

edX Enterprise Sales Terms and Conditions

Last Updated: January 5, 2022

These edX Enterprise Sales Terms and Conditions (the “Terms”) are entered into by and between edX LLC (“edX”) and the entity that orders Products and is responsible for payment under and compliance with these Terms (“Customer”) as described in an enterprise sales order form (“Order Form”) effective upon the parties’ execution of each such Order Form as of the date set forth therein. These Terms govern Customer’s purchase and use of edX Products listed on the Order Form and together with the applicable Order Form(s) constitute the entire agreement between edX and Customer regarding the subject matter contained herein (“Agreement”). Preprinted terms in Customer purchase orders or other Customer-generated ordering documents, or terms referenced or linked within them, will have no effect on this Agreement and are hereby void, regardless of whether they are signed by edX and/or purport to take precedence over this Agreement. In the event of any conflict between these Terms and the Order Form, the terms set forth in the Order Form shall control.

1. Obligations. edX will provide the Products as set forth in the applicable Order Form. Each party shall perform its obligations as set forth in the Agreement. Except as expressly permitted in an Order Form, Customer shall not resell the Products to a third party nor enter into any similar relationship with a third party to enable the purchase or use of Products through Customer.

2. Payment Terms. Customer shall pay for Products within 30 days of Customer’s receipt of the invoice unless other terms are specified on a given Order Form. All payments must be in US Dollars, and Customer shall solely bear all costs of conversion. All payments due under this Agreement are nonrefundable, and edX shall not reimburse Customer for any expenses. Customer agrees to provide edX with accurate billing and contact information on the applicable Order Form(s), including Customer’s legal company name, street address, e-mail address, and name of an authorized billing contact. Customer agrees to update this information within 30 days of any change to it. If Customer believes edX’s invoice is incorrect, Customer must contact edX in writing within sixty (60) days of the date of the invoice containing the amount in question to be eligible to receive an adjustment or credit. **In the event of late payment:** Customer shall be liable for all costs of collection (including attorneys’ fees) as may be allowed by law and edX, without liability, may suspend Products without notice including without limitation disabling any course access for which timely payment is not received. All edX fees hereunder are exclusive of all taxes, and Customer shall bear responsibility for payment of all taxes associated with the purchase excluding those based solely on edX’s income. Notwithstanding the foregoing, edX reserves the right to assess, collect and remit tax as may be applicable if assessed by appropriate authority. There shall be no deduction in respect of any such taxes or any offset against payment for any taxes, and all payments shall be grossed up to take account of any withholding taxes.

3. Confidentiality. Any information that is marked by the disclosing party as “Confidential” or which a reasonable person would assume to be confidential or proprietary given the terms of its disclosure shall remain the sole property of the disclosing party. Neither party shall disclose, use, modify, copy, reproduce or otherwise divulge Confidential Information of the other, except as required by law or in furtherance of the relationship between the parties. This obligation shall not apply (a) to materials the recipient already knows, receives from a third party without any obligation of confidentiality or independently develops or (b) to the extent disclosure is required by operation of law or court or governmental order.

4. Data. If any Products in an Order Form include reporting of demographic, enrollment and completion data (“Data”), such Data is provided by edX to Customer for the purpose of confirming and evaluating learner progress and completion of edX courses, consistent with the consent of learners to such purpose and reporting. Customer hereby represents and warrants that Customer is legally authorized to receive such Data in accordance with applicable law and solely in Customer’s capacity as an employer, academic institution, or coaching or tutoring service with respect to its current workforce, students, or clients, respectively (each, an “Enterprise Learner”). In the event Customer uses Data for any other purpose, Customer shall comply with its obligations under applicable laws, including with respect to obtaining any necessary consent from Enterprise Learners, for such use. For purposes of clarity, to the extent Customer is granted access to edX’s license or code management feature or any other enterprise administrator tools in connection with any Products, Customer acknowledges and agrees that its use of such features shall not entitle it to any Data unless specifically included in an Order Form. Customer acknowledges and agrees that edX serves as a data controller for all learner data on edX.org, including Data from Enterprise Learners, and further that Customer will also be a data controller relative to any applicable Data reporting by edX. Customer agrees to designate a qualified data manager to receive and manage Data, and each party will manage Data in accordance with administrative, physical and technical safeguards adequate to protect its confidentiality, integrity, and availability including without limitation the computing and storage devices used to process, maintain, store and transmit Data. Each party assumes all liability for its own use and storage of Data. edX may suspend or restrict access to Data if providing access may violate applicable law or a third party brings or threatens legal action.

