

PLEASE NOTE THAT YOUR USE OF AND ACCESS TO OUR SERVICES (DEFINED BELOW) ARE SUBJECT TO THE FOLLOWING TERMS; IF YOU DO NOT AGREE TO ALL OF THE FOLLOWING, YOU MAY NOT USE OR ACCESS THE SERVICES IN ANY MANNER.

Terms of Use

Effective date: November 12, 2013

Welcome to Infuse Learning, a virtual student response system that allows teachers to sign up, login and create a virtual classroom for teaching and learning. Students login to the teacher's virtual classroom via their mobile device, laptop or other device and respond to prompts in order to provide both the teacher and student feedback on the student's learning process.

We're excited to have you join us, but first we need you to agree to the rules and restrictions that govern your use of our website(s), products, services and applications (the "Services"). If you have any questions, comments, or concerns regarding these terms or the Services, please contact us at contact@infuselearning.com.

These Terms of Use (the "Terms") are a binding contract between you and Infuse Learning, LLC ("Infuse Learning," "we" and "us"). You must agree to and accept all of the Terms, or you don't have the right to use the Services. Your using the Services in any way means that you agree to all of these Terms, and these Terms, as modified from time to time, will remain in effect while you use the Services.

Since we are constantly trying to improve our Services, these Terms may need to change along with the Services. We reserve the right to change the Terms at any time, but if we do, we will bring it to your attention by placing a notice on the InfuseLearning.com website, and/or by sending you an email and/or by some other means.

If you don't agree with the new Terms, you are free to reject them; unfortunately, that means you will no longer be able to use the Services. If you use the Services in any way after a change to the Terms is effective, that means you agree to all of the changes.

Except for changes by us as described here, no other amendment or modification of these Terms will be effective unless in writing and signed by both you and us.

Information Collected by Infuse Learning

Infuse Learning receives and stores any information you knowingly provide to us. For example, through the registration process and/or through account settings, we may collect personally identifiable information such as your name, email address, school affiliation, test scores, etc. ("Personal Information"). Certain information may be required to register with us or to take advantage of some of our features. The information you provide shall only be used for creating your individual account and to provide you the Services, and for sending notifications to you regarding changes or added features to Services such as upgrades, new product offerings, etc. Please note that if you signed up through your school and/or district, your school and/or district can view all activity and content associated with your student account, including your Personal Information.

We do not give, rent, sell, or transfer your Personal Information to third parties under any circumstance. We reserve the right to access, read, preserve and disclose any information that we reasonably believe is necessary to comply with law or court order; enforce or apply our conditions of use and other agreements; or protect the rights, property, or safety of Infuse Learning, our employees, our users, or others.

The Children’s Online Privacy and Protection Act (“COPPA”) requires that online service providers obtain parental consent before they knowingly collect personally identifiable information online from children who are under 13. Therefore, we only collect Personal Information through the Services from a child under 13 where that student’s school, district, and/or teacher has agreed (via the terms described in the Terms of Use) to obtain parental consent for all children who use the Services and disclose Personal Information to us. A parent or guardian may sign up his or her child for the Services and provide Personal Information about that child to us. However, no child under 13 may send us any Personal Information unless he or she has signed up through his or her school, district or teacher and such school, district or teacher has obtained parental consent for that child to use the Services and disclose Personal Information to us. If you are a student under 13, please do not send any Personal Information to us if your school, district, and/or teacher has not obtained this prior consent from your parent or guardian, and please do not send any Personal Information other than what we request from you in connection with the Services. If we learn we have collected Personal Information from a student under 13 without parental consent from his or her parent or guardian or obtained by his or her school, district, and/or teacher, or if we learn a student under 13 has provided us personal information beyond what we request from him or her, we will delete that information as quickly as possible. If you believe that a student under 13 may have provided us personal information in violation of this paragraph, please contact us at contact@InfuseLearning.com.

