

Primary Terms and Conditions

THESE PRIMARY TERMS AND CONDITIONS ARE A LEGAL AGREEMENT (THE "AGREEMENT") BETWEEN YOU ("CUSTOMER") AND THE DEVELOPER. THIS AGREEMENT GOVERNS YOUR USE OF DEVELOPER'S PRODUCT, SOFTWARE, AND SERVICES. IT IS IMPORTANT THAT YOU READ AND UNDERSTAND THE FOLLOWING TERMS. BY CLICKING THROUGH ON THE MICROSOFT AZURE PLATFORM TO ACCESS THIS AGREEMENT, YOU ARE AGREEING THAT THESE TERMS WILL APPLY AND YOU WILL BE BOUND BY SUCH TERMS IF YOU REQUEST ANY DEVELOPMENT SERVICES FROM DEVELOPER. **HOWEVER, IF YOU ARE REQUESTING ONLY WHITE-LABEL DEVELOPMENT SERVICES IN WHICH A LICENSE TO USE DEVELOPER'S SOFTWARE WILL NOT BE GRANTED, PLEASE DISREGARD THESE PRIMARY TERMS AND CONDITIONS AND PROCEED TO EXHIBIT A: WHITE LABEL AGREEMENT TERMS AND CONDITIONS.**

This Agreement shall constitute a binding contractual agreement between Developer and Customer. This Agreement shall include the Terms of Service ("TOS"), Acceptable Use Policy ("AUP"), Service Level Agreement ("SLA"), Service Order License Agreement ("SOLA"), Statement of Work ("SOW"), Change Order ("CO"), License Agreement ("License"), Privacy Agreement ("PA"), and any exhibit attached hereto, including, but not limited to, the White Label Agreement Terms and Conditions attached hereto as Exhibit A. Customer hereby agrees to be bound by all terms and conditions in this Agreement.

WHEREAS, Developer owns all right, title and interest in and to software programs, online platforms and solutions for the purpose of providing an extensible integration platform that supports the latest educational data standards and providing critical metrics and performance monitoring via pre-built dashboards and reports in the educational environment (the "**Software**");

WHEREAS, Customer desires to obtain a license and support services for the Software from Developer in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants contained herein, Developer and Customer hereby agree as follows:

Terms of Service (TOS)

A. Definitions

1. "**Affiliate(s)**" means Customer and any person, firm, school, school district, corporation (including, without limitation, service corporation and professional corporation), partnership (including, without limitation, general partnership, limited partnership and limited liability partnership), limited liability company, joint venture, association, business trust or other similar entity that: (i) now or in the future, directly or indirectly, controls, is controlled with or by or under common control with Customer; (ii) is acquired, managed, operated, governed or supervised by Customer, whether by membership, stock ownership, joint operating agreement or other substantial relationship; or (iii) is designated as an Affiliate of Customer. For purposes of the foregoing, "control" shall mean, with respect to: a corporation, the ownership, directly or indirectly, of fifty percent (50%) or more of the voting power to elect directors thereof, or, for the purposes of foreign corporations, if less than fifty percent (50%), the amount allowed by applicable law; and any other entity, the power to direct the management of such entity.
2. "**Authorized User(s)**" means: (i) Customer, Affiliates and their collective students, employees, authorized agents, and other personnel and agents on staff or otherwise associated with Customer and Affiliates; (ii) third party agents, consultants, auditors and other independent contractors performing services for Customer and Affiliates; (iii) any governmental, accrediting or regulatory bodies lawfully requesting or requiring access to data; (iv) a facility manager; and (v) such other parties as the parties may mutually agree.
3. "**Certified Administrator**" means an "authorized user" that has been certified by Developer to administrate the current version of the Software in use by Customer.
4. "**Defect**" means any failure of the System to operate in accordance with the specifications or Documentation.
5. "**Documentation**" means, collectively: (i) all of the written, printed, electronic or other format materials published or otherwise made available by Developer to its licensees that relate to the functional, operational and/or performance capabilities of the Software, Software interfaces and/or Equipment; (ii) all user, operator, system administration, technical, support and other manuals and all other written, printed, electronic or other format materials published or otherwise made available by Developer to its licensees that describe the functional, operational and/or performance capabilities of the Software, Software interfaces and/or Equipment. Documentation shall not include source code for the Software.
6. "**Enhancements**" means a modification made by the Developer to the release of the Software licensed to the Customer under this Agreement that: (i) is not designated by the Developer as a new release and (ii) enables the Software to perform new or different functions, or increases the capacity or capability of the Software or enables the Software to function on new or different hardware or in a new or different software environment without changing its basic design, structure or functionality. Enhancements shall not include any new releases, options or future products that the Developer licenses

