

Master Services Agreement



This Master Services Agreement ("**Agreement**") is entered into and effective as of December 8, 2015 ("**Effective Date**") by and between **HealthStream, Inc.**, a Tennessee corporation, having its principal place of business at 209 10th Avenue South, Suite 450, Nashville, Tennessee 37203 ("**HealthStream**") and Chabot-Las Positas Community College, having its principal place of business at 5020 Franklin Drive, Pleasanton, CA, 94588 ("**Customer**"). Unless otherwise specified herein, this Agreement shall supersede any and all previous master services or similar agreement(s) between HealthStream and Customer.

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Definitions.

"Online Service(s)" means certain Service(s) provided by HealthStream to Users over the Internet or other similar computer networks (excluding courseware).

"Order Form" means the ordering documents, including any order forms or project specification outlines (PSOs), representing the initial purchase of any Services as well as any subsequent purchases agreed to between the parties in writing from time to time, that are signed under this Agreement and deemed incorporated into Exhibit A. Customer has designated those entities set forth on Exhibit B as additional purchasers with the authority to enter into Order Forms under this Agreement and bind Customer.

"Service(s)" means all service(s) provided by HealthStream, including but not limited to Online Service(s).

"Users" means Customer's employees, consultants, contractors, clients or agents who are authorized to use the Online Service(s) and have been supplied user identifications and passwords by Customer (or by HealthStream at Customer's request).

2. Provision of Service(s). HealthStream shall make the Service(s) available to Customer pursuant to the terms and conditions set forth in this Agreement and any and all Order Forms executed under this Agreement from time to time.

3. Use of Online Service(s).

3.1 Dependent Online Service(s). Certain Online Service(s) including, without limitation, courseware services, authoring services, and dictionary services (collectively the "**Dependent Online Services**"), require other Online Service(s) including, without limitation, Learning Center (in one of several versions) and Competency Center (collectively the "**Required Online Services**"), to be licensed by Customer to enable the Customer to use the Dependent Online Services. HealthStream may require and Customer shall agree to contract for, license and purchase at least the minimum level of Required Online Services as determined from HealthStream from time to time as a pre-requisite to contracting for, licensing and purchasing the Dependent Online Services. All relationships between Required Online Services and Dependent Online Services shall be detailed in the applicable Order Form(s).

3.2 HealthStream Responsibilities. HealthStream shall: (a) provide telephone and online standard support to designated representatives of Customer; and (b) use commercially reasonable efforts to make the Online Service(s) generally available 24 hours a day, 7 days a week, except for: (i) planned downtime; or (ii) any unavailability caused by circumstances beyond HealthStream's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving HealthStream employees), computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within HealthStream's possession or reasonable control, and network intrusions or denial of service attacks.

3.3 Customer Responsibilities. Customer is responsible for all activities that occur under Customer's User accounts. Customer shall:

(a) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (b) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Online Service(s), and notify HealthStream promptly of any unauthorized use; and (c) comply with all applicable local, state, federal, and foreign laws in using the Online Service(s) and, if using the Online Service(s) outside of the United States, not use the Online Service(s) in a manner that would violate any federal or state laws of the United States if conducted in the United States.

3.4 Use Guidelines. Customer shall use the Online Service(s) solely for its internal business purposes as contemplated by this Agreement and shall not: (a) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Online Service(s) available to any third party, other than as contemplated by this Agreement; (b) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (c) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (d) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (e) interfere with or disrupt the integrity or performance of the Online Service(s) or the data contained in the Online Service(s); or (f) attempt to gain unauthorized access to the Online Service(s) or its related systems or networks.

4. Fees & Payment.

Fees. Customer shall pay all fees specified in all executed Order Forms. In the case of Online Service(s) and except as otherwise provided: (a) fees are based on the number of User subscriptions purchased in the relevant Order Form, not the extent of actual usage; (b) fees are non-refundable; (c) the number of User subscriptions purchased cannot be decreased during the relevant subscription term stated on the Order Form; and (d) User subscriptions are for named Users and cannot be shared or used by more than one User but may be reassigned from time to time to new Users replacing former Users who have terminated an employment or some other prior relationship with Customer, changed job status or function, or otherwise no longer require ongoing use of the Service. Unless otherwise specified in the relevant Order Form, (a) the term of the transferred User subscriptions shall be coterminous with the expiration of the then current subscription term; and (b) pricing for the transferred User subscriptions shall be the same as that for the pre-existing subscriptions. HealthStream shall have the right at all times to review and audit the number of Users for any Online Service and to bill Customer for any Users in excess of that number of properly licensed and paid Users under all Order Forms and subscriptions.

