

End User Agreement

The User, defined as a third party associated with Western Carolina University (WCU), hereby accepts the following:

TERM AND TERMINATION: This Agreement shall remain in full force and effect for a period not to exceed one (1) year from the date of signature, unless otherwise terminated, pursuant to this Agreement, by the Parties. This Agreement may be renewed for additional one (1) year periods upon the agreement of the Parties. WCU reserves the right to immediately terminate any and all privileges granted to the User at any time, for any reason contemplated by WCU, with or without notice to the User. The user may terminate this Agreement immediately upon proper notice to the administrator of this Agreement.

SOFTWARE:

- (A) WCU will provide a campus application (hereinafter "Application"), which shall include access to predetermined content, granted for the purpose of communication with WCU students, other Users and/or third parties. WCU hereby grants to User a nonexclusive, nontransferable, license to use the Application for the purposes described herein.
- (B) WCU, at its sole discretion, may provide modifications, upgrades and enhancements to the Application during the term of this Agreement.
- (C) WCU does not control the content posted to the environment by any third party. WCU shall not police, review or monitor the content posted. However, all content must conform to any existing University of North Carolina General Administration and WCU policy or procedure. Content made available on the Application may be used for any purpose at the sole discretion of WCU, royalty free and without the consent of the User.

LIMITED WARRANTIES: EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, WCU DOES NOT MAKE ANY OTHER REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE APPLICATION AND EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, WCU DOES NOT WARRANT THAT THE APPLICATION WILL MEET THE USER'S REQUIREMENTS, THAT THE OPERATION OF THE APPLICATION SHALL BE UNINTERRUPTED OR ERROR-FREE OR THAT ALL ERRORS IN THE APPLICATION CAN OR WILL BE CORRECTED.

LIMITATION OF LIABILITY: NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES ATTRIBUTABLE TO A BREACH OR ALLEGED BREACH OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION SHALL BE APPLICABLE EVEN IN THE EVENT OF A FAILURE OF AN EXCLUSIVE REMEDY AVAILABLE TO A PARTY UNDER THIS AGREEMENT TO ACHIEVE ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL WCU BE RESPONSIBLE OR LIABLE FOR (A) ANY CORRUPTION, DAMAGE, LOSS, OR MISTRANSMISSION OF DATA (B) USER'S RELIANCE ON THE ACCURACY OR FITNESS OF RESULTS OBTAINED BY USING THE APPLICATION, (C) THE SECURITY OF DATA DURING TRANSMISSION VIA WCU'S INTERNAL NETWORKS OR VIA PUBLIC TELECOMMUNICATIONS FACILITIES, OR (D) HARDWARE, SOFTWARE, OR OTHER ITEMS OWNED BY WCU OR ANY MEMBER OF THE WCU COMMUNITY OR THAT ARE THE PROPERTY OF A THIRD PARTY.

INDEMNIFICATION: The User agrees to indemnify and hold WCU harmless for any losses, claims, damages, awards, penalties, or injuries incurred by any third party, including reasonable attorney's fees, which arise from any actions by the User and/or alleged breach of the User's representations and warranties made under this Agreement.

ASSIGNMENT: This Agreement or any interest hereunder shall not be assigned or transferred by the User without the prior written consent of WCU. The User shall not share, transfer, make known, or distribute the User's login credentials issued by WCU.

CONFIDENTIAL INFORMATION:

- (A) Content posted by WCU students, other Users and/or third parties may be considered confidential personally identifiable information. Further, content made available on the Application by WCU students, other Users and/or third parties shall not be considered student education records as defined by the Family Educational Rights and Privacy Act of 1974 (FERPA) codified at 20 U.S.C. § 1232g, with implementing regulations in title 34, part 99 of the Code of Federal Regulations.
- (B) Users (the "Receiving Party") are prohibited from disclosing any other party's (the "Disclosing Party") Confidential Information (as defined below) to any other party. "Confidential Information" shall mean all proprietary and personal information, data and trade secrets, and other confidential information and materials of the Disclosing Party that may be obtained by the Receiving Party under this Agreement. "Confidential Information" shall not include information or materials that (a) are learned by the Receiving Party from another person free of any restriction and without a breach by such person of any obligation it may have to the Disclosing Party, (b) are or become publicly available through no unauthorized act of the Receiving Party or any other person, or (d) are required to be disclosed pursuant to applicable law, regulation, governmental requirement, or court order; provided, however, that the Receiving Party shall advise the Disclosing Party of such required disclosure promptly upon learning thereof.

SIGNATURE OF USER

Name (Please print)

Signature

Date