

SOFTWARE SUBSCRIPTION AGREEMENT

PLEASE READ THESE TERMS CAREFULLY – THIS SUBSCRIPTION AGREEMENT (“Agreement”) IS A LEGAL AGREEMENT BETWEEN YOU (“You”) AND THE UNIVERSITY OF MARYLAND, a public agency and instrumentality of the State of Maryland, on behalf of UM Ventures, (“US,” “WE” or “University”). PLEASE READ THIS AGREEMENT BEFORE DOWNLOADING, ACCESSING, OR USING THE SOFTWARE. THE TERMS OF THIS AGREEMENT GOVERN YOUR ACCESS TO AND USE OF THE SOFTWARE. BY USING THE SOFTWARE, YOU SIGNIFY THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT AND ACCEPT AND AGREE TO ABIDE BY ITS TERMS AND CONDITIONS. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, YOU MUST NOT DOWNLOAD, ACCESS OR USE THE SOFTWARE.

This Agreement is made between You on behalf of yourself and any Authorized Users. The term “Party” herein shall refer to University and to You and your Authorized Users. Acceptance of this Agreement by the Parties shall entitle You to use the Software, subject to the terms and conditions stated herein. If You are acting on behalf of an entity, then You represent that You have the authority to enter into this Agreement on behalf of that entity.

TERMS AND CONDITIONS

1. DEFINITIONS

- a. “Software” shall mean the computer program titled “MyDesign: A Learning Management System for Design.”
- b. “Non-commercial Academic Use” shall mean use of the Software for academic, research, instructional, teaching, and training or educational purposes only, and expressly excluding any commercial purposes.
- c. “Educational Seat License” shall mean a revocable, non-exclusive, non-transferable Seat License provided free of charge to an educational institution for Non-commercial Academic Uses.
- d. “Authorized Users” shall mean Your employees, students, teachers, faculty, or other users authorized by You to access the Software using an Educational Seat License.

2. SUBSCRIPTION, AND USE OF YOUR DATA.

- a. Subject to Your agreement to comply with the terms of this Agreement, and your purchase of a subscription, the University hereby grants to You and to your Authorized Users a non-exclusive, non-transferable right and Educational Seat License to use the Software during the Term provided in Section 10.a. of this

Agreement. This subscription Agreement is limited to <number> (XX) seats or users. Please contact otc@umd.edu for additional licenses.

- b. You hereby grant to University a royalty-free, revocable, limited right and license to collect, store, and use Your data for the purposes and period described in Section 6 of this agreement.
- 3. RESTRICTIONS.** The Educational Seat License subscription granted under Section 2 is subject to the following restrictions and conditions.
- a. You will not:
 - i. modify, hide, delete or interfere with any proprietary and restrictive legends and notices that are included on Software at the time it is received. In the event University adopts and provides you with modified legends or notices, You will promptly incorporate them into the Software upon receipt;
 - ii. sell, license, sublicense or otherwise distribute Software, in whole or in part, to third parties;
 - iii. publicly post or display the Software, in whole or in part;
 - iv. use or cause the Software to be used to provide services to third parties or for the production or manufacture of products for sale to third parties;
 - v. decompile, clone, reverse assemble or reverse compile the Software, in whole or in part; or
 - vi. upload the Software to a network.
 - b. You shall not sublicense or to make copies of the Software.
 - c. All rights not expressly granted to You in this Agreement shall remain with University.

4. SUPPORT AND OPERATION OF SOFTWARE

- a. University does not guarantee any upgrades or fixes to or otherwise maintain the Software.
- b. University does not guarantee any technical support.
- c. You and Your Authorized Users are responsible for maintaining and protecting any files or other information saved using the Software. University will not be liable for any loss or corruption of any files or other information, or for any costs or expenses associated with backing up or restoring any Files.
- d. You are responsible for safeguarding the usernames and passwords that You and your Authorized Users use to access the Software and You agree not to disclose this information to any third party.

