



Cogcentric Labs Inc.

EDUCATIONAL TECHNOLOGY RESEARCH & DEVELOPMENT

Fabric Software as a Service (“SaaS”) – Terms of Use

Last Updated: October 7, 2019

This SaaS Agreement (“Agreement”) is made and entered into upon submission of the Fabric registration form (“Effective Date”). By using Fabric or signing up for a Fabric software account (the “Service”), you’re agreeing to these terms of service (“Terms”), which will result in a legal agreement between you (“Client”) and Cogcentric Labs Inc. (“Cogcentric”).

The Client hereto agrees to the following Terms.

1. Contract Period

Initial term of this Agreement is one month, starting from the Effective Date. This Agreement shall automatically and indefinitely renew for an additional term of one (1) month, unless either Cogcentric or Client provides notice of cancellation as covered in Terms of the Agreement.

2. Termination

Client may terminate the Agreement at any time and for any reason by Contacting Cogcentric by email. Client terms of Cancellation are covered in Section 5, Subscription Services. Cogcentric may terminate the Agreement at any time and for any reason by giving thirty (30) days written notice to the Client. Cogcentric may suspend the Service to Client at any time, with or without cause. Once Agreement is terminated, Client acknowledges and agrees that Cogcentric may permanently delete all Client data associated with the Service. Upon Client request, Cogcentric will provide a CSV file to Client containing all user history, object and course completion history and object submission history (“Data Dump”), so long as the request for the Data Dump occurs in writing within three (3) months of termination. Client agrees that a fee of \$100 will be charged by Cogcentric for said Data Dump.

3. Changes

Client acknowledges that Cogcentric may change the Terms of this Agreement at anytime, with or without notice, for a variety of reasons, such as to reflect changes in applicable law or updates to Services, and to account for new services or functionality. The most current version of the Terms will be posted on the Cogcentric website. If an amendment is material, as determined in Cogcentric’s sole discretion, Cogcentric will notify you by email. Changes will be effective no sooner than the day they are publicly posted. In order for certain changes to become effective, applicable law may require Cogcentric to obtain your consent to such changes, or to provide you with sufficient advance notice of them. Unless Client terminates their account, the new Terms will be effective immediately and apply to any continued or new use of the Service. Cogcentric may change the Service, Add-ons, or any features of the Service at any time, and Cogcentric may discontinue the Service, Add-ons, or any features of the Service at any time. If Client does not agree to any changes made to the Terms, Client should cease use of the Service, and by continuing to use the Service, Client agrees to be bound by the updated Terms.

Billing and Payment

4. User Accounts

A user account is a location on a server used to store a username, password, and other user information. Active Users are defined as any user account that exists within the Service, which is

not in a Locked Status (“Active User”). User Accounts that are permanently deleted from the Service are not considered an Active User.

5. Subscription Services

Cogcentric’s Fabric software subscription (“Subscription”) fees are billed in advance on a recurring, periodic basis (“Billing Cycle”). Client agrees to billing based on the number of Active Users at the start of each Billing Cycle. Billing Cycles are monthly and begin on the Effective Date. Client Subscription will automatically renew at the end of each Billing Cycle unless the Client Subscription is canceled by [contacting our customer support team](#). Client may cancel the Subscription at any time, in which case the Subscription will continue until the end of that Billing Cycle before terminating. Client may cancel the Subscription immediately after the Subscription starts if they do not wish it to renew.

6. Payment Method

So long as Client has a Subscription or otherwise has an outstanding balance with Cogcentric, Client agrees to provide Cogcentric with valid credit card information and authorizes Cogcentric to charge the monthly Subscription fees to the credit card on the Effective date and on each month following. Client will replace the information for any credit card that expires, is replaced or is cancelled with information for a valid one. If Client’s credit card is automatically replaced with a new card by a payment processor, Client acknowledges and agrees that Cogcentric is authorized to deduct any charges on Client’s account against the new credit card. Any employee, contractor or agent of Client using a credit card represents and warrants that they are authorized to use that credit card on behalf of Client, and that any and all charges may be billed to that credit card and won’t be rejected.