4.1 Invoicing & Payment; Suspension of Service. Customer shall maintain complete and accurate billing and contact information with HealthStream at all times. Fees for the Service(s) will be invoiced in advance and otherwise in accordance with the terms set forth in the relevant Order Form. Unless otherwise stated in the Order Form, charges are due 30 days from the invoice date and all payments made under this Agreement shall be in United States dollars. Any payment not received from Customer by the due date may accrue (except with respect to charges then under reasonable and good faith dispute), at HealthStream's discretion, late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date the payment was due until the date

paid. If Customer's account is thirty (30) days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of its other rights or remedies, HealthStream reserves the right to suspend the Service(s) provided to Customer, without liability to Customer, until the overdue amounts are paid in full.

4.2 Taxes. Unless otherwise stated, HealthStream's fees do not include any local, state, federal or foreign taxes, levies or duties of any nature ("**Taxes**"). Customer is responsible for paying all Taxes, excluding only taxes based on HealthStream's income. If HealthStream has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides HealthStream with a valid tax exemption certificate authorized by the appropriate taxing authority.

5. Proprietary Rights.

5.1 Reservation of Rights. Customer acknowledges that in providing the Service(s), HealthStream utilizes (a) the HealthStream name, the HealthStream logo, the HealthStream domain name, the product and service names associated with the Service(s), and other trademarks and service marks; (b) certain audio and visual information, documents, software and other works of authorship; (c) certain processes including, but not limited to, HealthStream's databases, questionnaires, market research procedures, tabulation procedures, creative processes, statistical methods, and production methods; and (d) other technology, software, hardware, products, processes, algorithms, user interfaces, know-how and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information (collectively, "**HealthStream IP**") and that the HealthStream IP is covered by intellectual property rights owned or licensed by HealthStream (collectively, "**HealthStream IP Rights**"). Other than as expressly set forth in this Agreement, no license or other rights in or to the HealthStream IP or HealthStream IP Rights are granted to Customer, and all licenses and rights are expressly reserved.

5.2 License Grant. HealthStream grants Customer and its Users a worldwide, non-exclusive, non-transferable, non-sublicenseable right to access and use the Online Service(s) in accordance with the terms of this Agreement.

5.3 Restrictions. Customer shall not (a) modify, copy or create derivative works based on the Service(s) or HealthStream IP; (b) create Internet "links" to or from the Online Service(s), or "frame" or "mirror" any content forming part of the Online Service(s), other than on Customer's own intranet; or (c) disassemble, reverse engineer, or decompile the Service(s) or HealthStream IP, or access it in order to build a similar or competitive product or service or copy any ideas, features, functions or graphics of the Service(s).

5.4 Customer Data. As between HealthStream and Customer, all data obtained by HealthStream from Customer through the provision of the Service(s) (collectively, the "**Customer Data**") is owned exclusively by Customer. Customer grants HealthStream an unrestricted, royalty-free, irrevocable license to maintain and distribute aggregated compilations of Customer Data ("**Aggregated Data**") and to use such Aggregated Data for future studies and reports; provided, however, that the Aggregated Data will not reveal any personal information or the identity of Customer. HealthStream may distribute certain Customer Data to licensing and accreditation organizations for the benefit of Users. HealthStream will release the minimum data required to adequately credit Users for educational activities completed. All Customer Data may be copied, displayed, published and otherwise used by the Customer; provided, however, that Customer hereby agrees that it shall not utilize or present the Customer Data in any manner that materially misrepresents the Customer Data. HealthStream shall hold all completed survey instruments prepared in connection with the Service(s) for which HealthStream distributes surveys on behalf of Customer for a period of 90 days following delivery of such survey instruments, after which time all survey instruments shall be destroyed, although HealthStream shall maintain electronic copies of the survey data.

5.5 Suggestions. HealthStream shall have a royalty-free, worldwide, perpetual license to use or incorporate into the Service(s) any

suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or its Users relating to the Service(s).

