Form.

CatchOn shall have no liability for any false information, misleading statements, misrepresentations or other inaccuracies in Customer's data.

EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, CATCHON AND ITS LICENSORS MAKE NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WITH RESPECT TO THE CATCHON SERVICES, OR ANY OTHER DOCUMENTATION, THIRD PARTY SOFTWARE OR OTHER PRODUCTS OR SERVICES (SUCH AS THIRD PARTY BROKERED SERVICES), AND EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CATCHON AND ITS LICENSORS DO NOT WARRANT THAT THE OPERATION OF THE CATCHON SERVICE WILL BE UNINTERRUPTED, FULLY SECURED, VIRUS FREE, ERROR FREE OR FULLY ACCURATE OR THAT ALL DEFECTS CAN BE CORRECTED. IT IS ALSO SPECIFIED THAT THE INTERNET AND THIRD-PARTY HOSTING PROVIDERS AND TELECOMMUNICATIONS SYSTEMS ARE NOT FREE OF ERRORS AND THAT DISRUPTIONS, DELAYS AND BREAKDOWNS MAY OCCUR. CATCHON CANNOT GIVE ANY WARRANTIES IN THIS REGARD AND MAY NOT THEREFORE BE HELD LIABLE FOR ANY DAMAGE CAUSED BY USE OF THE INTERNET AND THIRD-PARTY HOSTING PROVIDERS AND TELECOMMUNICATIONS SYSTEMS. CATCHON MAKES NO WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO (I) ANY THIRD-PARTY SOFTWARE THAT IS NOT INCORPORATED INTO THE CATCHON SERVICE AS PER THE APPLICABLE ORDER FORM, OR WITH REGARD TO (II) HOSTING PROVIDER HOSTING SERVICES.

10. Limitation of Liability

EXCEPT FOR INFRINGEMENT CLAIMS, A BREACH OF CONFIDENTIALITY, A BREACH OF SECTION 2 BY LICENSEE, OR THE WILLFUL INTENT OR GROSS NEGLIGENCE OF A PARTY, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, MULTIPLE OR PUNITIVE LOSSES OR DAMAGES (INCLUDING LOSSES OR DAMAGES FOR ANY LOST REVENUES, PROFITS OR DATA), EVEN IF SUCH PARTY HAS BEEN ADVISED OR MADE AWARE OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF WHETHER THE CLAIM IS BASED ON PERFORMANCE OR NON-PERFORMANCE OF ANY SOFTWARE, BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY, OR OTHER THEORY OF LIABILITY. EXCEPT FOR INFRINGEMENT CLAIMS, A BREACH OF CONFIDENTIALITY, A BREACH OF SECTION 2 BY LICENSEE, OR THE WILLFUL INTENT OR GROSS NEGLIGENCE OF A PARTY, CATCHON'S TOTAL LIABILITY FOR DAMAGES OF ANY KIND UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID OR PAYABLE BY LICENSEE FOR SERVICES UNDER THE ORDER FORM GIVING RISE TO THE CLAIM.

FURTHER, CATCHON DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY DATA ON THE SERVICES OR ANY OF OUR PARTNERS. CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY PURCHASE OR USE OF ANY PRODUCTS, WHETHER BASED ON ANY INFORMATION OR OTHERWISE, IS ENTIRELY AT CUSTOMER'S DISCRETION AND RISK. IF CUSTOMER HAS ANY PROBLEMS WITH ANY EDUCATIONAL TOOL, CUSTOMER'S REMEDY, IF ANY, IS THROUGH THE APPLICABLE PARTNER THAT PROVIDED OR SOLD THAT TOOL TO YOU.

11. Incorporation by Reference

CatchOn's Acceptable Use Policy ("AUP") and Privacy Policy are hereby acknowledged and incorporated into this Agreement by reference. We reserve the right to update our AUP or Privacy Policy during the term of this Agreement and your use of our Services is governed by the most current versions posted www.catchon.com/legal.