7. Failed Transactions

Should a transaction for Client’s monthly Subscription fail, Cogcentric will attempt to run the transaction again twenty-four (24) hours later, for a total of three (3) attempts. Following three (3) failed attempts to process a monthly transaction on the credit card provided, Cogcentric will attempt to contact Client by email and reserves the right to suspend Client’s account until Client’s payment can be processed and the Client account is no longer in arrears. A \$20 administration fee will be charged to Client following three failed attempts to process a monthly Subscription transaction.

8. Currency

Client acknowledges that all Cogcentric billing is in Canadian currency (CAD). Monthly credit card transactions for the Subscription are in Canadian currency (CAD) and will be automatically converted to the currency of the Client’s credit card on file. Currency conversion is handled by Client’s credit card provider and as such, Client will be subject to the conversion rates of their credit card provider.

9. Tax

Quoted fees do not include sales or other transaction-based taxes of any kind. Applicable taxes will be added to all Invoicing and are payable to Cogcentric by Client.

10. Price Changes

Cogcentric may change the fees charged to Client for the Services at any time, provided that the change will become effective only at the end of the then-current Billing Cycle of the Subscription. Cogcentric will provide Client with advance notice of any change in fees.

11. Billing Changes

Cogcentric may change the fees charged for the Service at any time, provided that, the change will become effective only at the end of the then-current billing cycle of Client’s Subscription. Quoted fees do not include sales or other transaction-based taxes of any kind.

Customization

12. Custom Hardware

Subscription does not include a dedicated firewall, geographically separated load balancing, separation of database server and web server, PCI-compliant configuration for eCommerce, a standby server system for automated failover, mirror sites in multiple locations (“Custom Hardware”). All Custom Hardware requests by Client are set-up and configured at the discretion of Cogcentric and covered under a separate Agreement.

13. Custom Development

Subscription is for use of the Service “as is” and does not include custom software development, new feature development, modification to existing features, software integrations, custom interface development (“Custom Development”) or any other Client requested modifications to the Service. All Custom Development requested by Client are completed at the discretion of Cogcentric and covered under a separate Agreement.

Rights

14. Proprietary Rights Owned by Cogcentric

Client will respect Cogcentric proprietary rights in the software used to provide the Service (proprietary rights include, but aren’t limited to, patents, trademarks, service marks, trade secrets, copyrights, and other intellectual property). Client may only use Cogcentric’s brand assets with written permission from Cogcentric.

15. Proprietary Rights Owned by Client

Client represents and warrants that Client either owns or has permission to use all of the material, content, data, and information (including Client’s information and the personal information of others) in the course of using the Service (“Content”). Client retains ownership of the Content that Client uploads to the Service.

16. Compliance with Laws

Client represents and warrants that Client’s use of the Service will comply with all applicable laws and regulations. Client is responsible for determining whether the Service is suitable for Client to use in light of Client’s obligations under any regulations like HIPAA, GLB, EU data privacy laws (including the General Data Protection Regulation) (collectively, “EU Data Privacy Laws”), Canadian export control laws and regulations and economic sanctions laws and regulations (“Canadian Export Control Laws and Regulations”), or other applicable laws. If Client is subject to regulations (like HIPAA) and Client uses the Service, then Cogcentric won’t be liable if the Service doesn’t meet those requirements. Client may not use the Service for any unlawful or discriminatory activities. If Client collects any personal information pertaining to a minor and stores such information within Client’s Fabric account, Client represents and warrants that Client have obtained valid consent from the minor according to the applicable laws of the jurisdiction in which the minor lives, or that Client have otherwise obtained the required parental or guardian consent according to the applicable laws of the jurisdiction in which the minor lives.

Client agree to indemnify and hold Cogcentric harmless from any losses, including all legal fees and expenses, that result from Client’s breach of this Section 7.

