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**PLEASE READ THIS CIRCLES CORPORATE TERMS OF SERVICE CAREFULLY. BY EXECUTING AN ORDER FOR SERVICES FROM CIRCLES LEARNING LABS, INC., CUSTOMER AGREES TO THIS CIRCLES CORPORATE TERMS OF SERVICE.**

**CIRCLES CORPORATE TERMS OF SERVICE**

This Circles Corporate Terms of Service (this “Agreement”) is by and between Circles Learning Labs, Inc., a Delaware public benefit corporation whose principal place of business is 453 6th Street, Brooklyn, NY 11215 (“CLL”) and the corporation, LLC, partnership, sole proprietorship, or other business entity executing an Order (as defined below) incorporating this Agreement (“Customer”). This Agreement is effective as of the date both parties have executed an Order (the “Effective Date”). Customer’s use of and CLL’s provision of CLL’s System (as defined below in the Recitals) are governed by this Agreement.

RECITALS

CLL provides technology-based system for facilitating peer group communications, known as The Circles System (the “System”), and the parties have agreed that CLL will make the System available to Customer to facilitate communications among Customer employees. Therefore, in consideration of the mutual covenants, terms, and conditions set forth below, including those outlined on Attachments A and B (which are incorporated into this Agreement by this reference), the adequacy of which consideration is hereby accepted and acknowledged, the parties agree as set forth below.

EACH PARTY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS. THE PERSON EXECUTING THIS AGREEMENT ON CUSTOMER’S BEHALF REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO BIND CUSTOMER TO THESE TERMS AND CONDITIONS.