5. Publicity. Neither party will use the other’s names, trademarks, logos or insignia, or any version, abbreviation or representation of them, in any advertising, publicity, promotional materials or other public announcement without the prior written consent of

the other, except that Customer grants edX the right to use Customer’s name, trademarks and logos on edX’s client list and in other marketing materials and further that Customer grants edX the right to use Customer’s trademarks and logos for the limited purpose of creating a co-branded user experience directed to Customer’s Enterprise Learners, provided that Customer may withdraw these rights at any time on prior written notice. All uses of edX service marks, logos, or trademarks must comply with edX trademark guidelines at <https://www.edx.org/trademarks> and as updated from time to time. No license is granted hereunder to Customer for use of any trademarks, service marks or logos of any edX partners or course content providers.

6. Disclaimer and Limitations. EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, PAST OR PRESENT, STATUTORY OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EDX DOES NOT GUARANTEE OR WARRANT THAT PRODUCTS AND DATA WILL BE ERROR FREE OR UNINTERRUPTED, COMPLY WITH APPLICABLE LAW OR PREVAILING ACCESSIBILITY STANDARDS, OR THAT EDX WILL CORRECT ALL ERRORS. EXCEPT FOR EACH PARTY’S LIABILITY ARISING OUT OF ITS BREACH OF PAYMENT, DATA, OR CONFIDENTIALITY OBLIGATIONS AND TO THE FULLEST EXTENT PERMISSIBLE BY LAW, EACH PARTY’S AGGREGATE AND CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING HEREUNDER, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER TO EDX UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE MONTHS PRECEDING THE CLAIM. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, REGARDLESS OF THE FORM OF ACTION OR THE THEORY OF RECOVERY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

7. Modifying These Terms. edX reserves the right to modify these Terms at any time to reflect changes to edX’s business processes and other non-material or non-adverse updates without advance notice to be effective upon posting on this page. For clarity, no modifications to any Order Form are effective unless in writing and signed by both parties.

8. Term and Termination. This Agreement shall continue in effect until each party has met all of its obligations in all underlying Order Forms, or until this Agreement is earlier terminated, as provided herein. Either party may terminate this Agreement (and any Order Forms then in effect) if the other party breaches any material term of this Agreement and fails to cure such breach within 30 days after written notice of such breach.

9. Miscellaneous. All legal notices must be in writing and sent by certified mail (return receipt requested) or a nationally recognized delivery service that guarantees overnight delivery and requires the signature of recipient. Notices will be effective as of the date sent to the addresses indicated in the Order Form, with a copy to Legal Department, edX LLC, 141 Portland Street, 9th Floor, Cambridge, MA 02139, legal@edx.org. Either party may change its address by giving timely notice to the other party. The parties are independent contractors. Each party shall each comply with all applicable laws in connection with its activities hereunder, including without limitation, applicable laws pertaining to data privacy, anti-corruption and anti-bribery. Each party hereby represents and warrants that it is not, and to its knowledge no director, officer, agent, employee or affiliate of the party is, on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, U.S. Department of the Treasury (OFAC), and/or any other list maintained pursuant to any of the rules or regulations of OFAC, and shall notify such other party immediately in writing of the occurrence of any event which renders the foregoing representation and warranty incorrect. Neither party may assign this Agreement or any of its rights or obligations hereunder to a third party, including, without limitation, by merger, operation of law or otherwise, without the other party’s prior written consent; provided, however, that no consent shall be required for an assignment of this Agreement by edX to any other entity, which controls, is controlled by or is under common control with edX. This Agreement will be binding upon and inure to the benefit of each party and its permitted successors and assigns. If any provision is held by a court of competent jurisdiction to be unenforceable, that provision shall be enforced to the maximum extent permissible, and all other provisions shall remain in full force and effect. The laws of the State of New York (without regard to its conflict of laws principles) exclusively govern all matters based upon, arising out of, or relating in any way to this Agreement, including all disputes, claims or causes of action arising out of or relating to this Agreement as well as the interpretation, construction, performance and enforcement of this Agreement. Notwithstanding any local laws to the contrary, the parties agree that the governing language of this Agreement and any notices related hereto shall be English. Prior agreements, representations, and statements with respect to the subject matter are superseded. No failure or delay of either party to exercise or enforce any of its rights operates as a waiver of such right. Any terms that by their nature extend beyond the termination or expiration of this Agreement, including without limitation Sections 2, 3, 4, 6, 8, and 9, will survive any termination or expiration and continue in full force and effect.