5. INTELLECTUAL PROPERTY

- a. University shall own all rights, title, and interest in and to the Software. Except for the rights expressly provided to You herein, this Agreement does not grant You any right, title, or interest in the Software.
- b. You shall own Your own data files, analyses, and similar works that result from Your use of the Software.
- c. Neither Party shall use the name or trademarks of the other Party or names of employees of the other Party for commercial purposes without the prior written approval of the other Party. Notwithstanding the preceding statement, the University may identify You as a customer and user of the Software.

6. UNIVERSITY'S USE OF YOUR DATA

- a. University may either request or automatically collect certain information from Authorized users who make use of the Software. Optional data fields are marked below with an asterisk (*): Your name, title, role, email address, *user avatar, *race, *gender identity, *ethnicity, *degree of English language fluency, unique identifier, Class ID, *class description, Teacher ID, start date, end date, team name, project description and associated resources, student submitted documents with Individual ID or Team ID, student document submission date, student document submission due date, teacher scores for student submitted documents, teacher markups of student submitted documents, School or organization ID, organization address, organization name, organization contact number, organization email address, organization website, and *Learning Management System (LMS) identifier.
- b. University collects and uses Your data for the following purposes: to evaluate a variety of student and teacher outcomes, to evaluate the outcomes and efficacy of the Engineering For Us All (E4USA) Professional Development, and to evaluate the implementation of the E4USA course across geographically and demographically diverse sites. Your data will be accessed by the primary investigators of the E4USA grant, the research team members, and graduate students.
- c. For the purposes described in Section 6b above, identifying information will be replaced with a generic non-identifying number. Data will be encrypted at rest and in transit. We strive to keep personal data in our records only as long as they are necessary for the purposes they were collected and processed. Data will be retained for seven (7) years after the completion of the study, according to University policy on human subject files, and then destroyed.
- d. University shall use any information received about students only for the purposes described in this Agreement, and will keep all students' records confidential in accordance with the provisions of the Family Education Rights and Privacy Act.
- e. Please reference <https://umd.edu/privacy-notice> for additional terms relating to the University's use and retention of Your data.

7. PROPRIETARY AND CONFIDENTIAL UNIVERSITY INFORMATION.

- a. You acknowledge that the Software is Proprietary Information and is the property of the University.
- b. You shall take reasonable steps to protect against unauthorized access to, disclosure of, and/or use of the Software, using at least the same degree of care to protect the Software that You use to protect Your own proprietary information. Specifically, You shall:
 - i. Not disclose the Software to any third party; and
 - ii. Limit disclosure of the Software to those of Your officers, employees, and students who have a need to access the Software, and You shall obtain their agreement to comply with the obligations under this Section.
 - iii. The obligations set forth in this Section 7 shall last until such time that the Software is released to the public domain.
- c. You acknowledge that any breach, threatened or actual, of this Section 7 may cause irreparable injury to the University that cannot be adequately compensated by monetary damages. As a result, You agree that the University is entitled, in addition to any other available remedies, to seek and be awarded injunctive relief, without posting a bond.

8. DISCLAIMER AND LIMITATION ON LIABILITY

- a. THE SOFTWARE IS MADE AVAILABLE ON AN "**AS IS**" BASIS. THE UNIVERSITY DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES – WHETHER EXPRESS OR IMPLIED, ORAL OR IN WRITING, IN FACT OR ARISING BY OPERATION OF LAW – WITH RESPECT TO THE SOFTWARE, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OF ANY THIRD PARTY, OR THOSE ARISING BY LAW, STATUTE, USAGE OF TRADE, OR COURSE OF DEALING. THE UNIVERSITY ALSO MAKES NO REPRESENTATION OR WARRANTY THAT THE SOFTWARE WILL OPERATE ERROR-FREE OR IN AN UNINTERRUPTED FASHION OR THAT ANY DOWNLOADABLE FILES OR INFORMATION WILL BE FREE OF VIRUSES OR CONTAMINATION OR DESTRUCTIVE FEATURES.
- b. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL THE UNIVERSITY BE LIABLE TO YOU FOR ANY BUSINESS EXPENSE OR INTERRUPTION, LOSS OF DATA, UNAUTHORIZED ACCESS TO DATA, LOSS OF PROFITS, AND/OR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DEMANDS, HOWEVER CAUSED, ARISING IN CONNECTION WITH OR OUT OF THE FURNISHING, USE OR PERFORMANCE OF SOFTWARE PROVIDED