separately. Enhancements shall include regulatory requirements modifications and any replatformed software, whether on different operating systems or equipment; provided, however, that Enhancements shall not include new or separate product offerings.

7. "**Customer**" means the entity defined in the introductory paragraph of this Agreement and its successors and permitted assigns.
8. "**Software**" means the software defined in the above recitals and any other software that is supplied by Developer to Customer under this Agreement, such as Software interfaces, Developer software, third party software, embedded third party software, and Enhancements or Updates thereto.
9. "**Update**" shall mean a change made by Developer to the release of the Software licensed to the Customer under this Agreement that: (i) is an internal change designed to correct bugs; or (ii) otherwise provides minor improvements to performance without changing the Software's basic design, structure or functionality.

B. Term

The term of this Agreement ("**Term**") shall commence on the date that Customer clicked-through the Microsoft Azure platform to access this Agreement (the "**Effective Date**") and shall continue through the end of Customer's fiscal year, unless otherwise terminated in accordance with this Agreement; provided, however, in no event shall the initial Term exceed two (2) years from the Effective Date; provided further, however, the Term shall renew automatically in annual increments unless either party provides written notice to the other party at least sixty (60) days prior to the end of the current Term.

C. Services

Developer will provide the services listed in the Service Order License Agreement (SOLA), Statement of Work (SOW) or any Change Order (CO) for the specific plan selected and subscribed to by the Customer, subject to the License granted herein. **All provisions of this Agreement are hereby incorporated by reference in any executed SOLA, SOW and/or CO. Subject to the authority of officers of Developer to contractually agree to the contrary as provided by Section X.16 of this Agreement, to the extent any provisions of the SOLA, SOW and/or CO conflict with the provisions of this Agreement, the terms and conditions of this Agreement shall control.**

D. License

1. **License Grant.** Commencing on the Effective Date and continuing for the Term of the Agreement, Developer grants to Customer a personal, non-exclusive, non-sublicensable and non-transferable license to use the Software and Documentation internally in accordance with the terms and conditions of this Agreement. Once the Term has ended, Developer grants to Customer a sixty (60) day personal, non-exclusive, non-sublicensable and non-transferable license to use the Software and Documentation internally in accordance with the terms and conditions of this Agreement for the limited purpose of access to Customer's data in read-only format (write will be disabled).
2. **License Scope.** Customer acknowledges and agrees that the scope of the license granted herein is limited to Developer's intellectual property rights embodied in the Software and Documentation provided by Developer to Customer. Except as expressly provided herein, no other license, express or implied, by estoppel or otherwise, to any other intellectual property rights is granted herein.
3. **License Restrictions.** Customer acknowledges and agrees that the following restrictions are an ongoing condition to the license granted to Customer under this Agreement and violation of these restrictions is a material breach of this Agreement:
 - a. Customer shall not allow any person other than an Authorized User to access the Software or Documentation.
 - b. Customer shall use the Software only as specifically permitted by this Agreement and in accordance with the requirements of applicable federal, state and local law, including but not limited to the Family Educational Rights and Privacy Act (FERPA), the Children's Online Privacy Protection Act (COPPA), and the Pupil Rights Amendment (PPRA).
 - c. Except as expressly provided in this Agreement, Customer shall not sublicense or in any manner rent, loan, transfer, provide, disclose, copy, publish, display or make available the Software, Documentation or any other component of the Software to any third party.
 - d. Customer shall not itself or permit its students, employees or any third party to, modify, enhance or otherwise alter the Software without Developer's express prior consent and under Developer's direct supervision.
 - e. Customer agrees not to alter, obscure or remove any copyright notices and other proprietary notices, regardless of form, contained in or affixed on the Software. Customer further agrees to use the Developer logo, Developer information, and/or related services in accordance with Developer' approved marketing guidelines.
 - f. Customer shall use commercially reasonable efforts to avoid any action which could be detrimental to the goodwill and reputation of Developer and the Software in connection with its use of the Software under this Agreement.
 - g. Customer will use the Software only for its intended purpose.
4. **Technical Specifications.** Customer and/or Authorized Users shall be responsible for acquiring and installing any computer hardware, mobile devices and operating systems necessary to use the Software, such as the specifications that may be set forth on an applicable SOLA and/or SOW.
5. **Additional Terms.** Subject to Section X.16 of this Agreement, the terms and conditions of the license granted herein may be supplemented by additional and separately executed license agreements between Developer and Customer.