12. Maintenance

CatchOn reserves the right to issue corrections or modifications or upgraded versions of the Services at any time at CatchOn's discretion. From time to time and with or without notice, the Services may be unavailable so that CatchOn may perform ongoing, scheduled or emergency corrections or upgrades; provided, that if practicable, CatchOn will use good faith efforts to notify Customer in advance.

13. Choice of Law and Forum Selection

This Agreement is governed by the substantive laws in force, without regard to conflict of laws principles, in the State of Tennessee. Any litigation, claims, disputes or controversies concerning, arising out of or in connection with this Agreement shall first be escalated to the senior management of both parties, who shall meet within ten (10) days of such escalation in an attempt to resolve the conflict. In the event the conflict is not resolved within ten (10) days of such meetings, the parties may bring suit solely only in a federal or state court in the County of Davidson, Tennessee, USA; and the parties hereby consent to the exclusive jurisdiction of such courts and waive any objection or defense concerning jurisdiction or venue that they might otherwise have.

14. Miscellaneous

CatchOn is not liable for its failure to perform any obligation under this Agreement during any period in which performance is delayed by Licensee or circumstances beyond CatchOn's reasonable control. A waiver by a party of any breach of any term of this Agreement will not be construed as a waiver of any continuing or succeeding breach. Licensee may not assign or transfer this Agreement or a license to a third party, whether by merger or otherwise, without CatchOn's written consent. All notices required or permitted under this Agreement will be given in writing to the general counsel of the other party at the address of the parties' corporate headquarters, and such notices will be considered given when received. Should any provision of this Agreement be invalid or unenforceable, the remainder of the provisions will remain in effect. CatchOn rejects the applicability to this Agreement of any Licensee terms and conditions listed on an Order Form or purchase order. The parties acknowledge they have read this Agreement and agree that it is the complete and exclusive statement of the agreement between the parties relating to the subject matter of this Agreement. This Agreement may not be modified or rescinded except in writing signed by both parties. In the event of any conflict between this Agreement and the Order Form, the Order Form shall control.

EXHIBIT A

FORM OF DATA RELEASE AGREEMENT [TO BE USED IF LICENSEE WISHES CATCHON TO SHARE ITS DATA WITH A THIRD PARTY]

CONSENT TO DATA SHARING AGREEMENT

This Agreement (the “**Agreement**”) is entered into this ___ day of _____, 2020 (the “**Effective Date**”), by and between, CatchOn, Inc., headquartered at 618 Grassmere Park Drive, Suite 12, Nashville, Tennessee 37211 (“**Company**”), and _____ (“**Customer**”).

WHEREAS, Company has developed a learning analytics and license management platform (“**Services**”) and Customer is a user of the Services under the Customer Agreement dated _____ (“**Services Agreement**”); and

WHEREAS, Customer wishes to make some data from the Service available to a third party to enable additional services not provided by Company;

NOW, THEREFORE, for and in consideration of the premises and mutual promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Limited Data Sharing

Customer may contract directly with a third-party data analytics company (“**Third Party Service Provider**”) (or contract through Company) and Customer hereby (i) authorizes Company to share via secure API a subset of Customer’s data, as defined by Customer in writing to Company, resulting from Customer’s use of Company’s Services for the sole purposes of allowing for the provision of services from the Third Party Service Provider to Customer. The Customer data stored on the Third-Party Service Provider’s platforms will be governed by the Third-Party Service Provider’s privacy policy and relevant agreements with the contracting party. The relevant contracting party with the Third-Party Service Provider shall ensure that the Third-Party Service Provider is obligated to protect and keep any such information confidential.

2. Term

This Agreement and the rights granted hereunder shall last until _____, or until either party provides ten (10) days’ prior written notice to the other party of termination. In the event Company has contracted with a Third Party Service Provider on Customer’s behalf, upon termination of this Agreement, at Customer’s request, Company will require such Third Party Service Provider to destroy, and certify in writing the destruction, all information shared with Third Party Service Provider hereunder.

