

# SQUARECAP TERMS OF SERVICE

Last Updated: January 19, 2015

These Terms of Service (“**Terms**”) govern your access to and use of the services, websites and applications offered by Squarecap (collectively, the “**Service**”). Your access to and use of the Service is conditioned on your acceptance of and compliance with these Terms. By accessing or using the Service you agree to be bound by these Terms.

We may amend these Terms from time to time. The most current version of these Terms will always be on this page (or such other page as the Service may indicate). If the amendment, in Squarecap’s sole discretion, is material Squarecap will notify you by posting to our website. By continuing to access or use the Service after those amendments become effective, you agree to be bound by the amended Terms.

These Terms apply to all who access the Service (“**Users**”).

Please contact us at [admin@squarecap.com](mailto:admin@squarecap.com) with any questions regarding these Terms.

## 1. Use of Our Service

You may use the Service only if you can form an agreement with Squarecap, and only in compliance with these Terms and all applicable local, state, national and international laws, rules and regulations. You must provide accurate information, including without limitation your name and unique student identification code, when you create your account on Squarecap.

You are responsible for safeguarding the password that you use to access the Service and for any activities or actions under your password. Squarecap will not be liable for any loss or damage arising from your failure to comply with this instruction. You must notify Squarecap immediately of any breach of security or unauthorized use of your account.

You represent that you are over the age of 13 years old. If you are over 13, but under the legal age of majority, your parent or legal guardian must (a) consent to these Terms and our Privacy Policy, (b) affirm that they accept these Terms on your behalf, and (c) bear all legal and financial responsibility and liability for your use of the Service.

All aspects of the Service are subject to modification or elimination at Squarecap’s sole discretion.

## 2. Service Fees and Refund Policy

In consideration of the right to access and use the Service, you agree to pay the applicable fees (“**Service Fees**”). Service Fees are billed in advance and are refundable only in accordance with the refund policy set forth below, as amended from time to time. A valid credit card (or equivalent) is required for paying the Service Fees. Users purchase a subscription of a fixed duration to use the Service as further described on our website. Each User account may only be used by the registered User and are not transferable to other individuals or entities. All Service Fees are exclusive of all sales, excise or use taxes, or any levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding taxes on the income of Squarecap. Service Fees are subject to change upon 30 days’ notice from us. Such notice may be provided at any time by posting the changes to this website or by e-mail.

All subscriptions for the Service do not automatically renew at the end of their respective term.

If you elect to upgrade your subscription to a higher priced subscription during the term of your existing subscription, for such upgrade you will be charged the price of the new subscription less the amount you previously paid for the old subscription. For clarity, the commencement date of any upgraded subscription will be the date of purchase of the original subscription, not the upgraded subscription.

Users may not downgrade their current subscription to a lower priced subscription.

Refunds will be provided based on the duration of the subscription and the date of a valid cancellation by the User as described in this paragraph. For all subscriptions, Users may receive a full refund if the User cancels his or her subscription on or before the date that is 14 calendar days following the date of such User's original subscription purchase. After the expiration of such 14 day period, the subscription payment for the first full year becomes non-refundable, and after the commencement of each successive annual period of a multi-year subscription, the Service Fees for such annual period become non-refundable. However, a User cancelling a multi-year subscription will receive a pro rata refund of the Service for such multi-year subscription based on the number of full annual periods remaining on the subscription relative to the total subscription term. For example, if a User subscribes for a two year period and cancels after the beginning of year two of the subscription, such User would not receive any refund upon such cancellation. As another example, if a User subscribes for a four year period and cancels after the beginning of year two of the subscription but before the commencement of year three of the subscription, such User would receive a refund for two of the four annual periods under the subscription or 50% of the Service Fees originally paid,

In order to cancel a User's subscription, the User should email [admin@squarecap.com](mailto:admin@squarecap.com) with a request to cancel. The date of cancellation is recorded as a date of receipt of the email.

### **3. Prohibited Activities**

You must not do any of the following while accessing or using the Service:

- use the Service for any unlawful purposes or for promotion of illegal activities;
- use the Service in any way that would result in academic dishonesty;
- use the Service in any way that would compromise the privacy or academic interests of other users;
- access or search or attempt to access or search the Service by any means (automated or non-automated) other than through the currently available, published interfaces that are provided by Squarecap (and only pursuant to these Terms), unless you have been specifically allowed to do so in a separate agreement with Squarecap;
- forge any TCP/IP packet header or any part of the header information in any email or posting, or in any way use the Service to create altered, deceptive or false source-identifying information;
- interfere with or disrupt (or attempt to do so) the access of any user, host or network, including, without limitation, sending invalid data, virus, worms, overloading, flooding, spamming, mail-bombing the Service, or by scripting the creation of Content in such a manner as to interfere with or create an undue burden on the Service;
- use to Service to spam anyone;
- access or interfere with non-public areas of the Service, Squarecap's computer systems or the servers running the Service;
- collect or harvest any personally identifiable information, including account names, from the Service;
- use the Service for any commercial solicitation purposes without Squarecap's written permission;
- impersonate another person or otherwise misrepresent your affiliation with a person or entity; or
- probe, scan or test the vulnerability of any system or network or breach or circumvent any security or authentication measures we may use to prevent or restrict access to the Service or use of the Service or the content therein.