TERMS AND CONDITIONS

1. **DEFINITIONS.** The following capitalized terms will have the following meanings whenever used in this Agreement.
	1. “AUP” means CLL’s acceptable use policy currently posted at http://circl.es/page/acceptable-use-policy
	2. “Customer Data” means data in electronic form input or collected through the System by Customer or through its account, including without limitation by Customer’s Users and through any recording of peer group communications.
	3. “Documentation” means CLL's standard manual related to use of the System.
	4. “Order” means an order for access to the System, executed by both parties on CLL’s standard order form.
	5. “Privacy Policy” means CLL’s privacy policy, currently posted at http://circl.es/page/privacy-policy
	6. “Term” is defined in Section 10.1 below.
	7. “User” means any individual who uses the System on Customer’s behalf or through Customer’s account or passwords, whether authorized or not.
2. **THE SYSTEM.**
	1. Use of the System. During the Term, Customer may access and use the System pursuant to: (a) the terms of any outstanding Order, including such features and functions as the Order requires; and (b) CLL’s policies related to the System, as such policies may be reasonably updated from time to time.
	2. Documentation: Customer may use the Documentation solely as necessary to support Users’ use of the System.
	3. System Revisions. CLL may revise System features and functions at any time, including without limitation by removing such features and functions or reducing service levels. If any such revision to the System materially reduces features or functionality provided pursuant to an Order, Customer may within 30 days of notice of the revision terminate such Order, without cause, or terminate this Agreement without cause if such Order is the only one outstanding.
3. **SYSTEM FEES.** Customer will pay CLL the fee set forth in each Order (the “Subscription Fee”) for each Term. CLL will not be required to refund the Subscription Fee under any circumstances.
4. **CUSTOMER DATA & PRIVACY.**
	1. Use of Customer Data. Unless it receives Customer’s prior written consent, CLL: (a) will not access, process, or otherwise use Customer Data other than as necessary to facilitate the System and to offer its products and services to Customer; and (b) will not intentionally grant any third party access to Customer Data, except subcontractors that are subject to a reasonable nondisclosure agreement. Notwithstanding the foregoing, CLL may disclose Customer Data as required by applicable law or by proper legal or governmental authority.
	2. Privacy Policy. The Privacy Policy applies only to the System and does not apply to any third party website or service linked to the System or recommended or referred to through the System or by CLL’s staff. Except as set forth in the Privacy Policy, CLL has no obligation to keep confidential information provided to CLL through the System, including without limitation information disclosed to or in the presence of CLL guides or other CLL personnel through peer group communications.
	3. Confidentiality Limits. Notwithstanding the provisions above of this Article 4, CLL has no obligation to protect or keep confidential information discussed with or in front of its guides or other staff, orally or in writing, or otherwise disclosed through peer group communications. Except as set forth above in Sections 4.1 and 4.2 above, CLL has no obligation to maintain the confidentiality of any information provided by Customer. Customer recognizes and agrees that: (a) Customer and not Circle is responsible for preventing illegal or other inappropriate disclosures through the System; and (b) hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using the System, Customer assumes such risks. CLL offers no representation, warranty, or guarantee that Customer Data will not be exposed or disclosed through errors or the actions of third parties.
	4. Data Accuracy. CLL will have no responsibility or liability for the accuracy of data uploaded to the System, including without limitation Customer Data and any other data uploaded by Users.
	5. Data Deletion. CLL may permanently erase Customer Data if Customer’s account is delinquent, suspended, or terminated for 30 days or more.
	6. Excluded Data. Customer represents and warrants that Customer Data does not and will not include, and Customer has not and will not upload or transmit to CLL's computers or other media, any data (“Excluded Data”) regulated pursuant to federal, state, and international personal and private data regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended, the Gramm–Leach–Bliley Act (GLBA), as amended, and the EU Directive 95/46/EC, as amended by the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) (the "Excluded Data Laws"). CUSTOMER RECOGNIZES AND AGREES THAT: (a) CLL HAS NO LIABILITY FOR ANY FAILURE TO PROVIDE PROTECTIONS SET FORTH IN THE EXCLUDED DATA LAWS OR OTHERWISE TO PROTECT EXCLUDED DATA; AND (b) CLL’S SYSTEMS ARE NOT INTENDED FOR MANAGEMENT OR PROTECTION OF EXCLUDED DATA AND MAY NOT PROVIDE ADEQUATE OR LEGALLY REQUIRED SECURITY FOR EXCLUDED DATA.
	7. Aggregate & Anonymized Data. Notwithstanding the provisions above of this Article 4, CLL may use, reproduce, sell, publicize, or otherwise exploit Aggregate Data in any way, in its sole discretion. (“Aggregate Data” refers to Customer Data with the following removed: personally identifiable information and the names and addresses of Customer and any of its Users or customers.)
5. **CUSTOMER’S RESPONSIBILITIES & RESTRICTIONS.**
	1. Acceptable Use. Customer will comply with the AUP. Customer will not: (a) use the System for service bureau or time-sharing purposes or in any other way allow third parties to exploit the System; (b) provide System passwords or other log-in information to any third party; (c) share non-public System features or content with any third party; or (d) access the System in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the System, or to copy any ideas, features, functions or graphics of the System. If it suspects any breach of the requirements of this Section 5.1, including without limitation by Users, CLL may suspend Customer’s access to the System without advanced notice, in addition to such other remedies as CLL may have. Neither this Agreement nor the AUP requires that CLL take any action against Customer or any User or other third party for violating the AUP, this Section 5.1, or this Agreement, but CLL is free to take any such action it sees fit.
	2. Unauthorized Access. Customer will take reasonable steps to prevent unauthorized access to the System, including without limitation by protecting its passwords and other log-in information. Customer will notify CLL immediately of any known or suspected unauthorized use of the System or breach of its security and will use best efforts to stop said breach.
	3. Compliance with Laws. In its use of the System, Customer will comply with all applicable laws, including without limitation laws governing the protection of personally identifiable information and other laws applicable to the protection of Customer Data.
	4. Users & System Access. Customer is responsible and liable for: (a) Users’ use of the System, including without limitation unauthorized User conduct and any User conduct that would violate the AUP or the requirements of this Agreement applicable to Customer; and (b) any use of the System through Customer’s account, whether authorized or unauthorized.
6. **IP & FEEDBACK.**
	1. IP Rights to the System. CLL retains all right, title, and interest in and to the System, including without limitation all software used to provide the System and all graphics, user interfaces, logos, and trademarks reproduced through the System. This Agreement does not grant Customer any intellectual property license or rights in or to the System or any of its components. Customer recognizes that the System and its components are protected by copyright and other laws.