3. Confidentiality

For the purposes of this Agreement, “**Confidential Information**” means the terms and conditions of this Agreement and any non-public information, data, monthly reports, usage information, operations, the Services or results of the Services, or other materials provided or disclosed by one party (the “**Disclosing Party**”) to the other (the “**Receiving Party**”) in connection with this Agreement. Confidential Information does not include any information that (i) was publicly known and made generally available in the public domain prior to the time

of disclosure by the Disclosing Party; (ii) becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction of the Receiving Party; (iii) is already in the possession of the Receiving Party without any obligation of confidentiality at the time of disclosure by the Disclosing Party; (iv) is obtained by the Receiving Party from a third party without a breach of the third party's obligations of confidentiality; (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.

Except with the prior written consent of the Disclosing Party or as set forth above in Section 1, a Receiving Party shall not disclose any Confidential Information of a Disclosing Party in any manner other than: (i) to such Party's attorneys, accountants and financial representatives under a duty of confidentiality as may be reasonably necessary in order to receive their professional advice; (ii) to such Party's employees and contractors who have a need to know and are obligated to maintain the confidentiality of such information; (iii) in connection with any legal, governmental or administrative proceeding, provided that prior written notice of such disclosure is furnished to the Disclosing Party in order to afford the Disclosing Party a reasonable opportunity to seek a protective order; (iv) to enforce provisions of the Agreement. Each Party shall use commercially reasonable efforts to protect the secrecy and avoid disclosure and unauthorized use of the other Party's Confidential Information.

4. Warranty

Customer explicitly warrants to Company that the disclosure of any data authorized to be shared hereunder will not violate FERPA or any other federal, state or local regulation.

Each party hereby represents and warrants to the other party that: (a) the execution, delivery and performance of this Agreement by such Party does not violate any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it; and (b) such party will comply with all applicable federal, state and local laws, rules and regulations in fulfilling its obligations hereunder, particularly and specifically including all applicable privacy laws.

5. Indemnity and Liability

Each party will defend, indemnify, and hold harmless the other for any losses, damages, or costs due to a third-party claim arising from the indemnifying party's breach of this Agreement or the confidentiality restrictions contained herein. A party's indemnity obligations are conditioned upon the indemnified party providing prompt notice of such a claim, and the indemnifying party retaining sole control of the defense of such claim.

EXCEPT FOR THE FOREGOING INDEMNITY, OR A BREACH OF CONFIDENTIALITY ARISING UNDER THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RELATING TO THE LOSS OF PROFITS, INCOME OR GOODWILL, IN ANY ACTION ARISING FROM OR RELATED TO THE AGREEMENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INTENDED CONDUCT OR OTHERWISE REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR THE FOREGOING INDEMNITY, OR A BREACH OF CONFIDENTIALITY ARISING UNDER THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY'S LIABILITY FOR MONETARY DAMAGES UNDER THE AGREEMENT EXCEED ONE THOUSAND DOLLARS (\$1,000.00).

6. Miscellaneous

This Agreement (and the Master Services Agreement) constitutes the entire agreement and understanding between the parties with regard to the subject matter thereof and supersedes all prior or contemporaneous oral or written agreements. Unless expressly provided for in this Agreement, any amendment, modification or alteration of this Agreement (including any exhibits attached thereto) must be in writing and signed by a duly authorized representative of each Party in order to be effective. Neither Party shall be deemed, by any act or omission, to have waived any of its rights or remedies unless such waiver is in writing and signed by an authorized representative of the waiving Party, and then only to the extent specifically set forth in such writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event. This Agreement will be governed by and construed in accordance with the laws of the State of Tennessee and applicable to agreements entered into and wholly performed within such state, without reference to conflict of laws provisions.

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity of any other provision of this Agreement and if any provision is determined to be invalid or otherwise illegal by a court of competent jurisdiction, then this Agreement shall remain in effect and be construed in accordance with its terms as if the invalid or illegal provision were not contained therein.