

CodeHS, Inc.
Master Service Agreement
Version: March 1, 2024

This Master Service Agreement (the “**MSA**”) outlines the standard contractual terms and conditions (“**Terms**”) that apply to the provision of any products or services by CodeHS, Inc. (“**CodeHS**”) to the entity (the “**Customer**”) identified in the signature block of this MSA and on the Order Form.

1. Definitions.

“**Agreement**” means, collectively, these Terms in the MSA, the Order Form, and the applicable CodeHS terms of service and privacy policy in effect (such applicable terms of service and privacy policy, collectively, the “**Additional Terms**”). CodeHS’ terms of service can be found at <http://codehs.com/terms> and the privacy policy can be found at <https://codehs.com/privacy>. Customer acknowledges that CodeHS may update and amend the terms of service and the privacy policy from time to time. CodeHS will comply with applicable law, rule and regulation in providing notice of any such amendments to Customer.

“**CodeHS Intellectual Property**” means the Service, and all improvements, changes, enhancements and components thereof, and all other proprietary materials of CodeHS and/or its licensors that are delivered, provided or used by CodeHS in the course of performing the Services, as well as all other intellectual property owned by CodeHS and all copyrights, patents, trademarks and trade names, trade secrets, specifications, methodologies, documentation, algorithms, criteria, designs, report formats and know-how, as well as and any underlying source code and object code related thereto.

“**Confidential Information**” means information in the possession or under the control of a party of a proprietary nature relating to the technical, marketing, product and/or business affairs or proprietary and trade secret information of that party in oral, graphic, written, electronic or machine readable form. Confidential Information shall not include information that: (a) the receiving party possesses prior to acquiring it from the other, (b) becomes available to the public or trade through no violation by the receiving party of this paragraph, (c) is given to the receiving party by a third party not under a confidentiality obligation to the disclosing party, (d) is developed by the receiving party independently of and without reliance on confidential or proprietary information provided by the disclosing party, or (e) the receiving party is advised by counsel is required to be disclosed by law.

“**Order Form**” means an order form for the purchase of CodeHS Services.

“**Pricing Summary**” refers to the table listed in the Order Form that specifically identifies every item, and the quantity of such item, that Customer is agreeing to and is obligated to purchase.

“**Service**” means the proprietary software as a service provided by CodeHS and made available through the CodeHS website and other related services provided by CodeHS as further described in the Order Form.

“**Term**” means the time period between the Start Date on the Order Form and termination as outlined under the Termination and Subscription Term provisions.

“**User**” means an individual who is authorized by the Customer to use the Service and for whom Customer has paid for such use.

2. Order Form.

CodeHS may issue to Customer, and Customer may execute, an Order Form for Services at any time. The provision of Services by CodeHS to the Customer shall be governed by the Agreement, including the Order Form.

3. License.

a. License. CodeHS hereby grants to the Customer a non-exclusive and non-transferable license to access and use the Services on a subscription basis during the Term, in accordance with any limitations herein and as set forth in an Order Form and the Agreement.

- b. License Restrictions. Customer shall not (and shall not permit Users to): (a) sell, rent, lease, lend, sublicense, distribute, or otherwise transfer or provide access to the Service to any person, firm, or entity except as expressly authorized herein, or access the Service to build a competitive service or product, or copy any feature, function or graphic for competitive purposes; (b) modify, adapt, alter or create derivative works from the Service or to merge the Service or any subpart thereof (including proprietary markings) with other services or software, or remove or modify any proprietary markings or restrictive legends in the Service, except as provided in this Agreement; (c) use the Service to: (i) store, transmit or create libelous, obscene, deceptive, defamatory, racist, sexual, hateful, unlawful, tortious materials or otherwise objectionable (except as necessary for Customer's instructional purposes, but in all cases in compliance with applicable law and regulation), or (ii) harm or impersonate any person or violate the rights of any third-party rights; (d) interfere with or disrupt the integrity or performance of the Service; (e) attempt to gain unauthorized access to the Service or its related systems or networks; or (f) introduce viruses, Trojan horses, worms, spyware, or other such malicious code into the Service.
 - c. Customer Responsibilities Regarding the License. Customer: (a) is solely responsible for and all activities arising from its Users, and (b) must keep its passwords secure and confidential, and notify CodeHS promptly of any known or suspected unauthorized access to the Service. Customer will comply with this Agreement (including the applicable CodeHS terms of service and privacy policy then in effect) and any other instructions given by CodeHS with respect to the Service.
- 4. CodeHS Responsibilities. CodeHS shall provide access to the Services as specified in the Order Form.
- 5. Fees. As consideration for the subscription to the Service, Customer shall pay the total fee ("**Fees**") set forth in the Order Form, by the date or dates specified in the Order Form, and by the payment methods specified in the Order Form. All Fees owed by Customer are exclusive of, and Customer shall pay, all sales, use, VAT, excise, withholding, and other taxes that may be levied in connection with this Agreement. All Fees are non-refundable, and quantities purchased cannot be decreased during the relevant subscription term. **Customer acknowledges that it is responsible for the Fees for the entire Term and for all years listed in the Order Form.** Upon expiration or termination of this Agreement, Customer shall immediately cease using the Services, and Customer shall pay any owed but unpaid Fees.
 - a. Overdue Charges. If any invoiced amount is not received by CodeHS by the due date, then without limiting CodeHS rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law.
- 6. Suspension of Service. CodeHS may immediately suspend the Service if Customer and/or its Users have violated a law or this Agreement (including the Additional Terms then in effect). CodeHS may try to contact Customer in advance, but it is not required to do so. CodeHS may also temporarily or permanently suspend or terminate the Services if payment is ten (10) days past due, without prior notice or liability to the Customer, but such suspension or termination will not serve as a termination of this Agreement nor shall it relieve Customer of any existing obligations for payment of any outstanding Fees. While the Services are suspended, payment must continue according to the Agreement.
- 7. Additional Order Forms. Customer and CodeHS may execute additional Order Forms at any time. Any and all Order Forms are subject to the terms of this MSA.
- 8. Representations and Warranties. CodeHS represents and warrants that the functionality or features of the Services may change but will not materially degrade during the Term. As Customer's exclusive remedy and CodeHS's sole liability for breach of the warranty set forth in this Section, CodeHS shall correct the non-conforming Service at no additional charge to Customer.
- 9. Compliance. Each party will comply with all applicable laws and regulations (including all applicable export control laws and restrictions) with respect to its activities under this Agreement. CodeHS will

