



General Terms and Conditions for Application Services

These General Terms and Conditions for Application Services ("Agreement") for the use of the CampusCE Integrated Web-based Learning Administration System and related services and/or features ("Service"), dated _____ ("Effective Date") is entered into by School Board of **Sarasota County on behalf of Suncoast Technical College ("Customer")**, located at 1960 Landings Blvd. Sarasota, FL 34231 and **CampusCE Corporation. ("CampusCE")**, with principal offices at 901 Fifth Avenue Suite 3040, Seattle, WA 98164.

1 DEFINITION

- 1.1 **"Catalog"** means the Customer's formally published list of items.
- 1.2 **"Confidential information"** means this Agreement and related exhibits and addenda, the Documentation, data, drawings, benchmark tests, specifications, trade secrets, and any other proprietary information supplied to Customer by CampusCE, or by Customer to CampusCE, that is clearly marked as "confidential information", including all items defined as Confidential Information in any other agreement between Customer and CampusCE whether executed prior to or after the Effective Date. Confidential Information also includes any data regarding individuals that is entered by Customer by means of the CampusCE software.
- 1.3 **"Documentation"** means the on-line help files, written instruction materials, and other associated text regarding the use of the Service.
- 1.4 **"Items"** means unique ordering references that are used by Customer on Customer's Catalog. Items are counted each time a new Catalog or information for a new Catalog is generated for the purpose of making information available to the public, or an audience that is not restricted to the Authorized Users.
- 1.5 **"Service Hours"** means Monday through Friday, 8am to 5pm Pacific Time, excluding all CampusCE official holidays.
- 1.6 **"Terminal"** means the networked receiving and transmitting equipment and software that are used to access the Service.
- 1.7 **"URL"** means Uniform Resource Locators, commonly known as links that are used to access the Service.
- 1.8 **"User"** means any employee or any agent or subcontractor of Customer who requires access to the Service solely for the purpose of conducting business with Customer, within the scope of their agency or contractor relationship with Customer who accesses the Service through the Customer's website [or the Customer's Terminal],.

2 SERVICE

- 2.1 **Access and Use Grant.** Subject to the terms and conditions of this Agreement, CampusCE grants to Customer a personal, non-exclusive and non-transferable license (without the right to sublicense) to (a) access the Service over the Internet using the URL assigned to Customer and (b) use the Documentation only in conjunction with Customer's use of the Service.
- 2.2 **Term and Early Cancellation Fee.** This Agreement begins on the Effective Date and remains in effect until terminated pursuant to the Service Plan executed by the Parties
- 2.3 **Availability/Interruption.**
CampusCE offers all of its services through Software as a Service (SAAS) model. The availability of the Service depends on many factors, including Customer's connection to the Internet, the availability of the Internet, and the Internet backbone and equipment that, by its nature, is not fault tolerant.
- 2.4 **Use of Service.** Customer will make reasonable efforts to ensure that Users are not using the Service for any unlawful or abusive purpose or in any way, which damages CampusCE' property or interferes with or disrupts CampusCE' system or other users access to its services. Customer will make reasonable efforts to ensure that Users comply with all laws while using the Service. Customer will make reasonable efforts to ensure that Users will not transmit any communication, which would violate any laws, court order, or regulation, or would likely be offensive to the recipient. Customer is responsible for all content that Users enter into the system. Resale of Service is prohibited without prior written contractual arrangements with CampusCE and any required regulatory approvals. Customer is responsible for ensuring that Customer's Terminal and networking infrastructure are compatible with Service. Customer has no ownership rights to the URL and agrees that CampusCE may change Customer URL by giving notice to Customer. If such URL contains any trademark or trade name of Customer, CampusCE may not use the URL for any purpose other than the provision of the Service in accordance with this Agreement and any such use shall stop upon the termination or expiration of this Agreement.

3 FEE AND PAYMENT

- 3.1 **Fees.** In accordance with the terms hereof, Customer will pay to CampusCE the fees and charges specified in the Service Plans.
- 3.2 **Rates.** Service rates and other charges and conditions are described in the Service Plans. If Customer selects a Service Plan with included Items or support hours, unused included Items or support hours from one billing cycle will not carry over to any other billing cycle.
- 3.3 **Billing.** CampusCE will provide Customer with bill in a format CampusCE chooses which may change from time to time. Payment of all charges is due upon receipt of invoice. Billing cycle end dates may change from time to time. When a billing cycle covers less than or more than a full month, CampusCE may make reasonable adjustments and pro-rations. Item or support hour usage may be billed in a subsequent month due to reporting.
- 3.4 **Default/Termination.** If Customer fails to pay any amount owed to CampusCE within 30 days after the date of the invoice, or if Customer has amounts still owing to CampusCE from a prior account, or if Customer breaches any representation to CampusCE or fails to perform any of Customer's warranties or obligations in this Agreement, Customer will be in material default and CampusCE may, after allowing a reasonable opportunity to cure, suspend Customer's access to the Service and/or terminate this Agreement, in addition to all other remedies available to CampusCE. CampusCE may require setup charges to renew Customer's access to the Service after termination or suspension. Upon termination, Customer is responsible for paying all amounts and charges owing under this Agreement, including any applicable cancellation fee. CampusCE shall be entitled to recover its reasonable costs including reasonable attorney's fees and court costs incurred in the collection of Fees ("Collection Costs"). Each party shall bear its own attorney's fees and court costs incurred in CampusCE's enforcing its rights under this Agreement other than with regards to Collection Costs.

