

Acatar Terms of Service

Glossary

Affiliated Users: “Affiliated Users” refers to the Organization, School regulators, persons authorized to have access to education records held by Acatar, Administrative Users, the teaching staff, and other Users designated by the Organization, the instructor(s), or by law.

Organization: The company, institution, or other legal entity

Tenant: A secured, and isolated organizational entity within Acatar

Terms of Service

1. Acceptance of Terms.

- a. This document, hereinafter referred to as Terms of Service (“TOS”), is an agreement user must accept in order to use Acatar’s Service (as defined below). It is applicable to (a) “**Owners**” – this includes Primary Owners who initially set up the Service and other Owners that are granted ownership privileges by the Primary Owner; (b) Administrators – those who manage and run a tenant or institution (“**Administrators**”) (Owners and Administrators, collectively “**Administrative Users**”), and to c) Members – users who are invited to join an existing tenant that has already been created in the Service by an Administrator (“**Members**”). The terms “**you**” and “**users**” encompass all users, including both Administrative Users and Members. This document describes rights and obligations as part of using the Service. Acatar (“**Acatar**” “**we**” “**us**”) provides its Service (as defined below) to you subject to this TOS. By accepting this TOS or by accessing or using the Service, you agree to be bound by this TOS (including the Privacy Policy, which is incorporated here by reference).
- b. If entering into this TOS on behalf of a company or other legal entity, you represent that you have the authority to bind such entity, its Members, its Administrative Users, and its affiliates to this TOS. In that case, the terms “you” or “your” shall also refer to such entity, its Members, its Administrative Users, and its affiliates, as applicable. If no such authority exists, or if you do not agree with this TOS, you may not use the Service. You acknowledge that this TOS is a contract between you and Acatar, even though it is electronic and is not physically signed by either party, and it governs your use of the Service.
- c. Acatar may change this TOS at any time. If material changes are made to the TOS, we will post a notice on the Site. This page will display the most current version of the TOS. The revised terms and conditions will become effective on the date set forth in the notice, and if you use the Service after that date, your use will constitute acceptance of the revised terms and conditions. If any change to this TOS is not acceptable to you, your only remedy is to cancel your account and stop using the Services.
- d. You are responsible for maintaining the confidentiality of your login, password, and account and for all activities that occur under your login or account, including the activities of Members.
- e. All users should be aware that Administrative Users may have certain rights to access your account and may obtain related information in connection with the Services. The Administrators also set policies regarding your use of various aspects of the Services, including retention settings and the ability to preserve and export all communications in the account. As these rights may vary depending on the account, please see our FAQs for general

information about account classifications, and refer to your Administrator if you have questions regarding your particular account such as your account settings. Please also see the [Privacy Policy](#) for more information on these topics. Administrators are solely responsible for informing members of the applicable Organization (your company, institution, or other legal entity) policies, obtaining any legally required member consent to such policies, and for ensuring that all uses of the Services comply with applicable federal, state and/or international privacy laws, including but not limited to, the Electronic Communications Privacy Act, 18 U.S.C. § 2510 et seq.

- f. By accessing or using the Services, you affirm that you are at least 18 years of age (or have reached the age of majority if that is not 18 years of age where you live). You represent that you are fully able and competent to enter into and comply with the terms and conditions in this TOS. The Service is not directed to children under 13, so if you are under 13 years of age, you are not permitted to access or use the Services. If Acatar become aware that you are using the Service even though you are under 13, your account will be deactivated. Any violation of this policy can be reported by contact us at privacy@learninghouse.com.
 - g. If you are a school or teacher in the United States and want your students, who are over 13, to use the Service, including in conjunction with the establishment of a Service account for the school or a group of students at the school, you are responsible for complying with the U.S. Family Educational Rights and Privacy Act (“**FERPA**”). This means you must notify those students’ parents/guardians of the personally identifiable information you will collect and share with Acatar and obtain parental/guardian consent before your students establish accounts or use the Service. When obtaining such consent, you should provide parents/guardians with a copy of our Privacy Policy. You must keep all consents on file and provide them to us if we request them. If you are located outside of the United States, we will rely upon you to obtain any required consent or approval from the parent or guardian of any student covered by similar laws and, as a condition to your and your students’ use of the Service, you will comply with such laws.
- 2. **Description of Service.** The “**Service(s)**” means (a) Acatar's learning environment services and related systems and technologies, as well as the websites <http://acatar.com> and <http://uncompromising.education>, and (b) all software (including the Software, as defined below), applications, data, reports, text, images, and other content made available by or on behalf of Acatar through any of the foregoing. The “**Service**” does not include Your Data (as defined below) or any software application or service that is provided by you or a third party, which you use in connection with the Service. Any modifications and new features added to the Service are also subject to this TOS. Acatar reserves the right to modify or discontinue the Service (or any Service plan) or any feature or functionality thereof at any time without notice to you. All rights, title and interest in and to the Service and its components (including all intellectual property rights) will remain with and belong exclusively to Acatar.
- 3. **Access and Use of the Service.**
 - a. You may access and use the Service only for lawful, authorized purposes and you shall not misuse the Service in any manner (as determined by Acatar in its sole discretion). See Section 6 for specific provisions outlining prohibited uses of the Service. Administrative Users shall be responsible for all actions by Tenant Members. You shall comply with any codes of conduct, policies, storage limitations, or other notices Acatar provides you or publishes in connection with the Service from time to time, but if any of those policies materially change the TOS, you will be provided with reasonable notice as provided in Section 1.3 above. You shall promptly notify Acatar if you learn of a security breach related to the Service.
 - b. Any software that may be made available by or on behalf of Acatar in connection with the Service (“**Software**”) contains proprietary and confidential information that is protected by applicable intellectual property and other laws. Subject to the terms and conditions of this TOS, Acatar only grants you a personal, non-sublicensable and non-exclusive license to use