If you are signing up for this service and creating accounts on behalf of student(s), you represent and warrant that you are either (a) a teacher or school administrator or otherwise authorized by a school or district to sign up on behalf of students or (b) the parent of such student(s). If you are a school, district, or teacher, you represent and warrant that you are solely responsible for complying with COPPA, meaning that you must obtain advance written consent from all parents or guardians whose children under 13 will be accessing the Services. When obtaining consent, you must provide parents and guardians with these Terms and our Privacy Policy. You must keep all consents on file and provide them to us if we request them. If you are a teacher, you represent and warrant that you have permission and authorization from your school and/or district to use the Services as part of your curriculum, and for purposes of COPPA compliance, you represent and warrant that you are entering into these Terms on behalf of your school and/or district.

Basics of Using Infuse Learning

You may be required to sign up for an account, and select a password and username (“Infuse Learning User ID”). You promise to provide us with accurate, complete, and updated registration information about during the registration process. You may not select as your Infuse Learning User ID a name that you don’t have the right to use. You may not (i) select or use as an Infuse Learning User ID a name of another person with the intent to impersonate that per-

son; or (ii) use as an Infuse Learning User ID a name subject to any rights of a person other than you without appropriate authorization. In certain situations, your Infuse Learning User ID may be selected for you by your school or district; the same rules apply to them when they select an Infuse Learning User ID for you.

You represent and warrant that you are of legal age to form a binding contract (or if not, you've received your parent's or guardian's permission to use the Services and gotten your parent or guardian to agree to these Terms on your behalf). If you're agreeing to these Terms on behalf of an organization or entity (for example, if you're an administrator agreeing to these Terms on behalf of your district), you represent and warrant that you are authorized to agree to these Terms on that organization or entity's behalf and bind them to these Terms.

You will only use the Services for your personal, non-commercial use, and only in a manner that complies with all laws that apply to you. If your use of the Services is prohibited by applicable laws, then you aren't authorized to use the Services. We can't and won't be responsible for your using the Services in a way that breaks the law.

Additional Restrictions to Use of Services:

You represent, warrant, and agree that you will not contribute any Content or User Submission (each of those terms is defined below) or otherwise use the Services or interact with the Services in a manner that:

1. Infringes or violates the intellectual property rights or any other rights of anyone else (including Infuse Learning);
2. Violates any law or regulation;
3. Is harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, or otherwise objectionable;
4. Jeopardizes the security of your Infuse Learning account or anyone else's (such as allowing someone else to log on as you on the Services);
5. Attempts, in any manner, to obtain the password, account, or other security information from any other user;
6. Violates the security of any computer network, or cracks any passwords or security encryption codes;
7. Runs Maillist, Listserv, any form of auto-responder or "spam" on the Services, or any processes that run or are activated while you are not logged into the Services, or that otherwise interfere with the proper working of the Services (including by placing an unreasonable load on the Services' infrastructure);
8. "Crawls," "scrapes," or "spiders" any page or portion of the Services (through use of manual or automated means);
9. Copies or stores any significant portion of the Content;

10. Decompiles, reverse engineers, or otherwise attempts to obtain the source code of the Services.

A violation of any of the foregoing is grounds for termination of your right to use or access the Services.

Intellectual Property Rights

The materials displayed or performed on the Services, including, but not limited to, text, graphics, articles, photos, images, illustrations, User Submissions, and so forth (all of the foregoing, the “Content”) are protected by copyright and other intellectual property laws. You promise to abide by all copyright notices, trademark rules, information, and restrictions contained in any Content you access through the Services, and you won’t use, copy, reproduce, modify, translate, publish, broadcast, transmit, distribute, perform, upload, display, license, sell or otherwise exploit for any purpose any Content not owned by you, (i) without the prior consent of the owner of that Content or (ii) in a way that violates someone else’s (including Infuse Learning’s) rights.

You understand that Infuse Learning owns the Services. You won’t modify, publish, transmit, participate in the transfer or sale of, reproduce (except as expressly provided in this Section), creative derivative works based on, or otherwise exploit any of the Services.

The Services may allow you to copy or download certain Content; please remember that just because this functionality exists, doesn’t mean that all the restrictions above don’t apply.