E. Excluded Services

Developer only supports Customers directly, not Customers' students, clients, subsidiaries, or affiliates, unless otherwise stated in the SOLA, SOW and/or CO. Developer will not support software applications not provisioned and deployed by Developer, unless otherwise stated in the SOLA, SOW and/or CO. Custom or third party software installation not contracted or wrapped by Developer, software maintenance and troubleshooting on software not provisioned by Developer, new releases and upgrades to Software not

paid for by Customer as part of a SOLA, SOW and/or CO, and custom scripts not supplied by Developer are not included in the services to be provided by Developer under any SOLA, SOW and/or CO.

F. Support Services

Except as may be set forth specifically in the SOLA, technical support shall be provided as follows:

1. **Basic Support.** Developer shall provide the following “**Basic Support Services**” to Customer for the Term of this Agreement:
 - a. Telephone support during normal business hours Monday – Friday 9:00am US Central Time to 5:00pm US Central Time exclusive of Holidays at 888-222-6910.
 - b. Email support during normal business hours Monday – Friday 9:00am US Central Time to 5:00pm US Central Time exclusive of Holidays at an email address to be provided to Customer upon request.
 - c. Updates, Enhancements or patches to the Software on an as-needed basis without charge.
 - d. Corrective maintenance to the Software.
2. **Additional Support.** Developer will provide the following “**Additional Support Services**” to Customer for the Term of this Agreement if paid for by Customer at pricing set forth in the SOLA:
 - a. Developer will provide reasonable off-site training in the use of the Software to Customer’s Authorized Users.
 - b. Developer will reasonably assist Customer in the task of loading the Software on the equipment provided by Customer as specified in a SOLA, SOW, and/or CO.
 - c. Developer will reasonably make available to Customer, at Developer’s sole discretion, “**Other Services**” at Customer’s request including, but not limited to, additional on and/or offsite training, post-install on-site implementation services, consulting and forms design services. Pricing quotes for Other Services will be provided by Developer upon request.
3. **Performance.** With respect to the Additional Support Services and Other Services, Developer shall:
 - a. perform such services in a professional, competent and businesslike manner and in accordance with industry practices and standards generally applicable to such services;
 - b. have the right, with Customer’s input, to determine the method, details, and means of performing such services;
 - c. provide such services in accordance with a mutually agreed upon implementation work plan;
 - d. perform such services primarily at Developer’s premises except when such services require Developer to travel to the Customer’s site; and
 - e. respond to support requests on a first-come, first-serve basis but with special consideration for criticality of issue and will make every effort to respond within 24 hours within the scope of normal business operating days.
4. **Certified Administrator.** Customer acknowledges and agrees to have at least one employee or third-party contractor that has been deemed a Certified Administrator by Developer on their current version of the Software. The Certified Administrator must have completed training and/or certification classes with Developer’s certified instructors on the administration of the Software. Customer also acknowledges and agrees that in order to obtain whole version product upgrades, their Certified Administrator(s) may be required to attend training and/or certification classes that explain how to upgrade and administrate the new version of the product. These classes are offered as Other Services.
5. **Super Administrator.** Customer shall designate one or more Super Administrators in accordance with data privacy and security requirements of any applicable federal, state or local law, including but not limited to FERPA. Through the Super Administrator(s), Customer shall be responsible for assigning and maintaining Roles and Custom Roles (both as defined in the data privacy and security requirements of FERPA) and in order to ensure disclosure of personally identifiable information solely to users with a legitimate need to carry out the purposes of this Agreement.
6. **Directory Maintenance.** Customer is responsible for maintaining a directory of User IDs for all Authorized Users and associating each User ID with one or more roles. Customer is responsible for ensuring that its Authorized Users use only their respective assigned User IDs and do not use another’s User ID. Customer will adopt and maintain such security precautions for User IDs and passwords to prevent their disclosure to, and use by, unauthorized persons.
7. **Disclosures.** Through the Super Administrator, Customer will implement a process to ensure that data aggregated by Developer for analysis is disclosed only to authorized representatives of Customer. The Super Administrator may approve disclosures of personally identifiable information to a third party application provider only if specifically authorized by Customer or if the third party application provider is an authorized representative of a State Educational Agency with respect to its functions for evaluating and ensuring compliance with federal and state supported education programs, Customer has entered a written or electronic agreement with such third party application provider to obtain services from such provider, the disclosures are needed to provide such services, and such agreement provides that the personally identifiable information will be used only for that purpose and that the personally identifiable information will be destroyed when the service is terminated or when the Customer data is no longer needed for that purpose.
8. **Scheduled Maintenance.** Developer reserves the right to take down applicable servers hosting the Software to make improvements or changes or to conduct routine maintenance checks (“Scheduled Maintenance”). Developer will use commercially reasonable efforts to give at least eight (8) hours’ notice prior to any Scheduled Maintenance and to perform Scheduled Maintenance Monday through Friday from 7:00pm to 5:00am US Central Time or weekend hours. Developer will not be responsible for any damages or costs incurred by Customer, if any, for Scheduled Maintenance. Software archival will occur after the end of each school year, during and after which time read-only access will be available provided student data and output data is still available.