6. Confidentiality.

6.1 Definition of Confidential Information. As used in this Agreement, "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure including, without limitation, the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms under this Agreement), the Customer Data, the Service(s), the HealthStream IP, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information (except for Customer Data) shall not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (d) is received from a third party without breach of any obligation owed to the Disclosing Party.

6.2 Confidentiality. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting the Confidential Information. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

6.3 Remedies. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this [Section 6](#), the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin the acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

7. Warranties & Disclaimers.

7.1 Warranties.

(a) **General.** Each party represents and warrants that it has the legal power to enter into this Agreement. HealthStream represents and warrants that (i) it will provide the Service(s) in a manner consistent with general industry standards reasonably applicable to the provision of the Service; (ii) it owns or otherwise has sufficient rights to the Service(s) and the HealthStream IP to grant the rights and licenses granted in this Agreement; (iii) it will perform the Services in a skillful, professional, workmanlike and competent manner by qualified personnel; (iv) the Service(s) and HealthStream IP do not infringe any intellectual property rights of any third party. During the term of this Agreement, (i) the Online Service(s) shall perform materially in accordance with any applicable user guides or specifications; and (ii) the functionality of the Online Service(s) will not be materially decreased from that available as of the Effective Date. Customer agrees that its purchase of the Online Service(s) is not contingent upon the delivery of any future functionality or features nor is it dependent upon any oral or written public comments made by HealthStream with respect to future functionality or features.

(b) **Customer Research Data Limited Warranty.** HealthStream warrants that the Customer Data provided by HealthStream as a result of certain research Service(s) ("**Customer Research Data**") will conform substantially to the terms specified in the Order Form. In the event of a breach of this warranty, Customer shall provide HealthStream with written notice of such breach, identifying the claimed errors or deficiencies in the Customer Research Data provided, and HealthStream shall have a reasonable period to cure

such purported errors or deficiencies. HEALTHSTREAM'S SOLE OBLIGATION UNDER THIS WARRANTY SHALL BE TO CORRECT AND/OR MODIFY THE CUSTOMER RESEARCH DATA SO THAT IT CONFORMS SUBSTANTIALLY TO THE TERMS SPECIFIED IN THE ORDER FORM. Customer shall notify HealthStream of any errors and/or deficiencies in the Customer Research Data within three (3) months of HealthStream's delivery of the Customer Research Data to Customer, or such claims shall be waived.

(c) **Non-Exclusion.** HealthStream represents and warrants that HealthStream, its officers, directors, and employees (i) are not currently excluded, debarred, or otherwise ineligible to participate in the federal healthcare programs as defined in 42 U.S.C. §1320a-7b(f) (the "federal healthcare programs"), (ii) have not been convicted of a criminal offense related to the provision of healthcare items or services and have not been excluded, debarred, or otherwise declared ineligible to participate in the federal healthcare programs, and (iii) are not, to the best of its knowledge, under investigation or otherwise aware of any circumstances which may result in HealthStream being excluded from participation in the federal healthcare programs. This shall be an ongoing representation and warranty and HealthStream shall immediately notify Customer of any change in the status of the representations and warranty set forth in this section.

7.2 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, HEALTHSTREAM MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. HEALTHSTREAM SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

8. Mutual Indemnification.

8.1 Indemnification by HealthStream. Subject to this Agreement, HealthStream shall defend, indemnify and hold Customer harmless against any loss or damage (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("**Claims**") made or brought against Customer by a third party alleging that the use of the Service(s) as contemplated under this Agreement infringes the intellectual property rights of a third party; provided, that Customer (a) promptly gives written notice of the Claim to HealthStream; (b) gives HealthStream sole control of the defense and settlement of the Claim (provided that HealthStream may not settle or defend any Claim unless it unconditionally releases Customer of all liability); and (c) provides to HealthStream, at HealthStream's cost, all reasonable assistance.

8.2 Indemnification by Customer. Subject to this Agreement, Customer shall defend, indemnify and hold HealthStream harmless against any loss or damage (including reasonable attorneys' fees) incurred in connection with Claims made or brought against HealthStream by a third party alleging that the Customer Data or Customer's use of the Service(s) (as opposed to the Service itself) infringes the intellectual property rights of, or has otherwise harmed, a third party; provided, that HealthStream (a) promptly gives written notice of the Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases HealthStream of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance.