17. Client Responsibilities.

Client is responsible for Client’s conduct, Content, and communications with others while using the Service. Client must comply with the following requirements when using the Service: (a) Client may not purchase, use, or access the Services for the purpose of building a competitive product or service or for any other competitive purposes. (b) Client may not misuse the Service by interfering with normal operation, or attempting to access the Service using a method other than through the interface and instructions provided by Cogcentric.(c) Client may not circumvent or attempt to circumvent any limitations that Cogcentric imposes. (d) Unless authorized by Cogcentric in writing,

Client may not probe, scan, or test the vulnerability of any Cogcentric service, system or network. (e) Unless authorized by Cogcentric in writing, Client may not use any manual or automated system or software to extract or scrape data from the websites or other interfaces through which Cogcentric makes the Service available. (f) Unless permitted by applicable law, Client may not deny others access to, or reverse engineer, the Service, or attempt to do so. (g) Client may not transmit any viruses, malware, or other types of malicious software, or links to such software, through the Service. (h) Client may not engage in abusive or excessive usage of the Service, which is usage significantly in excess of average usage patterns that adversely affects the speed, responsiveness, stability, availability, or functionality of the Service for other users. Cogcentric will endeavor to notify Client of any abusive or excessive usage to provide Client with an opportunity to reduce such usage to a level acceptable to Cogcentric. (i) Client may not use the Service to infringe on the intellectual property rights of others, or to commit any unlawful activity. (j) Unless authorized by Cogcentric in writing, Client may not resell or lease the Service. (k) If Client's use of the Service requires Client to comply with industry-specific regulations applicable to such use, the Client will be solely responsible for such compliance, unless Cogcentric has agreed otherwise. Client may not use the Service in a way that would subject Cogcentric to those industry-specific regulations without obtaining Cogcentric's prior written agreement. (l) Client may not register accounts by "bots" or other automated methods.

Liability

18. Exclusion of Certain Liability

To the extent permitted by applicable law, Cogcentric, its affiliates, officers, employees, agents, and contractors will not be liable for (a) any indirect, consequential, special, incidental, punitive, or exemplary damages whatsoever, or (b) loss of use, data, business, revenues, or profits (in each case whether direct or indirect), arising out of or in connection with the services and these terms, and whether based on contract, tort, strict liability, or any other legal theory, even if Cogcentric has been advised of the possibility of such damages and even if a remedy fails of its essential purpose. In addition, for the avoidance of doubt, in no instance will Cogcentric its employees and contractors, be liable for any losses or damages Client suffers regardless of whether Cogcentric terminates or suspends Client's account.

19. Limitation of Liability

To the extent permitted by applicable law, the aggregate liability of each of Cogcentric, its affiliates, officers, employees, agents, and contractors arising out of or in connection with the Service and these Terms will not exceed the lesser of: (a) amounts paid by Client to Cogcentric for use of the Service during the 12 months prior to the event giving rise to the liability; and (b) five-hundred (500) Canadian Dollars (CAD).

20. No Warranties

To the maximum extent permitted by law, Cogcentric provides the Service as-is. This means that, except as expressly stated in these Terms, Cogcentric doesn't provide warranties, conditions, or undertakings of any kind in relation to the Service, either express or implied. This includes, but isn't limited to, warranties of merchantability and fitness for a particular purpose, which are to the fullest extent permitted by law, excluded from the Agreement. Since Client may use the Service for a variety of reasons, Cogcentric can't guarantee that it'll meet Client's specific needs.

21. Indemnity

Client agrees to indemnify and hold Cogcentric, its employees and contractors harmless from any losses, including legal fees and expenses that directly or indirectly result from any claims Client makes that aren't allowed under these Terms due to a "Limitation of Liability" or other provision. (Indemnity is an agreement to compensate someone for a loss.) Client also agrees to indemnify and hold Cogcentric harmless from any losses, including legal fees and expenses, that directly or indirectly result from (a) Client's Content, (b) Client's use of the Service, (c) Client's violation of any laws or regulations, (d) third-party claims that Client or someone using Client's password did

something that, if true, would violate any of these Terms, (e) any misrepresentations made by Client, or (f) a breach of any representations or warranties Client made to Cogcentric.