G. Payment Terms

1. **License/Subscription Fees.** Customer shall pay Developer the “**License/Subscription Fees**” specified in the SOLA, License, CO, or other agreement, as the case may be. Failure to timely pay the License/Subscription Fees is a material breach of this Agreement.
2. **Annual Support Fees.** Developer will not charge Customer a fee for any of the Basic Support Services.

3. **Other Service Fees.** Customer shall pay Developer all fees for Other Services, including but not limited to Hosting, Custom Extension Features, Extended Support, Implementation Services, and On-Site Service, as billed and incurred based on rates set forth in the SOLA, SOW or Change Order, as may be modified by Developer in its sole discretion from time to time. Any invoice relating to Other Services shall detail: (i) the Services performed (e.g., each activity, task and/or critical path milestone); (ii) the identity of the Developer personnel performing the Other Services, if applicable; and (iii) the number of hours and corresponding fees attributable to each such person's performance of the Other Services, if applicable.
4. **Hourly Service Fees.** For any services offered by Developer on an hourly basis ("Hourly Services"), Customer shall specify the period of time for which the Hourly Services are requested, or cancel at any time. The minimum period of time for which Hourly Services may be requested is one (1) hour and Customer will be billed in full hourly increments, such that no breakdown by minutes shall be permitted unless specifically authorized by Developer at the sole discretion of Developer.
5. **Additional Service Fees and Upgrade Fees.** Additional services and upgrades, not including Hourly Services, ordered on first (1st) day of a new billing cycle will appear as full charges on the monthly invoice for that month, which will be billed on the first (1st) day of the subsequent month, and will continue each month thereafter on the normal billing cycle. Additional services and upgrades ordered after the first (1st) day of the month will be pro-rated to the end of the month and billed as a one-time pro-rata charge.
6. **One Time Fees.** One time fees such as setup fees, administrative fees and late fees are due and payable at the time they are incurred, and/or agreed upon in writing or via ticket with Developer' approval. One time fees such as bandwidth overages and storage layer overages are due and payable as part of the invoice following the billing cycle in which they are incurred, and are based on standard rates, or as otherwise agreed upon in writing or via ticket with Developer' approval.
7. **Time and Method of Payment.** All fees payable to Developer under this Agreement shall be detailed, categorized and clearly stated on an invoice in accordance with the terms and conditions set forth in this Section. Unless otherwise agreed by the parties, all amounts payable under this Agreement shall be payable in U.S. Dollars. All payments to Developer are non-refundable. Developer shall invoice Customer as set forth in this Section, and Customer shall pay all net undisputed amounts due to Developer under this Agreement by the due date.
8. **Late Payments.** Developer reserves the right to charge interest at the maximum rate allowed by law on all amounts past due, and to assert appropriate liens to ensure payment. The rights and remedies set forth herein are in addition to any other rights or remedies, at law or in equity, Developer may have against Customer in connection with any non-payment. Customer agrees to pay Developer one-and-one-half percent (1½%) per month for all invoices over 30 days old. Access to Software and services will be suspended and/or put on hold if the Customer fails to pay by the due date, and will remain suspended until invoices become current subject to the terms included herein. It is the Customer's responsibility to make sure that Developer receives payment by the payment due date and Customer's failure to make timely payment constitutes a material breach of this Agreement. Returned checks or rejected credit cards will cause an immediate disruption to your service. Basic Support Services and Additional Support Services will be suspended in the event that any invoices are not paid by the due date, and will remain suspended until invoices become current subject to the terms included herein. Services will be re-activated only after the Customer cures any and all such payment breaches.