Anything you post, upload, share, store, or otherwise provide through the Services is your “User Submission.” Some User Submissions are viewable by other users. In order to display your User Submissions on the Services, and to allow other users to enjoy them (where applicable), you grant us certain rights in those User Submissions.

For all User Submissions, you hereby grant Infuse Learning a license to translate, modify (for technical purposes, for example making sure your content is viewable on your iPhone as well as your computer) and reproduce such User Submissions, in each case to enable us to operate the Services, as described in more detail below. This is a license only - your ownership in User Submissions is not affected.

If you store a User Submission in your own personal Infuse Learning account, in a manner that is not viewable by any other user except you (a “Personal User Submission”), you grant Infuse Learning the license above, as well as a license to display, perform, and distribute your Personal User Submission for the sole purpose of displaying that Personal User Submission to you and providing you the Services necessary to do so.

If you share a User Submission only in a manner that only certain specified users can view (for example, a private message to one or more other users)(a “Limited Audience User Submission”), then you grant Infuse Learning the license above, as well as a license to display, perform, and distribute your Limited Audience User Submission for the sole purpose of displaying that Limited Audience User Submission to such other specified users, and providing you the Services necessary to do so. Also, you grant such other specified users a license to access

that Limited Audience User Submission, and to use and exercise all rights in it, as permitted by the functionality of the Services.

If you share a User Submission publicly on the Services and/or in a manner that more than just you or certain specified users can view (a “Public User Submission”), then you grant Infuse Learning the license above, as well as a license to display, perform, and distribute your Public User Submission for the purpose of displaying that Public User Submission to all Infuse Learning users and providing you the Services necessary to do so. Also, you grant all other users of the Services a license to access that Public User Submission, and to use and exercise all rights in it, as permitted by the functionality of the Services.

You agree that the licenses you grant are royalty-free, irrevocable, and worldwide, for as long as your User Submissions are stored with us. When you delete your Infuse Learning account, we will stop displaying your User Submissions to other users (if applicable), but you understand and agree that it may not be possible to completely delete that content from Infuse Learning’s records, and that your User Submissions may remain viewable elsewhere to the extent that they were copied or stored by other users. You understand and agree that Infuse Learning, in performing the required technical steps to provide the Services to our users (including you), may need to make changes to your User Submissions to conform and adapt those User Submissions to the technical requirements of connection networks, devices, services, or media.

Use of Content through the Services

Any information or content publicly posted or privately transmitted through the Services is the sole responsibility of the person from whom such content originated, and you access all such information and content at your own risk, and we aren’t liable for any errors or omissions in that information or content or for any damages or loss you might suffer in connection with it. We cannot control and have no duty to take any action regarding how you may interpret and use the Content or what actions you may take as a result of having been exposed to the Content, and you hereby release us from all liability for you having acquired or not acquired Content through the Services. We can not guarantee the identity of any users with whom you interact in using the Services and are not responsible for which users gain access to the Services.

You are responsible for all Content you contribute, in any manner, to the Services, and you represent and warrant you have all rights necessary to do so, in the manner in which you contribute it. You will keep all your registration information accurate and current. You are responsible for all your activity in connection with the Services.

The Services may contain links or connections to third party websites or services that are not owned or controlled by Infuse Learning. When you access third party websites or use third party services, you accept that there are risks in doing so, and that Infuse Learning is not responsible for such risks. We encourage you to be aware when you leave the Services and to

read the terms and conditions and privacy policy of each third party website or service that you visit or utilize.¹

Infuse Learning has no control over, and assumes no responsibility for, the content, accuracy, privacy policies, or practices of or opinions expressed in any third party websites or by any third party that you interact with through the Services. In addition, Infuse Learning will not and cannot monitor, verify, censor or edit the content of any third party site or service. By using the Services, you release and hold us harmless from any and all liability arising from your use of any third party website or service.

Your interactions with organizations and/or individuals found on or through the Services, including payment and delivery of goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such organizations and/or individuals. You should make whatever investigation you feel necessary or appropriate before proceeding with any online or offline transaction with any of these third parties. You agree that Infuse Learning shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings.