implement reasonable, administrative, technical, and physical safeguards in an effort to secure its facilities and systems from unauthorized access and to secure the Customer Content.

10. **Limitation of Liability.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8, "REPRESENTATIONS AND WARRANTIES," CODEHS DISCLAIMS ALL WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. CODEHS DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR BE ERROR-FREE. EACH PARTY AND ITS SUPPLIERS SHALL NOT BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE USE OR INABILITY TO USE THE SERVICES (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY, LOSS OF DATA, RECORDS OR INFORMATION, AND ANY FAILURE OF DELIVERY OF THE SERVICE), EVEN IF THE OTHER PARTY HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES. EACH PARTY'S CUMULATIVE MAXIMUM LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER WITHIN THE PRECEDING 12 MONTHS UNDER THIS AGREEMENT. CUSTOMER ACKNOWLEDGES THAT CODEHS IS NOT RESPONSIBLE FOR THIRD-PARTY SERVICES MADE AVAILABLE THROUGH THE SERVICE.
11. **Confidentiality.** Each party acknowledges that the other party may disclose its Confidential Information to the other in the performance of this Agreement. Accordingly, each party shall: (a) keep the Confidential Information disclosed by the other party confidential, (b) use Confidential Information only for purposes of fulfilling its obligations hereunder, and (c) disclose such Confidential Information only to the receiving party's employees who have a need to know and only for the purposes of fulfilling this Agreement.
12. **Proprietary Rights.** As between Customer and CodeHS, the CodeHS Intellectual Property is, and shall at all times remain, the sole and exclusive property of CodeHS. Customer shall have no right to use, copy, distribute or create derivative works of the CodeHS Intellectual Property except as expressly provided herein. CodeHS shall have the right, in its sole discretion, to modify the CodeHS Intellectual Property. Customer expressly acknowledges that Customer has no right, title or interest in the Service or in any CodeHS Intellectual Property, other than the limited license to use the Service as provided herein.
13. **Termination.** Either party may terminate this Agreement for the material breach of any provision by the other party if such material breach remains uncured for thirty (30) days after receipt of written notice of such breach from the non-breaching party (an "**Uncured Breach**"). Such termination right shall be in addition to any other rights and remedies that may be available to the non-breaching party.
14. **Subscription Term.**
 - a. Automatic renewal of services under this Agreement is governed by the "Auto Renewal" section in the Order Summary of the Order Form. If Auto Renewal is not specified then the Order Form will not automatically renew and Services will end on the End Date.
 - b. If the Order Form does not Auto Renew:
 - i. Subscription access to CodeHS Services will begin on the Start Date specified in the Order Form and continue until the End Date specified in the Order Form.
 - c. If the Order Form does Auto Renew:
 - i. Subscription access to CodeHS Services will begin on the Start Date specified in the Order Form and continue until the End Date specified in the Order Form, and the Agreement shall automatically renew on the End Date for additional successive one (1) year periods thereafter (a "Renewal Term") unless (i) either party notifies the other in writing of its intent to terminate at least thirty (30) days prior to the end of the then-current term, or (ii) a new Order Form is signed. The terms of this Agreement shall apply to any Renewal Term, and the Fee of any Renewal Term shall be the Fee charged by CodeHS for

the last school year listed on the Order Form, or the most current CodeHS pricing for the current usage.