9. **Renewal.** In the event the parties wish to renew this Agreement, the parties acknowledge and agree that a new SOLA, licensing agreement and/or SOW must be entered into.
10. **invoicing.** Developer typically invoices annually at the beginning of Customer's fiscal year, and may invoice Customer monthly for certain usage charges or other charges incurred during the previous month. Fees for Software and service(s) ordered by the Customer shall begin accruing on the date of the initial order and will be charged pro-rata to the end of the billing cycle. Future charges will be billed as full monthly fees. On-Site Service charges will be invoiced separately for each support trip and shall be due and payable immediately upon receipt by Customer.
11. **Disputed Amounts.** For disputed invoices or the disputed portion of an invoice, Customer shall provide to Developer, in writing, within ten (10) business days of receiving the subject invoice, a detailed statement of exceptions of the disputed amounts. In any event, Customer shall nevertheless be responsible for the timely payment of any disputed invoice. Customer and Developer shall attempt to resolve any invoice disputes in a timely, good faith manner. If Developer agrees with Customer's basis for disputing an invoice, then Developer shall refund any amounts already paid by Customer with regard to such invoice. Provided the timely payment of any disputed amounts and all other invoices have been paid, all of Developer's obligations shall continue unabated during the duration of the dispute resolution.
12. **Service Credits.** SLA credits, if any, will be issued to your Customer account and shall be used to offset future billable services. SLA credits shall not be issued as cash back to the Customer nor shall the service credits be transferable to other account holders. SLA credits shall expire without value if Customer's account is terminated for any reason.
13. **Additional Products.** Developer agrees to offer for licensing to Customer, upon development, any additional products or software brought to market by Developer during the Term of this Agreement. The parties agree to negotiate pricing for such additional products or software in good faith.
14. **Taxes and Other Charges.** All Developer fees are exclusive of any applicable sales, use, value-added, other federal, state or local taxes, or any import duties or tariffs imposed on the Software, services and/or transactions made the subject of this Agreement, and Customer shall be responsible for paying all foreign, federal, state, and local sales, use, value added, excise duty and any other taxes assessed with respect to any Software and/or services, except that Developer shall be responsible for any corporate franchise taxes imposed on Developer by law and for any taxes based on its net income or gross receipts.

H. Billing Policy

Developer shall provide invoices and any quotes, proposals, estimates, sales orders, and other billing-related documentation, as the case may be, to Customer by any of the following methods, each of which Customer acknowledges and agrees is independently sufficient for purposes of notice regarding the receipt of each such invoice or other subject document:

1. By regular mail to the address of Customer (to the attention of Accounts Payable or the Customer Contact) provided by Customer in any SOLA, SOW, CO, or License; or

2. By electronic mail ("Email") to the Email address provided by Customer in any SOLA, SOW, CO, or License.

Customer acknowledges and agrees that Customer is responsible for maintaining accurate and current address and/or Email address information with Developer pursuant to the notice provision, Section X.5 below, with the name and Email address of the user to be removed or added, as the case may be. Developer will include itemization of each invoice or other subject document it generates as Developer deems appropriate in its' sole discretion including, but not limited to, Customer's name and address, an itemized list of charges and/or services rendered, the amount due and owing, and Customer's identifying account information.