9. Limitation of Liability.

9.1 Limitation of Liability. EXCEPT FOR LIABILITY ARISING UNDER SECTIONS 4 (PAYMENT OF FEES) OR 5.3 (RESTRICTIONS), IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE LESSER OF \$100,000 OR THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER UNDER THIS AGREEMENT.

9.2 Exclusion of Consequential and Related Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR

FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGE.

9.3 Limitation of Action. Except for actions for non-payment or breach of either party's intellectual property rights, no action (regardless of form) arising out of this Agreement may be commenced by either party more than two (2) years after the cause of action has accrued.

9.4 WAIVER OF RIGHT TO JURY TRIAL. EACH PARTY HEREBY WAIVES ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY ACTION OR LITIGATION IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY ORDER FORM UNDER THIS AGREEMENT.

10. Term & Termination.

10.1 Term of Agreement. This Agreement commences on the Effective Date and, unless earlier terminated pursuant to the terms of this Agreement, continues until the later of the date when (a) all User subscriptions granted in accordance with this Agreement have expired or been terminated and (b) no Service(s) is being provided by HealthStream.

10.2 Term of User Subscriptions. User subscriptions for Online Service(s) commence on the start date specified in the relevant Order Form and continue for the subscription term specified in the Order Form. User subscriptions for Online Service(s) shall automatically renew for one (1) additional one (1) year term at 105% of the then current fee charged to Customer, unless one party provides the other notice of termination at least ninety (90) days prior to the end of the relevant subscription term.

10.3 Termination for Cause. A party may terminate this Agreement for cause: (a) upon ninety (90) days written notice of a material breach to the other party if the breach remains uncured at the expiration of the cure period; or (b) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon any termination for cause by Customer, HealthStream shall refund Customer any prepaid fees for Online Service(s) for the remainder of the User subscription term after the date of termination. Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to HealthStream prior to the effective date of termination.

10.4 Surviving Provisions. The following provisions shall survive any termination or expiration of this Agreement: Sections 4, 5 (excluding Section 5.2), 6, 7, 8, 9, 10 and 11.

11. General Provisions.

11.1 Relationship of the Parties; Publicity. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. There are no third-party beneficiaries to this Agreement. Neither party may issue press releases relating to this Agreement without the other party's prior written consent. Either party may include the name and logo of the other party in lists of customers or vendors in accordance with the other party's standard guidelines.

11.2 Notices. All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (a) personal delivery; (b) the second business day after mailing; (c) the second business day after sending by confirmed facsimile; or (d) the second business day after sending by email. Notices to HealthStream shall be addressed to the attention of its Legal Department.

11.3 Waiver and Cumulative Remedies; Severability. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated in this Agreement, the remedies provided in the Agreement are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the

original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

11.4 Assignment. Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior express written consent of the other party. Notwithstanding the foregoing, either party may assign this Agreement together with all rights and obligations under this Agreement, without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

11.5 Governing Law and Venue. This Agreement shall be governed exclusively by the internal laws of the State of Tennessee, without regard to its conflicts of laws rules. The state and federal courts located in Davidson County, Tennessee shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party consents to the exclusive jurisdiction of these courts.

11.6 Authority. The persons signing below have the right and authority to execute this Agreement for their respective entities and no further approvals are necessary to create a binding Agreement.

11.7 Entire Agreement. This Agreement, including all exhibits and addenda to this Agreement and all Order Forms signed under this Agreement, constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. In the event of any conflict between the provisions in this Agreement and any exhibit or addendum to this Agreement, or Order Form signed under this Agreement, the terms of the exhibit, addendum or Order Form shall prevail to the extent of any inconsistency. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void. This Agreement may be executed in counterparts, which taken together shall form one legal instrument.

IN WITNESS WHEREOF, the parties' authorized signatories have duly executed this Agreement as of the Effective Date:

Chabot-Las Positas Community College

By:

Print Name: _____

Lorenzo Legaspi

Title

Vice Chancellor, Business Services

Date _____

HealthStream Inc.

By:

Print Name: _____

Title _____

Date _____

EXHIBIT A

Order Forms and/or PSOs

To be attached to this Exhibit and Agreement and incorporated into this Exhibit and Agreement from time to time upon signing.

EXHIBIT B

Authorized Purchasing Entities

To be attached listed by the Customer, these are entities authorized to enter into Order Forms and bind Customer under this Agreement.