4 CHANGES TO THIS AGREEMENT

No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the both parties.

5 WARRANTY AND LIMITATIONS

- 5.1 **Warranty.** CampusCE warrants to the Customer that (a) the Service will perform in substantial accordance with the Documentation, (b) it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof, (c) the functionality of the Service will not be materially decreased during any one-year term of a Service Plan, and (d) the Service will not contain or transmit to Customer any Malicious Code (except for any Malicious Code contained in user-uploaded data or otherwise originating from Users). "Malicious Code" shall mean viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs. If the Service does not perform as warranted, CampusCE will use its commercial best efforts to correct the problems.
- 5.2 **Disclaimer.** EXCEPT AS SET FORTH ABOVE, CAMPUSCE MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY REGARDING OR RELATING TO THE A SERVICE OR THE DOCUMENTATION, OR ANY MATERIALS OR SERVICES FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT, INCLUDING SUPPORT. SPECIFICALLY, CAMPUSCE DOES NOT WARRANT THAT THE SERVICE WILL BE ERROR FREE OR WILL PERFORM IN AN UNINTERRUPTED MANNER. TO THE GREATEST EXTENT ALLOWED BY LAW, CAMPUSCE SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF CAMPUSCE HAD BEEN INFORMED OF SUCH PURPOSE) AND NON-INFRINGEMENT WITH RESPECT TO THE SERVICE, DOCUMENTATION AND SUPPORT, AND WITH RESPECT TO THE USE OF ANY OF THE FOREGOING. NO EMPLOYEE, AGENT, REPRESENTATIVE OR AFFILIATE OF CAMPUSCE HAS AUTHORITY TO BIND CAMPUSCE TO ANY ORAL REPRESENTATIONS OR WARRANTY CONCERNING THE SERVICE. ANY WRITTEN REPRESENTATION OR WARRANTY NOT EXPRESSLY CONTAINED IN THIS AGREEMENT IS UNENFORCEABLE.
- 5.3 **Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT UNLESS (A) SUCH DAMAGE OR LOSS HAS BEEN CAUSED BY INTENTIONAL MISCONDUCT AND/OR GROSS NEGLIGENCE OF SUCH PARTY; OR (B) SUCH DAMAGE CONSISTS OF DEATH OR PERSONAL INJURY CAUSED BY THE GROSS NEGLIGENCE OF SUCH PARTY. EACH PARTY'S MAXIMUM AGGREGATE LIABILITY (WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER FORM OF LIABILITY) FOR DAMAGES OR

LOSS, HOWEVER ARISING OR CAUSED, WHETHER OR NOT ARISING FROM NEGLIGENCE, WILL IN NO EVENT BE GREATER THAN THE GREATER OF \$150,000 OR THE AMOUNT ACTUALLY PAID BY AND DUE FROM CUSTOMER HEREUNDER IN THE TWELVE MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY. THE PROVISIONS OF THIS SECTION 5.3 WILL APPLY DESPITE THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY REMEDY OFFERED UNDER THIS AGREEMENT.

6 CONFIDENTIAL INFORMATION

- 6.1 Non-use and non-disclosure.** Customer acknowledges that CampusCE considers the Confidential Information to include valuable trade secrets. Each party agrees that it will not disclose Confidential Information to third parties except in response to requests for public disclosure of documents. Each party agrees that it shall use the Confidential Information of the other party solely in accordance with the provisions of this Agreement. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. However, neither party bears any responsibility for safeguarding information that is (i) publicly available, (ii) obtained from third parties without restrictions on disclosure, or (iii) independently developed without reference to Confidential Information. Nothing herein will prevent routine discussions by the Customer that normally take place in a "user group" context.
- 6.2 Injunctive relief.** In the event of actual or threatened breach of the provisions of Section 6.1, the non-breaching party will be entitled to immediate injunctive and other equitable relief, without bond and without the necessity of showing actual damage, to the extent permitted by law.
- 6.3 Public Records.** Notwithstanding the foregoing, CampusCE recognizes that Customer may be subject to information requests under State or Federal law. If Customer receives a public records request which may identify records CampusCE identifies as confidential, Customer shall provide CampusCE reasonable notice prior to disclosing such records, so that CampusCE may seek a court order prohibiting disclosure. Any such action by CampusCE shall be at CampusCE's sole expense, without recourse to Customer.
- 6.4 Florida State Entity.** CampusCE acknowledges and agrees that Customer is a public body corporate of the State of Florida and, as such, Chapter 119, Florida Statutes, shall override and control any right or obligation of either party with regard to any and all Confidential Information, including, but not limited to, the rights and obligations of this Section 6.