If there is a dispute between participants on this site, or between users and any third party, you agree that Infuse Learning is under no obligation to become involved. In the event that you have a dispute with one or more other users, you release Infuse Learning, its officers, employees, agents, and successors from claims, demands, and damages of every kind or nature, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way related to such disputes and/or our Services. If you are a California resident, you shall and hereby do waive California Civil Code Section 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor."

Change of Services

We are always trying to improve the Services, so they may change over time. We may suspend or discontinue any part of the Services, or we may introduce new features or impose limits on certain features or restrict access to parts or all of the Services. We will try to give you notice when we make a material change to the Services that would affect you, but this isn't always practical. Similarly, we reserve the right to remove any Content from the Services at any time, for any reason (including, but not limited to, if someone alleges you contributed that Content in violation of these Terms), in our sole discretion, and without notice.

Copyright and Trademark Policy

In accordance with the Digital Millennium Copyright Act of 1998 ("DMCA"), the text of which may be found on the U.S. Copyright Office website at <http://www.copyright.gov/legislation/>

¹ Using Infuse Learning requires that you understand that Infuse Learning uses iSpeech and Google Translate API. Acceptance of Infuse Learning's Terms of Use implies understanding and acceptance of conditions and terms associated with both iSpeech (<http://www.ispeech.org/policies.php>) and Google Translate API (<https://developers.google.com/translate/v2/terms>; <http://www.google.com/intl/en/policies/privacy/>).

dmca.pdf, Infuse Learning will respond expeditiously to claims of copyright infringement committed using the Site that are reported to our Designated Copyright Agent, identified below.

If you are a copyright owner, or are authorized to act on behalf of one, or authorized to act under any exclusive right under copyright, please report alleged copyright infringements taking place on or through the Site by completing a DMCA Notice of Alleged Infringement and delivering it to our Designated Copyright Agent. Upon receipt of the Notice as described below, Infuse Learning will take whatever action, in its sole discretion, it deems appropriate, including removal of the challenged material from the Site. DMCA Notice of Alleged Infringement ("Notice") content must include the following:

1. Identify the copyrighted work that you claim has been infringed, or - if multiple copyrighted works are covered by this Notice - you may provide a representative list of the copyrighted works that you claim have been infringed.
2. Identify (i) the material that you claim is infringing (or to be the subject of infringing activity) and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material, including at a minimum, if applicable, the URL of the link shown on the Site where such material may be found, and (ii) the reference or link, to the material or activity that you claim to be infringing, that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate that reference or link, including at a minimum, if applicable, the URL of the link shown on the Site where such reference or link may be found.
3. Provide your mailing address, telephone number, and, if available, email address.
4. Include both of the following statements in the body of the Notice: "I hereby state that I have a good faith belief that the disputed use of the copyrighted material or reference or link to such material is not authorized by the copyright owner, its agent, or the law (e.g., as a fair use)." "I hereby state that the information in this Notice is accurate and, under penalty of perjury, that I am the owner, or authorized to act on behalf of the owner, of the copyright or of an exclusive right under the copyright that is allegedly infringed."
5. Provide your full legal name and your electronic or physical signature.

Deliver this Notice, with all items completed, to our Designated Copyright Agent:

Infuse Learning's Copyright Agent

Infuse Learning
c/o Doug Baer
5949 Sherry Lane, Suite 1700
Dallas TX 75225

Refund Policy

All product sales are final. However, if you are unhappy with the product you may contact Customer Support at contact@InfuseLearning.com within 30 days of purchasing the service to be eligible for a refund. If we determine that we failed to deliver the product appropriately, you may be entitled to a refund, exchange or repair, in our discretion.

Termination

You are free to do that at any time, by contacting us at contact@InfuseLearning.com. Infuse Learning is also free to terminate (or suspend access to) your use of the Services or your account, for any reason in our discretion, including your breach of these Terms. Infuse Learning has the sole right to decide whether you are in violation of any of the restrictions set forth in these Terms.

Account termination may result in destruction of any Content associated with your account, so keep that in mind before you decide to terminate your account. We will try to provide advance notice to you prior to our terminating your account so that you are able to retrieve any important User Submissions you may have stored in your account (to the extent allowed by law and these Terms), but we may not do so if we determine it would be impractical, illegal, not in the interest of someone's safety or security, or otherwise harmful to the rights or property of Infuse Learning.

