

# **EduStream™ End-User License Agreement**

**NOTICE:** PLEASE READ THIS AGREEMENT CAREFULLY. BY USING OR ACCESSING ANY FEATURE OR ANY PORTION OF THE EDUSTREAM™ WEB SERVICE AND WEB-ACCESS PORTAL ("EDUSTREAM"), YOU ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT.

This Agreement establishes the rights and responsibilities of the owners and users of the EduStream product.

## **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 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 individual community colleges, colleges, universities, and higher learning institutions, and approved by SBCCD, as the administrator in charge of creating user login accounts and passwords, provide access to faculty and Third Party Content 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 use agreement, and other such tasks as directed by SBCCD.

“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 a 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 User’s acceptance of the terms and conditions stated herein, by clicking the “I Accept” button, and shall continue until later terminated in the manner specified in section II E.

## B. Limitations.

User agrees that the authorized use of EduStream shall be limited in all respects to direct access and viewing of EduStream content for educational and research purposes only, through the use of an individually assigned user login and password. User shall obtain a user login and password at the discretion of an authorized Site Administrator at an approved Institution and shall comply with any registration or application requirements as determined by the Site Administrator. User may be required to update the registration or application materials from time to time as required by SBCCD and/or the Site Administrator.

The images and other media accessed through EduStream may be protected by copyright law and are solely for the use of students enrolled in courses at SBCCD or another authorized community college, college, universities, or higher learning institution under the terms of an Institutional User Agreement, for purposes associated with said courses, and may not be retained, copied or further disseminated outside of the scope of the course for which it was authorized.

User understands that individual user logins and passwords may serve as a means to restrict access to certain portions of the EduStream web service and functionalities, subject to the complete discretion of SBCCD and/or an authorized Site Administrator. User's grant of access to any portion or function of the EduStream product shall not constitute any right of access to any other portion or function.

User agrees and understands that the right to use EduStream is granted by limited, non-exclusive license and has not been sold or otherwise transferred hereunder. User may not sublicense, assign or transfer the authorization to use and access EduStream to any other person or entity.

## C. Intellectual Property.

User agrees that in receiving permission to use or access EduStream, User does not and shall not acquire 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 comprises the EduStream web services and web-access portal are the intellectual property and/or trade secrets of SBCCD. User 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 a Third Party Content Provider. User shall treat all such content as if it is the intellectual property of either SBCCD, another authorized User, or a Third Party Content Provider, and shall take reasonable steps to prevent any unauthorized use, infringement, or theft of such property. Absent explicit written permission by the owner or assignee of intellectual property accessed through EduStream, User shall not copy, reproduce, distribute, or rebroadcast such property, or otherwise infringe upon any rights conferred by copyright law or otherwise.

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.

User shall not modify, adapt, translate or create derivative works based upon the EduStream product. User shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the EduStream source code. User 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 as follows:

By User through written notification to SBCCD, Distributed Education and Technology Services, at 441 West 8<sup>th</sup> Street, San Bernardino, California, 92401.

By SBCCD or any Site Administrator through deactivation of User's login and password, for reasons which may include but shall not be limited to: Users' breach of any of the terms of this agreement; any unauthorized or commercial or for-profit use by User; 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.

User agrees to indemnify and hold SBCCD 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 any use or access of the EduStream product.

B. Warranty.

THE EDUSTREAM WEB SERVICE AND WEB-ACCESS PORTAL IS MADE AVAILABLE TO 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 shall not, under any circumstance, be liable to any 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 cause for service interruption beyond its control (e.g. local or regional power failure).

#### D. Third Party Content.

The authorized use of EduStream may allow User 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 third party Content is at User's own risk. 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 User'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.

SBCCD reserves the right to amend and/or supplement the terms and conditions of this Agreement and shall provide adequate notice to users upon such amendment or supplementation. Continued use of the EduStream product subsequent to such notice by any user shall constitute agreement with such amendment or supplementation.

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.

**BY CLICKING THE "I ACCEPT" BUTTON AND/OR BY USING ANY FUNCTION OR FEATURE OF THE EDUSTREAM PRODUCT, USER AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THESE TERMS, CLICK THE "DECLINE" BUTTON AND DISCONTINUE YOUR USE OF THE EDUSTREAM PRODUCT.**