7 MISCELLANEOUS

- 7.1** During the term of this Agreement, CampusCE grants to the Customer the nonexclusive, nontransferable right to use (but not sublicense) the trademarks, marks, logos and trade names of CampusCE that are posted on CampusCE's web site or printed in marketing materials, financial reports, or other related documents. Upon Customer's prior written consent regarding the specific use requested, CampusCE is permitted to use Customer's trade names and logo in quotes or testimonials that are posted on CampusCE's Web site or printed in marketing presentations, financial reports, or other similar documents.
- 7.2 Non-assignment/Binding Agreement.** Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by a party, in whole or in part, whether voluntary or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of the other party, which consent will not be unreasonably withheld. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.
- 7.3 Notices.** Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by registered mail return receipt requested, or (c) sent by overnight air courier, in each case forwarded to the appropriate address set forth above. Either party may change its address for notice by written notice to the other party. Notices will be considered to have been given at the time of actual delivery in person, 3 business days after posting or one day after delivery to an overnight air courier service.
- 7.4 Intellectual Property Rights:** CampusCE will retain ownership of all rights, title and interest, including intellectual property rights, in and to the CampusCE Software. Any data generated by system users shall be the sole and exclusive property of Customer, and shall not be used for any purpose by CampusCE, its agents or representatives.
- 7.5 Force Majeure.** Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquakes, fire and explosions, but the inability to meet financial obligations is expressly excluded.
- 7.6 Entire Agreement.** This Agreement, together with the Service Plan and its exhibits attached to this Agreement, represent the entire agreement between CampusCE and Customer, which may only be amended by mutual written agreement of both parties. This Agreement supersedes any inconsistent or additional promises made to Customer

by any CampusCE' representatives, agents or dealers or by Customer to any CampusCE representatives, agents, or dealers.. If any part of this Agreement is found invalid, the balance of the Agreement remains enforceable.

- 7.7 **Waiver.** Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed or be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action.
- 7.8 **Severability.** If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties will endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.
- 7.9 **Counterparts.** This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement.
- 7.10 **Applicable Law.** This Agreement will be interpreted and construed in accordance with the laws of the State of Florida, except for the conflict of laws provisions thereof. All actions and proceedings arising out of or relating to this Agreement will be brought in the state or federal courts of Florida and the parties hereby consent to the exclusive jurisdiction of such courts.
- 7.11 **Non-Discrimination.** CampusCE agrees not to discriminate in any manner on the basis of sex, race, creed, age, color, national origin, religious belief, disability, status as a disabled veteran, or veteran of the Vietnam era, and further agrees to comply with all applicable executive orders and federal, state, and local laws, rules and regulations prohibiting discrimination and sexual harassment.
- 7.12 **Ancillary Costs.** All travel expenses, meals and lodging set forth under the Agreement shall be paid in accordance with Section 112.061, Florida Statutes. Any expenses in excess of the amounts prescribed by law shall be borne by CampusCE.
- 7.13 **Liability of School Board of Sarasota County on behalf of Suncoast Technical College.** Customer assumes any and all risks of personal injury and property damage attributable to the negligent acts or omissions of Customer and its officers, employees, servants, and agents while acting within the scope of their authorized powers and duties or their employment by Customer. Notwithstanding any provision in the Agreement to the contrary, Customer assumes no additional risks except those set forth in the first sentence of this Section 7.14. Customer warrants and represents that it is self-funded for liability insurance, both public and property, with said protection being applicable to officers, employees, servants, and agents while acting within the scope of their employment by Customer. Nothing contained in the Agreement shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agencies and public bodies corporate to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.
- 7.14 **Taxes.** Customer is exempt from the payment of all sales, use or excise taxes. CampusCE shall pay all personal property taxes on its equipment and property and shall pay all taxes based upon its net income or capital structure.

CampusCE Corporation

**School Board of Sarasota County on behalf
of Suncoast Technical College**

By: Loren Pace

By:

Title: President

Title:

Date:

Date:

Approved for Legal Content
June 2, 2015, by Matthews, Eastmoore,
Hardy, Crauwels & Garcia, Attorneys for
The School Board of Sarasota County, Florida
Signed: ASH