HEREUNDER. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

- c. IN NO EVENT WILL THE UNIVERSITY'S TOTAL LIABILITY FOR THE BREACH OR NONPERFORMANCE OF THIS AGREEMENT EXCEED THE LICENSE FEE PAID TO THE UNIVERSITY UNDER THIS AGREEMENT.

9. INDEMNITY

- a. To the extent permitted by law, You hereby agree to defend, indemnify, and hold harmless the University and its employees, agents, directors, and officers from and against any and all claims, proceedings, damages, injuries, liabilities, losses, costs, and expenses (including reasonable attorneys' fees and litigation expenses) relating to or arising in connection with any negligent act or omission by You, or Your Authorized Users, pertaining to Your activities and obligations under this Agreement.

10. TERM AND TERMINATION

- a. This Agreement and Your right to use the Software will take effect when You either (i) "ACCEPT" the terms of this Agreement by signing below or (ii) You install, access, or use the Software, and shall remain effective until July 1, 2022 unless earlier terminated as set forth below or extended by the Parties (the "Term").
- b. The University reserves the right at any time to terminate this Agreement when it has any reasonable belief (i) of fraudulent or unlawful activity committed by You or Your Authorized Users with respect to your use of the Software, or (ii) of a violation of any term or condition of this Agreement. Termination will become effective upon your receipt of written notice of such a default.
- c. You may terminate this Agreement at any time by ceasing to use the Software and providing written notice of the same to the University.
- d. University may terminate this Agreement at any time upon fifteen (15) days written notice to You.
- e. Within thirty (30) days of any termination or expiration of this Agreement for any reason, You must certify to the University that you have deleted and/or destroyed all copies of any aspect of the Software in your possession.
- f. Sections 1, 4-9, 10f, and 11 will survive the termination of this License

11. MISCELLANEOUS

- a. This Agreement may be amended from time to time only by a written instrument signed by the Parties.
- b. No term or provision in this Agreement will be waived and no breach excused unless such waiver or consent is in writing and signed by the Party claimed to have waived or consented. Failure by either Party to insist on strict performance of any

of the terms and conditions of this Agreement will not operate as a waiver by either Party of that or any subsequent default or failure of performance.

- c. If any provision of this Agreement is determined by a court of competent jurisdiction to be void, invalid, or otherwise unenforceable, such determination shall not affect the remaining provisions of this Agreement and the illegal, invalid, or unenforceable clause shall be modified in compliance with applicable law in a manner that most closely matches the intent of the original language.
- d. This Agreement does not create a joint venture, partnership, employment, or agency relationship between the Parties.
- e. No provision herein, express or implied, confers upon any person other than the Parties to this Agreement any rights, remedies, obligations, or liabilities hereunder.
- f. This Agreement shall be binding upon and inure to the benefit of the Parties hereto. You may not assign this agreement without the University's prior written approval.
- g. This Agreement shall be governed by and interpreted in accordance with United States copyright law and the laws of the State of Maryland without reference to its conflicts of laws rules. Nothing in this Agreement is or shall be deemed to be a waiver by University of any of its rights or status as an agency and instrumentality of the State of Maryland.
- h. This Agreement represents the entire agreement between You and the University with respect to the Software and supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between You and University regarding the Software. If You require the use of a purchase order to process the license transaction or to pay the license fee, any terms on such a document are hereby rejected and shall be null and void.

<LICENSEE>

BY:

Name and title: _____

Signature: _____

Date: _____