the object code of any Software solely in connection with the Service. Any rights not expressly granted herein are reserved.

- c. Acatar may make available, in its sole discretion, the Acatar Application Programming Interface and related documentation, data, code, and other materials provided with the API (collectively “**API**”) through our developer site. You undertake use of the API at your own risk, and such use of this API is governed by this TOS and the Acatar API Terms of Service (“**API TOS**”) located at <https://github.com/Acatar/terms>. You hereby agree to be bound by those terms, and acknowledge that violation of Acatar’s TOS or Acatar’s API TOS is grounds for termination of Your Account.

4. **Your Data Rights and Related Responsibilities.**

- a. “Your Data” means any data and content you upload, post, transmit or otherwise made available via the Services (which may include data you elect to import from Non-Acatar Products you use). “**Your Data**” includes messages you send, files you upload, comments you make on files and in discussions, profile information and anything else you enter or upload into the Service. Acatar will make commercially reasonable efforts to ensure that all facilities used to store and process Your Data meet a high standard for security.
- b. In order to provide the Service to you, we require that you grant us certain rights with respect to Your Data. Examples include the ability to transmit, store and copy Your Data in order to display it to you and other users, index it so you are able to search it, and make backups to prevent data loss. Acceptance of this TOS gives us the permission to do so and grants us any such rights necessary to provide the Service to you, only for the purpose of providing the Service (and for no other purpose). This permission includes allowing us to use third-party service providers in the operation and administration of the Service and the rights granted to us are extended to these third parties to the degree necessary in order for the Service to be provided.
- c. If any users send us any feedback or suggestions regarding the Service, you grant Acatar an unlimited, irrevocable, perpetual, free license to use any such feedback or suggestions for any purpose without any obligation to you.
- d. You are solely responsible for your conduct (including by and between all users), the content of Your Data, and all communications with others while using the Services. We may choose to review Public Content (as defined below) for compliance with our policies and guidelines, but you acknowledge that Acatar has no obligation to monitor any information on the Services. However, when Acatar becomes aware of possible violations of this TOS, Acatar may initiate an investigation that may include gathering information from you and the complaining party, if any, and examination of material on Acatar’s servers. Acatar, in its sole discretion, will determine what action will be taken in response to a violation on a case-by-case basis. Violations of this Agreement may subject Client to civil or criminal liability.
- e. You grant Acatar a free, non-exclusive, worldwide license to use, host, store, reproduce, communicate, publish, publicly perform and publicly display (within Acatar) and distribute Your Data as necessary for Acatar to conduct the course that you are enrolled in, teaching, or otherwise authorized to attend. This license continues for as long as Acatar is hosting a course with Your Data, and maintaining any records and/or archival copies of Your Data.
- f. Acatar does not guarantee the accuracy, integrity, quality, or security of user-entered content (or any other content), including without limitation, any errors or omissions, or any loss or damage of any kind incurred as a result of the user of any user-entered content posted, emailed, transmitted, or otherwise made available via Acatar.
- g. Using or accessing content in Acatar does not give you ownership of any intellectual property rights to that content. Except for use of content as contemplated to fulfill your course obligations, you may not use content from Acatar unless you own it, obtain permission from

its owner, or are otherwise permitted by law. These terms do not grant you the right to use any branding or logos used in Acatar. You agree not to remove, obscure, or alter any legal notices displayed in Acatar.

5. **Representations and Warranties.** You represent and warrant to Acatar that (i) all content uploaded (the “**Upload Materials**”) shall be owned or properly licensed by you and shall not adversely impact the Services or violate any rights of any third parties. You are responsible for ensuring that all Upload Materials will function properly and as intended. You are responsible for all activity originating from your website, unless proven to be a victim of outside hacking or address forgery. You assume responsibility for all material that may be put on by a third party. Use of the Services requires a certain level of knowledge in the use of Internet languages, protocols, and LMS, which can vary depending on your anticipated use and desired content, and includes, but is not limited to, the following: web publishing requires knowledge of HTML, properly locating and linking documents, FTP-ing web contents, graphics, text, sound, image mapping, etc.