If you have deleted your account by mistake, contact us immediately at contact@InfuseLearning.com - we will try to help, but unfortunately, we can't promise that we can recover or restore anything.

Provisions that, by their nature, should survive termination of these Terms shall survive termination. By way of example, all of the following will survive termination: any obligation you have to pay us or indemnify us, any limitations on our liability, any terms regarding ownership or intellectual property rights, and terms regarding disputes between us.

Warranty Disclaimer. Infuse Learning does not make any representations or warranties concerning any content contained in or accessing through the Services, and we will not be responsible or liable for the accuracy, copyright compliance, legality, or decency of material contained in or accessed through the Services. We make no representations or warranties regarding suggestions or recommendations of services or products offered or purchased through the Services. THE SERVICES AND CONTENT ARE PROVIDED ON AN "AS-IS" BASIS, WITHOUT WARRANTIES OR ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

Limitation of Liability. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE) SHALL INFUSE LEARNING BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR (A) ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, OR (B) ANY

AMOUNT, IN THE AGGREGATE, IN EXCESS OF THE GREATER OF (I) \$100 OR (II) THE AMOUNTS PAID BY YOU TO INFUSE LEARNING IN CONNECTION WITH THE SERVICES IN THE TWELVE (12) MONTH PERIOD PRECEDING THIS APPLICABLE CLAIM, OR (III) ANY MATTER BEYOND OUR REASONABLE CONTROL. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY TO YOU.

Indemnity. You agree to indemnify and hold Infuse Learning, its affiliates, officers, agents, employees, and partners harmless from and against any and all claims, liabilities, damages (actual and consequential), losses and expenses (including attorneys' fees) arising from or in any way related to any third party claims relating to (a) your use of the Services (including any actions taken by a third party using your account), and (b) your violation of these Terms.

In the event of such a claim, suit, or action ("Claim"), we will provide notice of the Claim to the contact information we have for your account (provided that failure to deliver such notice shall not eliminate or reduce your indemnification obligations hereunder).

Assignment. You may not assign, delegate or transfer these Terms or your rights or obligations hereunder, or your Services account, in any way (by operation of law or otherwise) without Infuse Learning's prior written consent. We may transfer, assign, or delegate these Terms and our rights and obligations without consent.

Choice of Law; Arbitration. These Terms are governed by and will be construed under the laws of the State of Texas, without regard to the conflicts of laws provisions thereof. Any dispute arising from or relating to the subject matter of these Terms shall be finally settled in Dallas County, Texas, in English, in accordance with the Streamlined Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. ("JAMS") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes, who shall be selected from the appropriate list of JAMS arbitrators in accordance with the Arbitration Rules and Procedures of JAMS. Judgment upon the award rendered by such arbitrator may be entered in any court of competent jurisdiction. Notwithstanding the foregoing obligation to arbitrate disputes, each party shall have the right to pursue injunctive or other equitable relief at any time, from any court of competent jurisdiction. For all purposes of this Agreement, the parties consent to exclusive jurisdiction and venue in the state or federal courts located in, respectively, Dallas County, Texas, or the Northern District of Texas, Dallas Division.

Miscellaneous. You will be responsible for withholding, filing, and reporting all taxes, duties, and other governmental assessments associated with your activity in connection with the Services. The failure of either you or us to exercise, in any way, any right herein shall not be deemed a waiver of any further rights hereunder. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated, to the minimum extent necessary, so that these Terms shall otherwise remain in full force and effect and enforceable. You and Infuse Learning agree that these Terms are the complete and exclusive statement of the mutual understanding between you and Infuse Learning, and that it supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of these Terms, and that all modifications to these Terms must be in a writing signed by both parties (except as otherwise provided herein). No agency, partnership, joint venture, or employment is created as a result of these Terms and you do

not have any authority of any kind to bind Infuse Learning in any respect whatsoever. You and Infuse Learning agree there are no third party beneficiaries intended under this Agreement.