### **4. User Content**

Areas of the Service allow you to submit, post and display information, text, graphics or other materials ("**User Content**"). You retain ownership of all User Content you submit, post, display or otherwise make available on the

Service. For example, ownership to content that is uploaded to the Service or otherwise made available through the Service by classroom instructors will be retained by the instructors.

By submitting, posting or displaying User Content on or through the Service, you grant Squarecap a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such User Content. This license is limited to providing the Service. Your User Content will not be used for publicity, advertising or any public statements without your prior consent.

You agree that this license includes the right for other users with permitted access to your User Content to use your User Content in conjunction with participation in the Service and as permitted through the functionality of the Service. For example, questions submitted by students through the Service may be viewed and used by other Users of the Service.

You are solely responsible for your User Content that you upload, publish, display, link to or otherwise make available (hereinafter, “**post**”) on the Service, and you agree that we are only acting as a passive conduit for your online distribution and publication of your User Content.

You warrant, represent and agree that you will not post User Content that:

- infringes, violates or otherwise interferes with any copyright or trademark of another party;
- infringes on any intellectual property right of another party or the privacy or publicity rights of another party;
- reveals any trade secret, unless the trade secret belongs to you or you have the owner’s permission to disclose it;
- is libelous, defamatory, abusive, threatening, harassing, hateful, offensive, humiliating to other people (publicly or otherwise) or otherwise violates any law or right of any third party;
- creates an impression that you know is incorrect, misleading or deceptive, including by impersonating others or otherwise misrepresenting your affiliation with a person or entity;
- contains other people’s private or personally identifiable information without their express authorization and permission;
- constitutes obscene, pornographic, indecent, profane or otherwise objectionable material;
- is discriminatory, hateful or bigoted toward, or abusive of, any group or individual;
- violates any school or other applicable policy, including those related to cheating or ethics; or
- contains or links to a virus, trojan horse, worm, time bomb or other computer programming routine or engine that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information.

Squarecap reserves the right in its discretion to remove any User Content from the Service, suspend or terminate your account at any time, or pursue any other remedy or relief available under equity or law if you post any User Content that violates these provisions.

## **5. Grant of Rights to You**

Subject to these Terms, Squarecap grants you a worldwide, non-exclusive, non-transferable, revocable, license to use the Service as it is provided to you by Squarecap for your personal, noncommercial use only.

Your User Content will be viewable by other users of the Service with permitted access to your User Content, such as the other users of the Service in your classroom or course. You should only provide User Content that you are comfortable sharing with others under these Terms. Squarecap takes no responsibility and assumes no liability for any User Content that you or any other User or third party posts or sends over the Service. You shall be solely responsible for your own User Content and the consequences of posting or publishing it. You understand and agree that any loss or damage of any kind that occurs as a result of the use of any User Content that you send,

upload, download, stream, post, transmit, display or otherwise make available or access through your use of the Service, is solely your responsibility. You understand that if you do not have the right to submit User Content, your publication and re-publication of that User Content may subject you to liability.

Squarecap reserves the right to access, read, preserve and disclose any information that we reasonably believe is necessary to:

- satisfy any applicable law, regulation, legal process or governmental request;
- enforce the Terms, including investigation of potential violations hereof;
- detect, prevent or otherwise address fraud, security or technical issues;
- respond to user support requests; or
- protect the rights, property or safety of Squarecap, its users and the general public.

## **6. FERPA**

This section applies only to those users who access the Service in connection with classes offered by your educational agency or institution (the “**School**”) that is subject to the Family Educational Rights and Privacy Act (FERPA). Squarecap acknowledges that certain information about the School’s students is contained in records maintained by Squarecap and that this information can be confidential by reason of the Family and Educational Rights and Privacy Act of 1974 and related School policies unless valid consent is obtained from the School’s students or their legal guardians. Both parties agree to protect these records in accordance with FERPA and School policy. To the extent permitted by law, nothing contained herein shall be construed as precluding either party from releasing such information to the other so that each can perform its respective responsibilities. The School shall advise Squarecap whenever any students have provided consent to release information to an extent broader than as provided for by FERPA or School policy.