You also agree not to:

- a. upload, post, transmit, or otherwise make available any of Your Data that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically, or otherwise objectionable;
- b. use the Service to harm minors in any way;
- c. impersonate any person or entity, including, but not limited to, an Acatar employee, Administrator, Owner, or other Member, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- d. manipulate identifiers in order to disguise the origin of any of Your Data;
- e. upload, post, transmit, or otherwise make available any of Your Data that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- f. upload, post, transmit or otherwise make available any of Your Data in a manner that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party;
- g. sublicense, resell, rent, lease, transfer or assign (except as permitted in Section 15) the Service or its use, or offer the Service on a time share basis to any third party;
- h. use the Service to upload, post, transmit, or otherwise make available any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
- i. use the Service to upload, post, transmit, or otherwise make available any software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware;
- j. disrupt the normal flow of dialogue, or otherwise act in a manner that negatively affects other users' ability to engage in real time exchanges using the Service;
- k. interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service, including using any device or software;
- l. modify, adapt, or hack the Service, including by using any non-public Acatar APIs, or otherwise attempt to gain unauthorized access to the Service or its related systems or networks.

- m. intentionally or unintentionally violate any applicable local, state, national or international law in connection with your use of the Service, including, but not limited to, any data, privacy, or export control laws, or regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, without limitation, the New York Stock Exchange, the American Stock Exchange, or the NASDAQ, and any regulations having the force of law;
- n. use the Service to provide material support or resources (or to conceal or disguise the nature, location, source, or ownership of material support or resources) to any organization(s) designated by the United States government as a foreign terrorist organization pursuant to section 219 of the Immigration and Nationality Act;
- o. use the Service to "stalk" or otherwise harass another; and/or
- p. collect or store personal data about other users in connection with any of the prohibited conduct and activities set forth above.
- q. attempt to gain unauthorized access to any portion or feature of Acatar, nor any other systems or networks connected to Acatar, nor to any underlying server, nor to any of the services offered through Acatar, by hacking, password "mining", or any other illegitimate means.

You acknowledge that Acatar and its designees shall have the right (but not the obligation) in their sole discretion to pre-screen, refuse, or remove any of Your Data that is available via the Service. We may also review Your Data transmitted through non-public mechanisms (such as private channels within the Service) where we deem appropriate, including for violations of this TOS or in response to a user complaint. Without limiting the foregoing, Acatar and its designees shall have the right (but not the obligation) to remove any of Your Data that violates the TOS or is otherwise objectionable. You must evaluate, and bear all risks associated with, the use of Your Data, including any reliance on the accuracy, completeness, or usefulness of Your Data.

You acknowledge, consent and agree that Acatar may access, preserve and disclose your account information and Your Data if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to: (i) comply with legal process; (ii) enforce the TOS; (iii) respond to claims that any of Your Data violates the rights of third parties; (iv) respond to your requests for customer service; or (v) protect the rights, property or personal safety of Acatar, its users and the public.

6. Term; Termination.

- a. This TOS will continue in full effect unless and until your account or this TOS is terminated as described herein.
- b. All accrued rights to payment and the terms of Sections 8 through 18 shall survive termination of this TOS.
- c. Your use of or access to Acatar may be suspended or terminated due to (a) any breach or violation of this TOS, the Privacy Policy, or other policies of the Organization, (b) requests by law enforcement or other government agencies, (c) a request by you, (d) discontinuance or material modification of the courses you are enrolled in (or any part thereof), (e) technical or security issues or problems and/or (f) suspected misconduct by you or of your account. Furthermore, your access to Acatar shall terminate five (5) days after all courses you are enrolled in have ended, if applicable.
- d. Termination of your access to Acatar may include (1) removal of or suspension of access to any or all parts of Acatar, (2) deletion of your password, your account and, at the Organization options, Your Data and any other information about you or your time in Acatar, and (3) barring of further use of Acatar.
- e. You agree that Acatar is not intended to serve as a repository, archive, or backup of Your Data, and that you are not entitled to access to Your Data or any of the courses you were

previously enrolled in, on or after your Acatar account is terminated, or your right to access Acatar or the courses within is revoked. However, if Your Data includes records to which you have access by law, they may be transferred by Acatar to the Organization so that any (if any) rights may be exercised there.