	2. Feedback. CLL has not agreed to and does not agree to treat as confidential any Feedback (as defined below) Customer or Users provide to CLL, and nothing in this Agreement or in the parties’ dealings arising out of or related to this Agreement will restrict CLL’s right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Customer or the User in question. Feedback will not be considered Customer’s confidential information subject to any nondisclosure agreement. (“Feedback” refers to any suggestion or idea for improving or otherwise modifying any of CLL’s products or services.)
7. **REPRESENTATIONS & WARRANTIES.**
	1. Customer. Customer represents and warrants that: (a) it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement; (b) it has accurately identified itself and it has not provided any inaccurate information about itself to or through the System; and (c) it is a corporation, the sole proprietorship of an individual 18 years or older, or another entity authorized to do business pursuant to applicable law.
	2. Warranty Disclaimers. CUSTOMER ACCEPTS THE SYSTEM “AS IS” AND AS AVAILABLE, WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) CLL HAS NO OBLIGATION TO INDEMNIFY OR DEFEND CUSTOMER OR USERS AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY; (b) CLL DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (c) CLL DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMERS DATA WILL REMAIN PRIVATE OR SECURE.
8. **INDEMNIFICATION.** Customer will defend, indemnify, and hold harmless CLL and CLL’s Associates (as defined below) against any “Indemnified Claim,” meaning any third party claim, suit, or proceeding arising out of or related to Customer's alleged or actual use of, misuse of, or failure to use the System, including without limitation: (a) claims by Users or by Customer's employees, as well as by Customer’s own customers; (b) claims related to unauthorized disclosure or exposure of personally identifiable information or other private information, including Customer Data; (c) claims related to misappropriation of trade secrets, violation of confidentiality rights, or violation of laws or regulations restricting information use and disclosure, including without limitation insider trading laws, in each case resulting from disclosures made through peer group discussions; (d) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality rights by written material, images, logos or other content uploaded to the System through Customer’s account, including by Customer Data; and (e) claims that use of the System through Customer’s account harasses, defames, or defrauds a third party or violates applicable law, including restrictions on electronic advertising. Indemnified Claims include, without limitation, claims arising out of or related to CLL’s negligence. Customer’s obligations set forth in this Article 8 include retention and payment of attorneys and payment of court costs, as well as settlement at Customer’s expense and payment of judgments. CLL will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing affirmative obligations. (CLL’s “Associates” are CLL’s officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns.)
9. **LIMITATION OF LIABILITY.**
	1. Dollar Cap. CLL’S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE FEES PAID BY CUSTOMER DURING THE 12 MONTHS PRECEDING THE INJURY GIVING RISE TO THE LIABILITY.
	2. Exclusion of Consequential Damages. IN NO EVENT WILL CLL BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.
	3. Clarifications & Disclaimers. THE LIABILITIES LIMITED BY THIS ARTICLE 9 APPLY: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF CLL IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF CUSTOMER’S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Article 9, CLL’s liability will be limited to the maximum extent permissible. For the avoidance of doubt, CLL’s liability limits and other rights set forth in this Article 9 apply likewise to CLL’s affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.
10. **Term & Termination.**
	1. Term. The term of this Agreement (the “Term”) will commence on the Effective Date and continue for the period set forth in the Order or, if none, for 12 months. Thereafter, the Term will renew for successive 12-month periods, unless either party refuses such renewal by written notice 30 or more days before the renewal date.
	2. *Termination for Cause*. Either party may terminate this Agreement for the other’s material breach by written notice. Such notice will specify in detail the nature of the breach and will be effective in 30 days, or more if specified in the notice, unless the other party first cures the breach.
	3. Effects of Termination. Upon termination of this Agreement, Customer will cease all use of the System and delete, destroy, or return all copies of the Documentation in its possession or control. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of Customer to pay fees incurred before termination; (b) Articles and Sections 6 (*IP & Feedback*), 7.2 (*Warranty Disclaimers*), 8 (*Indemnification*), and 9 (*Limitation of Liability*); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose.
11. **MISCELLANEOUS.**
	1. Independent Contractors. The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other’s behalf.
	2. Notices. CLL may send notices pursuant to this Agreement to Customer’s email contact points provided by Customer, and such notices will be deemed received 24 hours after they are sent. Customer may send notices pursuant to this Agreement to the contact points listed at http://circl.es/contact, and such notices will be deemed received 72 hours after they are sent.
	3. Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party’s reasonable control.
	4. Assignment & Successors. Customer may not assign this Agreement or any of its rights or obligations hereunder without CLL’s express written consent. Except to the extent forbidden in this Section 11.4, this Agreement will be binding upon and inure to the benefit of the parties’ respective successors and assigns.
	5. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. If a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
	6. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
	7. Choice of Law & Jurisdiction: This Agreement and all claims arising out of or related to this Agreement will be governed solely by the internal laws of the State of New York, including without limitation applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties’ rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of New York, New York. This Section 11.7 governs all claims arising out of or related to this Agreement, including without limitation tort claims.
	8. Conflicts. In the event of any conflict between this Agreement and any CLL policy posted online, including without limitation the AUP or Privacy Policy, the terms of this Agreement will govern.
	9. Technology Export. Customer will not: (a) permit any third party to access or use the System in violation of any U.S. law or regulation; or (b) export any software provided by CLL or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer will not permit any third party to access or use the System in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria).
	10. Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.
	11. Amendment. CLL may amend this Agreement from time to time by posting an amended version at its Website and sending Customer written notice thereof. Such amendment will be deemed accepted and become effective 30 days after such notice (the “Proposed Amendment Date”) unless Customer first gives CLL written notice of rejection of the amendment. In the event of such rejection, this Agreement will continue under its original provisions, and the amendment will become effective at the start of Customer’s next Term following the Proposed Amendment Date (unless Customer first terminates this Agreement pursuant to Article 10, *Term & Termination*). Customer’s continued use of the Service following the effective date of an amendment will confirm Customer’s consent thereto. This Agreement may not be amended in any other way except through a written agreement by authorized representatives of each party. Notwithstanding the foregoing provisions of this Section 11.11, CLL may revise the Privacy Policy and Acceptable Use Policy at any time by posting a new version of either at the Website, and such new version will become effective on the date it is posted.