

EduStream™ Institutional License Agreement

This Agreement is entered into by and between the San Bernardino Community College District (“SBCCD”) and Las Positas College (“Las Positas”), an educational institution.

WHEREAS, SBCCD has created a web service and web-access portal and related technology (“EduStream”) for the purpose of linking students to digital media, streaming video, and other educational materials in furtherance of classroom and distance education purposes; and

WHEREAS, SBCCD desires to make the EduStream product available to the educational community; and

WHEREAS, Las Positas desires to provide access to the EduStream product to its faculty and students for research and educational purposes;

NOW THEREFORE, the parties hereby agree as follows:

I. Definitions.

“EduStream” is a proprietary web service and web-access portal created and maintained by the San Bernardino Community College District for the benefit of its authorized users. The web-based streaming application is provided for access by the California Community College system, other colleges, universities, and higher learning institutions, and their faculty and students.

“SBCCD” means the San Bernardino Community College District and the individual administrator(s) designated by the Chancellor/President to administer the EduStream web service and web-access portal.

“User” means any student or person authorized by a Site Administrator or an authorized agent of SBCCD to access and view some or all portions of the EduStream web service and web-access portal.

“Site Administrator” means a person designated by an Institution and approved by SBCCD as the administrator in charge of creating user login accounts and passwords for students and faculty, providing access to faculty and third party providers to add or upload content for access via the EduStream web service and web-access portal, monitoring user compliance with the terms and conditions of the individual end-user agreements and the Institutional License Agreement, and other such tasks as directed by SBCCD.

“Institution” means any individual community college, college, university, and/or other higher learning facility or organization, including Las Positas.

“Content” means any data, text files, audio files, video files, streaming digital media, or other information that may be stored on, accessed by, linked to, or incorporated within EduStream by any other authorized user, thirds parties, or SBCCD.

“Third Party Content Provider” means any person or entity who, while not in the capacity of an Institution, Site Administrator or authorized User, and with permission of a Site Administrator

and/or SBCCD, makes available any data, text files, audio files, video files, streaming digital media, or other information for the purpose of being stored on, accessed by, linked to, or incorporated within EduStream.

II. Terms of Use.

A. Term.

This agreement shall commence upon Las Positas 's acceptance of the terms and conditions stated herein, and shall continue for five (5) years unless terminated in the manner specified in Section II E.

B. Duties of SBCCD.

SBCCD shall make available to Las Positas, for the benefit and use of its faculty and students, access to the EduStream web service and web-access portal. Such access and use shall be for research and educational purposes only and shall be subject to the terms, limitations, disclaimers, and warranties described herein.

C. Duties of Las Positas.

Las Positas acknowledges that the authorized use of EduStream shall be limited in all respects to direct access and viewing of EduStream content by authorized Users for educational and research purposes only, through the use of an individually assigned user login and password. Las Positas shall designate a Site Administrator to be approved by SBCCD. The Site Administrator shall be responsible for issuing and monitoring User logins and passwords at his/her discretion and shall establish any registration or application requirements for authorized Users.

EduStream provides Las Positas 100 Gigabytes of file storage, unlimited number of accounts for faculty and staff, and unlimited access to the EduStream web service and web-access portal. Should Las Positas desires additional file storage beyond the 100 Gigabytes file storage limit, SBCCD may implement a fee-based structure for the additional allotment of additional storage.

The Site Administrator shall employ individual user logins and passwords as a means to restrict access to certain portions of the EduStream web service and functionalities, as made available to Users at the complete discretion of SBCCD. The Site Administrator shall be responsible for evaluating and approving any Content that is linked or uploaded to EduStream by Las Positas. Las Positas shall be solely responsible for ensuring that such Content is provided in full compliance with applicable laws, including copyright law.

Las Positas agrees and understands that any rights granted hereunder to provide access and use of the EduStream product for its faculty and/or students is granted by limited, non-exclusive license and is not sold. Las Positas may not sublicense, assign or transfer the authorization any rights hereunder to any other person or entity.

C. Intellectual Property.

Nothing hereunder shall grant to Las Positas any ownership in or rights to any intellectual property or Content comprised by EduStream, or any component thereof or associated therewith, whether created by SBCCD or by any third party, whether or not in cooperation with SBCCD. The arrangement, structure, appearance, and computer code which comprise the EduStream web services and web-access portal are the intellectual property and/or trade secrets of SBCCD. Las Positas shall not participate in or facilitate the misappropriation of any such property or trade secrets by any person or entity.