The Service is not a part of or endorsed by the School. If you create a class for the intended purpose of using the Service, you represent and warrant that the School associated with or created for such class is valid and that you are validly affiliated with the School.

## **7. Proprietary Rights**

All right, title and interest in and to the Service (including without limitation all of the contents, such as text, images, audio and HTML used to generate the pages, but excluding your User Content) (collectively, “**Content**”), are and will remain the exclusive property of Squarecap and its licensors. All materials therein, including, without limitation, software, images, text, graphics, illustrations, logos, patents, trademarks, service marks, copyrights, photographs, audio, videos, music and all intellectual property rights related thereto, are the exclusive property of Squarecap and its licensors (including other Users who post User Content to the Service). Except as explicitly provided herein, you may not use, download, upload, copy, print, display, perform, reproduce, publish, modify, prepare derivative works from, delete, add to, license, post, transmit, or distribute any Content from the Service in whole or in part, for any public or commercial purpose without the specific written permission of Squarecap. Except as explicitly provided herein, use of the Service does not grant you a license to any Content, features or materials you may access through the Service. The Service is protected by copyright, trademark and other laws of both the United States and foreign countries. Except as explicitly provided herein, nothing in these Terms gives you a right to use the Squarecap name or any of the Squarecap trademarks, logos, domain names and other distinctive brand features.

Any feedback, comments or suggestions you may provide regarding the Service is entirely voluntary and we will be free to use such feedback, comments or suggestions without any obligation to you.

## **8. Third-Party Resources, Links and Websites**

The Service may contain links to or be otherwise integrated with third-party websites and other resources (including your school's learning management system, or LMS) that are not owned or controlled by Squarecap. These links do not imply any endorsement by Squarecap, and Squarecap does not endorse or assume any responsibility for any such third-party sites, information, materials, products or services. If you access a third party website or resource from the Service, you do so at your own risk, and you understand that these Terms and Squarecap's Privacy Policy do not apply to your use of such links. You expressly relieve Squarecap from any and all liability arising from your use of any third-party website, service, or content. You acknowledge and agree that Squarecap is not responsible or liable for:

- the availability or accuracy of such websites or resources; or
- the content, products, or services on or available from such websites or resources.

You further hereby consent and agree to Squarecap's access and use any of your information contained in the LMS for purposes of providing the Service.

## **9. Indemnification of Squarecap**

USER AGREES TO DEFEND, INDEMNIFY AND HOLD SQUARECAP AND ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES AND COSTS (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COURT COSTS) ARISING OUT OF OR RELATING TO USER'S BREACH OF ANY OF THESE TERMS OR USE BY USER OR ANY THIRD PARTY (AUTHORIZED, PERMITTED OR ENABLED BY USER) OF THE SERVICE, EVEN IF CAUSED IN WHOLE OR IN PART BY A PRE-EXISTING DEFECT, THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), STRICT LIABILITY OR OTHER LEGAL FAULT OF SQUARECAP, EXCEPT TO THE EXTENT THE FOREGOING DIRECTLY AND EXCLUSIVELY RESULT FROM SQUARECAP'S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. SQUARECAP RESERVES THE RIGHT, AT ITS OWN EXPENSE, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER OTHERWISE SUBJECT TO INDEMNIFICATION BY USER. THIS INDEMNIFICATION WILL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT OR USER'S USE OF THIS SERVICE.

## **10. Disclaimers and Limitation of Liability**

Your access to and use of the Service or any User Content is at your own risk. You understand and agree that the Service is provided to you on an "AS IS" and "AS AVAILABLE" basis. Without limiting the foregoing, SQUARECAP AND ITS PARTNERS DISCLAIM ANY WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. Squarecap makes no warranty and disclaims all responsibility and liability for the completeness, accuracy, availability, timeliness, security or reliability of the Service or any content thereon. Squarecap will not be responsible or liable for any harm to your computer system, loss of data, or other harm that results from your access to or use of the Service, or any User Content. You also agree that Squarecap has no responsibility or liability for the deletion of, or the failure to store or to transmit, any User Content and other communications maintained by the Service. We make no warranty that the Service will meet your requirements or be available on an uninterrupted, secure, or error-free basis. No advice or information, whether oral or written, obtained from Squarecap or through the Service, will create any warranty not expressly made herein.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SQUARECAP AND ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, DATA, USE, GOOD-WILL OR OTHER INTANGIBLE LOSSES, RESULTING FROM:

- YOUR ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE SERVICE;
- ANY CONDUCT OR CONTENT OF ANY THIRD PARTY ON THE SERVICE, INCLUDING WITHOUT LIMITATION, ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES;

- ANY CONTENT OBTAINED FROM THE SERVICE; OR
- UNAUTHORIZED ACCESS, USE OR ALTERATION OF YOUR TRANSMISSIONS OR CONTENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, WHETHER OR NOT SQUARECAP HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

Some jurisdictions do not allow the exclusion of certain warranties or the exclusion or limitation of liability for consequential or incidental damages, so the limitations contained in these Terms may not apply to you.