15. **Notice.** Any notice by a party under this Agreement shall be in writing and either (i) personally delivered, (ii) delivered by facsimile (iii) delivered by email or (iv) sent via reputable overnight courier (such as Federal Express) or certified mail, postage prepaid and return receipt requested, addressed to the other party at the address and/or contact information specified in the Order Form or such other address of which either party may from time to time notify the other in accordance with this Section. A copy of all notices to CodeHS shall be sent to: CodeHS, Inc., 747 N LaSalle #500, Chicago, IL 60654, email: hello@codehs.com. For purposes of service messages and notices about the Service to Users, CodeHS may also place a banner notice or send an email to an email address associated with an account. It is the User's responsibility to ensure that a current email address is associated with their account. All notices shall be in English and shall be deemed effective upon receipt.

16. **General Provisions.**

- a. **Force Majeure.** If CodeHS is unable to perform its obligations under this Agreement due to circumstances beyond its reasonable control, including, but not limited to, earthquakes, hacker attacks, actions or decrees of governmental bodies, changes in applicable laws, environmental and health emergencies, communication or power failures, such obligations will be suspended so long as those circumstances persist.
- b. **Choice of Law; Export Control.** This Agreement shall be interpreted, governed and construed by the laws of the State of Delaware without regard to the actual state or country of incorporation or residence of Customer. Each party shall comply with all United States and foreign export control laws or regulations applicable to its performance under these Terms.
- c. **Independent Contractor.** CodeHS is acting in performance of this Agreement as an independent contractor to Customer. These Terms do not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.
- d. **Fully Integrated Agreement.** The Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, and any prior representations, statements, and agreements, whether oral or written, relating thereto are superseded by the terms of this Agreement. CodeHS rejects additional or conflicting terms of any Customer form-purchasing document.
- e. **Assignment.** Customer shall not assign this Agreement, in whole or in part, to any entity without CodeHS's prior written consent. Any attempt to assign this Agreement, in whole or part, in contravention of this Section, shall be void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns.
- f. **Waiver.** Any failure by either party to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement. In the event of any conflict between the provisions in these Terms, the Order Form, or Additional Terms, the terms of the Order Form will take first precedence, then the Terms will take second precedence, then the Additional Terms will take third precedence.
- g. **Marketing.** CodeHS shall be permitted to use Customer's name and logo on the CodeHS website, in testimonial content, in press releases, and within marketing materials. With Customer's prior consent, CodeHS may issue press releases discussing these Terms as they relate to Customer.
- h. **Survival.** Any terms that by their nature survive termination or expiration of this agreement, will survive.
- i. **Reformation.** Nothing in this Agreement is intended to violate any law, rule or regulation. In the event that any terms or provisions of this Agreement are declared invalid or unenforceable by any Court of competent jurisdiction or any federal, state or local government agency having jurisdiction over the subject matter of this Agreement, then (i) the remaining terms and provisions

that are not affected thereby shall remain in full force and effect and (ii) the parties will promptly meet to negotiate substitute terms and provisions for those declared invalid.

17. **Mediation and Arbitration.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof (any “**Claim**”), shall first be subject to mandatory, confidential mediation. The mediation process shall be initiated and conducted through the rules of the American Arbitration Association or through JAMS, and shall take place in Chicago, Illinois. In the event the mediation is not successful, the Claim shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof, provided however, that each party will have a right to seek injunctive or other equitable relief in a court of law. The prevailing party will be entitled to receive from the nonprevailing party all costs, damages and expenses, including reasonable attorneys’ fees, incurred by the prevailing party in connection with that action or proceeding, whether or not the controversy is reduced to judgment or award. The parties hereby consent to the arbitration in the State of Illinois in the city and county of Chicago, Illinois. The arbitration, and any results of the arbitration, shall be strictly confidential. Judgment may be entered in any court with competent jurisdiction. In proceeding in this manner, the parties acknowledge that they are waiving their right to have a jury or court decide the Claim, and that they are waiving their right to appeal any judgment made by the arbitrator.
18. **Waiver of Jury Trial.** EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.
19. **Permission to Contact College Board.** In executing this MSA, the Customer gives express written permission to CodeHS to obtain from The College Board any scores related to AP Computer Science courses involving the Customer.
20. **Suggestions, Ideas and Feedback.** CodeHS shall have the unrestricted right to use or act upon any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Customer or any other party relating to the Services to the extent it does not constitute Confidential Information of the Customer.
21. **Legally Binding Agreement.** By executing this order form below, each party indicates that it agrees to be legally bound by this order form, including the attached terms and conditions or terms and conditions of the Customer’s initial order form which govern this order form. This MSA and any Order Form may be executed in counterparts (including through an electronic signature) which taken together shall form one legal instrument.