Content made available for access by Users may at any given time be the property and creative work of SBCCD, an authorized User or Institution, or a Third Party Content Provider. Las Positas shall treat all such content as if it is the intellectual property of either SBCCD, an authorized User, another authorized Institution, or a Third Party Content Provider, and shall take reasonable steps to prevent any unauthorized use, infringement, or theft of such property.

EduStream and the EduStream logo are trademarks of the San Bernardino Community College District in the United States and/or other countries, and shall not be used in any manner without the express written permission of SBCCD.

D. Modification.

Las Positas shall not modify, adapt, translate or create derivative works based upon the EduStream product. Las Positas shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the EduStream source code. Las Positas shall not attempt to circumvent or disable any security feature of the EduStream Product, including its password protection, or assist any other person or entity in doing so.

E. Termination.

This agreement may be terminated by either party for any reason upon thirty (30) days written notice as follows:

By Las Positas through written notification to SBCCD, Distributed Education and Technology Services, at 441 West 8th Street, San Bernardino, California, 92401.

By SBCCD, through written notification to Las Positas at the following address: 3000 Campus Hill Dr., Livermore, CA 94551.

Reasons for termination may include but shall not be limited to breach of any of the terms of this agreement; any unauthorized or commercial or for-profit use by Las Positas, or any use which constitutes a violation of law. Each party's responsibilities as pertains to any use of the EduStream product are ongoing and shall survive the termination of this agreement.

III. Indemnity, Warranties and Disclaimers.

A. Indemnity.

SBCCD and Las Positas agrees to indemnify and hold each other harmless from any and all liabilities, losses, damages, claims, or causes of action (including all reasonable expenses,

costs, and attorneys fees) arising out of or relating to Las Positas 's use or access of the EduStream web service and web-access portal. This indemnity provision specifically includes any liability resulting from any allegations of misappropriation or infringement of any intellectual property or privacy rights asserted by any third party related to content provided by the institution for access on EduStream.

B. Warranty.

THE EDUSTREAM WEB SERVICE AND WEB-ACCESS PORTAL IS MADE AVAILABLE TO INSTITUTIONS AND AUTHORIZED USERS ON AN "AS IS" BASIS ONLY AND WITHOUT ANY WARRANTY OF ANY KIND. SBCCD MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, REGARDING THE INTEGRATION, ACCURACY, SECURITY, AVAILABILITY, QUALITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE EDUSTREAM PRODUCT.

C. Limit of Liability.

SBCCD and Las Positas shall not, under any circumstance, be liable to any Institution or User or any other person or entity for any loss, claims, costs or damage, whether direct, indirect, or incidental, for any loss of use or revenues, lost or damaged data, or any other commercial or economic loss which may result from the use of or access to, or loss of use or loss of access to, or the proper or improper functioning, of the EduStream product.

SBCCD may find it necessary to interrupt service for periodic maintenance and reserves the right to do so. Scheduled maintenance shall be preceded by reasonable notice posted on the EduStream site. Such notice shall be posted forty-eight (48) hours in advance unless unanticipated conditions necessitate shorter notice. In all cases of service interruption, SBCCD will endeavor to restore service at the earliest possible time under the circumstances. SBCCD shall not be liable for any service interruption beyond its control (e.g. local or regional power failure).

D. Third Party Content.

Las Positas acknowledges that the authorized use of EduStream may allow Users to access third party data, text files, audio files, video files, streaming digital media, or other information which is not owned and/or has not been created by, and may not have been reviewed or edited by SBCCD. Use of and reliance upon third party Content is at each User's own risk, and approval of third party Content submitted for inclusion in EduStream by institutions shall be the responsibility of the individual Institution. SBCCD makes no warranties or representations, express or implied, regarding the integration, accuracy, security, availability, quality, merchantability or fitness for any particular purpose with respect to the third party Content.

III. General Provisions.

This Agreement constitutes the entire agreement governing Institution's use of and access to the EduStream product, and there exist no other agreements, warranties or representations other than those expressly mentioned herein. This Agreement is the final and complete expression of the rights and responsibilities of the parties.

This Agreement shall be construed under and governed by the laws of the State of California, to the extent applicable and without regard for its conflict of law provisions, and by the laws of the United States of America.

If any part of this Agreement is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, the remaining parts of this Agreement shall remain in full force and effect, with such illegal, invalid or unenforceable parts severed from this Agreement.

APPROVED AND ACCEPTED:

[NAME OF INSTITUTION] Las Positas College

[NAME]
[TITLE]

Date

SAN BERNARDINO COMMUNITY COLLEGE DISTRICT

Ronald Gerhard
Business Manager
San Bernardino Community College District

Date