22. Legal Fees and Expenses

If Cogcentric files an action against Client claiming Client breached these Terms and Cogcentric prevails, Cogcentric will be entitled to recover all reasonable legal fees, expenses, and any damages or other relief Cogcentric may be awarded.

23. Equitable Relief

If Client violates these Terms, then Cogcentric may seek injunctive relief (meaning Cogcentric may request a court order to stop Client) or other equitable relief.

24. Subpoena Fees

Should Cogcentric have to provide information in response to a subpoena, court order, or other legal, governmental, or regulatory inquiry related to Client's account, then Cogcentric may charge Client for Cogcentric's costs. These fees may include attorney and employee time spent retrieving the records, preparing documents, and participating in a deposition.

25. Disclaimers

Cogcentric its employees and contractors aren't responsible for the behavior of any third parties, linked websites, or other Clients.

Fine Print

26. Assignments

Client may not assign any of Client's rights under this agreement to anyone else. Cogcentric may assign Cogcentric's rights to any other individual or entity at our discretion.

27. Choice of Law

The Province of British Columbia's laws, except for conflict of laws rules, will apply to any dispute related to the Agreement or the Service. Any dispute related to the Agreement or the Service itself will be decided by the Provincial courts in The Province of British Columbia or the Federal court of Canada and each party will be subject to the jurisdiction of those courts.

28. Force Majeure

Cogcentric won't be held liable for any delays or failure in performance of any part of the Service, from any cause beyond Cogcentric's control. This includes, but is not limited to, acts of god, changes to law or regulations, embargoes, war, terrorist acts, riots, fires, earthquakes, nuclear accidents, zombie apocalypse, floods, strikes, power blackouts, volcanic action, unusually severe weather conditions, and acts of hackers, or third-party internet service providers.

29. Survivability

Even if this Agreement is terminated, the following sections will continue to apply: Proprietary Rights Owned by Us, Proprietary Rights Owned by Client, Compliance with Laws, Limitation of Liability, No Warranties, Indemnity, Choice of Law, Severability, and Entire Agreement.

30. Severability

If it turns out that a section of these Terms isn't enforceable, then that section will be removed or edited as little as required, and the rest of the Agreement will still be valid.

31. Amendments and Waiver

Amendments or changes to the Agreement won't be effective until Cogcentric emails revised Terms to the Client. If Cogcentric doesn't immediately take action on a violation of these Terms, Cogcentric is not giving up any rights under the Terms, and Cogcentric may still take action at some point.

32. Notification of Security Breach

In the event of a security breach that may affect Client, Cogcentric will notify Client of the breach once Cogcentric have determined, in Cogcentric's discretion, that it occurred and will provide a description of what happened. If Cogcentric determines, and notifies Client, that Client needs to forward all or part of that information to any of the Client's Fabric users, Client will promptly do so

33. Compatibility

Unless otherwise specifically identified in the Agreement or a Change Order: (a) the Service is compatible solely with the domestic versions of Microsoft Edge – latest version, (b) Firefox – latest version, (c) Safari - latest version, (d) Chrome latest version.

34. Notices

Any notice to Client will be effective when Cogcentric send it to the last email or physical address Client provided Cogcentric. Any notice to us will be effective when delivered to Cogcentric: admin@cogcentric.com, or any physical addresses as Cogcentric may later provide.

35. Entire Agreement

This Agreement makes up the Terms between Cogcentric and Client in relation to its subject matter and supersedes all prior agreements, representations, and understandings. Where there's a conflict between these Terms and Terms in any subsequent agreements between Client and Cogcentric, the Terms in any subsequent agreement(s) will control to the extent of the conflict.