The Service is controlled and operated from its facilities in the United States. Squarecap makes no representations that the Service is appropriate or available for use in other locations. Those who access or use the Service from other jurisdictions do so at their own volition and are entirely responsible for compliance with all applicable United States and local laws and regulations, including but not limited to export and import regulations. You may not use the Service if you are a resident of a country embargoed by the United States, or are a foreign person or entity blocked or denied by the United States government. Unless otherwise explicitly stated, all materials found on the Service are solely directed to individuals, companies, or other entities located in the United States.

## 11. Copyright Infringement

Squarecap will respond to notices of copyright infringement that comply with applicable law. If a copyright holder believes that there has been a violation of his/her copyright on a site that is hosted by Squarecap or a Squarecap subsidiary, the copyright holder may request that Squarecap remove or disable the material by submitting written notification to our Copyright Agent (designated below). In accordance with the Digital Millennium Copyright Act (“DMCA”), the written notice must include substantially the following:

- A signature (physical or electronic) of a person authorized to act on the copyright owner’s behalf.
- Identification of the copyrighted work that is claimed to have been infringed, or, if the claim involves multiple copyrighted works, a representative list of such works.
- Identification of the material that is claimed to be infringing, with information sufficient to permit us to locate the material.
- Contact information for the person giving the notification, including name, address, telephone, and email address.
- A statement that the person giving the notification has a good faith belief that use of the copyrighted material is not authorized by the copyright owner, its agent, or the law.
- A statement that the information in the notification is accurate, and under penalty of perjury, that the person giving the notification is authorized to act on behalf of the copyright owner.

Our designated Copyright Agent to receive DMCA notices is:

Copyright Agent  
 6914 Dallas Drive,  
 Austin, TX 78729  
 1-512-680-0963  
[admin@squarecap.com](mailto:admin@squarecap.com)

Please be aware that if you knowingly make a material misrepresentation that material or activity is infringing your copyright, you may be held liable for damages under the DMCA.

If a party believes that it has had material removed or disabled by mistake or misidentification, such party may file a counter-notification with Squarecap by submitting written notification to our copyright agent (identified above). Pursuant to the DMCA, the Counter-Notice must contain substantially all the following:

- A signature (physical or electronic) of the person submitting the counter-notification.
- Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access disabled.
- Contact information for the person submitting the counter-notification, including name, address, telephone, and email address.
- A statement under penalty of perjury by the person submitting the counter-notification that he/she has a good faith belief that the material was removed or disabled as a result of a mistake or misidentification.
- A statement by the person submitting the counter-notification that such person will consent to the jurisdiction of the Federal District Court for the judicial district in which it is located and that such person will accept service from the person (or an agent of that person) who submitted the DMCA notice at issue.

The DMCA allows Squarecap to restore the removed content if the party filing the original DMCA Notice does not file a court action against such person within ten business days of receiving the copy of such Counter-Notice.

Please be aware that if you knowingly make a material misrepresentation that material or activity was removed or disabled by mistake or misidentification, you may be held liable for damages under the DMCA.

It is Squarecap's policy in appropriate circumstances to disable and/or terminate the accounts of Users who repeatedly infringe copyrights.

## **12. General Provisions**

You agree that:

- the Service shall be deemed solely based in Texas; and
- the Service shall be deemed a passive one that does not give rise to personal jurisdiction over Squarecap, either specific or general, in jurisdictions other than Texas. These Terms shall be governed by the internal substantive laws of the State of Texas, without respect to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Any claim or dispute arising in connection with the Service shall be decided exclusively by a court of competent jurisdiction located in Travis County, Texas, and you consent to the jurisdiction of and venue in such courts and waive any objection as to inconvenient forum.

These Terms, together with any amendments and additional agreements you may enter into with Squarecap in connection with the Service, shall constitute the entire agreement between you and Squarecap concerning the Service. If any provision of these Terms is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms, which shall remain in full force and effect. These Terms supersede and replace any prior agreements between Squarecap and you regarding the Service.

No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and Squarecap's failure to assert any right or provision under these Terms shall not constitute a waiver of such right or provision.

These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Squarecap without restriction. Any attempted transfer or assignment in violation hereof shall be null and void.

Squarecap will have no liability to User or any third party for any failure by Squarecap to perform its obligations under these Terms in the event that such non-performance arises as a result of the occurrence of an event beyond the reasonable control of Squarecap, including without limitation an act of war or terrorism, natural disaster, failure of electricity supply, riot, civil disorder, or civil commotion or other event of force majeure.

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