7. Disclaimer of Warranties.

- a. The Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, or because of other causes beyond our reasonable control, but Acatar shall use reasonable efforts to provide advance notice of any material scheduled service disruption. Further, you understand that Your Data may be transmitted or handled in an unencrypted manner if you choose to use unencrypted gateways to connect to the Service. Additionally, while Acatar takes steps to ensure that information provided to its third party vendors and hosting partners is transmitted using reasonable security measures, it does not guarantee that these transmissions will be encrypted. Accordingly, you acknowledge that you bear sole responsibility for adequate security, protection and backup of Your Data. Acatar will have no liability to you for any unauthorized access or use of any of Your Data, or any corruption, deletion, destruction or loss of any of Your Data.
- b. THE SERVICE AND ALL RELATED COMPONENTS AND INFORMATION ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND ACATAR EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. YOU ACKNOWLEDGE THAT ACATAR DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE OR VIRUS-FREE, NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES, AND NO INFORMATION, ADVICE OR SERVICES OBTAINED BY YOU FROM ACATAR OR THROUGH THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS TOS.

8. Limitation of Liability. ACATAR SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS TOS, OR OTHERWISE, FOR INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL ACATAR’S LIABILITY UNDER THIS TOS EXCEED THE FEES PAID BY YOU UNDER THIS AGREEMENT.

9. Governing Law; Jurisdiction; Venue.

- a. This TOS and all Agreements will be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, without regard to its choice of law principles. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement shall be brought against any of the parties in the courts of the Commonwealth of Kentucky, County of Jefferson, or, if it has or can acquire jurisdiction, in the United States District Court for the Western District of Kentucky, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.
 - b. Prior to bringing any such action or proceeding, the parties agree that if they are unable to resolve a dispute or controversy related to this Agreement, they will submit the dispute or controversy to non-binding mediation. The parties will select a mutually agreeable mediator. All discussions with the mediator will be treated as compromise and settlement negotiations. Nothing said or disclosed during the mediation that is not otherwise independently discoverable, will be offered or received as evidence or used for impeachment or any other purpose in any litigation. Each party shall pay its own costs in connection with such mediation, provided, however, that the fee of the mediator will be shared equally by the parties
10. **Statute of Limitations.** Regardless of any statute or law to the contrary or the applicable dispute resolution process, an informal complaint pertaining to any Claim or cause of action arising out of or related to use of the Service or under the TOS must be filed with Acatar within one (1) year after such Claim or cause of action arose or be forever barred.
11. **Notice And Procedure for Making Claims of Copyright or Intellectual Property Infringement.** We respect the intellectual property of others, and we ask our users to do the same. We may, in appropriate circumstances and at our discretion, disable and/or terminate the accounts of users who may be repeat infringers. If you believe that your work has been copied in a way that constitutes copyright infringement, or your intellectual property rights have been otherwise violated, please provide Acatar the following information:
- a. an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
 - b. a description of the copyrighted work or other intellectual property that you claim has been infringed;
 - c. a description of where the material that you claim is infringing is located on the site;
 - d. your address, telephone number, and email address;
 - e. a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
 - f. a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf
 - g. Acatar's Agent for Notice of claims of copyright or other intellectual property infringement can be reached as follows:

By mail:

General Counsel
The Learning House, Inc.
427 South Fourth Street, Suite 300
Louisville, KY 40202

By Phone: (502) 589-9878

12. **Indemnification.** You shall defend, indemnify, and hold harmless Acatar from and against any claims, actions or demands, including without limitation reasonable legal and accounting fees, arising or resulting from your breach of this TOS, any of Your Data, or your (and your Members') use or misuse of the Service. Acatar shall provide notice to you of any such claim, suit or demand. Acatar reserves the right to conduct the exclusive defense and control of any matter that is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting Acatar's defense of such matters.
13. **Enforceability.** If any provision of this TOS is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this TOS will otherwise remain in full force and effect and enforceable.
14. **Integration, Modification, and Authority.** This TOS is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this TOS. All waivers and modifications to this TOS must be in a writing signed by both parties that expressly by its terms modifies or waives a provision of this TOS, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this TOS and you do not have any authority of any kind to bind Acatar in any respect whatsoever.
15. **Assignment.** You may not assign this TOS without the prior written consent of Acatar, except, if you are a company or other legal entity, you may assign this TOS in connection with a merger, re-organization or acquisition of all or a substantial portion of your assets by another company, but only upon 30-days prior written notice to Acatar. Acatar may assign or transfer this TOS, in whole or in part, without restriction.
16. **Notices.** Except as otherwise set forth herein, all notices under this TOS will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.
17. **Waiver and Severability of Terms.** The failure of Acatar to exercise or enforce any right or provision of the TOS shall not constitute a waiver of such right or provision.
18. **No Right of Survivorship and Non-Transferability.** If you are a living person, you agree that your account is non-transferable and your rights to the content within your account terminate upon your death, however the content may be thereafter be available and accessible by Administrative Users.