I. Intellectual Property.

1. **Title.** Title to the Software and Documentation, including all copies thereof, shall be in and remain with Developer or its third-party licensors. The parties agree that all inventions, product improvements, and modifications to the Software and Documentation conceived of or made by Developer that are based, either in whole or in part, on Customer's feedback, suggestions, or recommended improvements, are the exclusive property of Developer, and all rights, title and interest in and to any such invention, product improvement, or modification to the Software and Documentation will vest solely in Developer.
2. **Prohibition on Reverse Engineering.** Customer agrees that it will not (nor shall it permit anyone else to) "unlock", decompile, reverse engineer, disassemble, or otherwise translate the binary or object code versions of the Software to human-perceivable form nor permit any person or entity under its control to do so.
3. **Reservation of Rights.** Developer claims and reserves all rights and benefits afforded under federal and international copyright laws. Any right not expressly granted to Customer by this Agreement is hereby expressly reserved by Developer. Other than the License granted herein, nothing in this Agreement shall be deemed to authorize Customer to use any copyright, name, trademark, service mark, or patent or other intellectual property right of Developer.
4. **Customer Data.** Title to Customer data and output data from the Software pursuant to Customer's use of the Software, including all copies thereof, shall be in and remain with Customer. Commencing on the Effective Date and continuing for the Term of the Agreement, Customer grants to Developer a personal, non-exclusive, non-sublicensable, irrevocable and non-transferable license to use all materials and information provided by Customer, Customer data and output data internally in accordance with the terms and conditions of this Agreement.
5. **Hardware.** Developer is and shall at all times remain the exclusive owner of all hardware upon which, and from which, all Developer services are provided hereunder, unless otherwise stated in the SOLA. All hardware purchased by Customer not provided by Developer is and shall at all times remain the exclusive property of Customer.

J. Records and Audit Rights

1. **Records.** Customer shall keep full, complete, clear and accurate records with respect to Customer's use of the Software and Documentation.
2. **Audit Rights.** On Developer's request, not more frequently than annually, an officer of Customer shall certify to Developer that the Software and Documentation are being used in accordance with this Agreement. In lieu of such certification, at Developer's request (no more than once each calendar year) and within thirty (30) days after receiving written notice, Customer shall permit a Developer representative or an independent auditor mutually agreed to by Developer and Customer to have access during Customer's regular business hours, to all equipment, records, and documents of Customer that may reasonably contain information bearing upon Customer's use of the Software and Documentation under the terms of this Agreement. Developer's audit rights shall survive any termination or expiration of this Agreement.
3. **Student Data and Output Data.** To the extent Developer may be maintaining output data for Customer, Developer shall keep such data so long as Customer pays all License/Subscription Fees and materially complies with all other terms and conditions of this Agreement. Developer agrees to use best efforts and commercially reasonable best practices when deploying services related to data integrity, backup, security, and retention. These services include, but are not limited to: hard drive storage, raid hard drive arrays, network attached storage, storage area networks, operating system installs, operating system reloads, customer portal information, and other situations involving customer data. Customer assumes ultimate responsibility for data content, integrity, retention, security, backup, and ownership. In the event that Developer handles Customer data (*i.e.*, when replacing hard drives), Developer will act in accordance with PCI guidelines to ensure data is securely handled. **Upon the end of the Term, the occurrence of an Event of Default, or termination of this Agreement for any reason other than nonpayment, Developer will provide to Customer within sixty (60) days of such date a backup/copy/export of student data and output data according to a schedule and procedure as Developer and Customer may reasonably agree. Upon completion of such data transfer, all such data shall be deleted/purged by Developer.** Notwithstanding any other provision of this Agreement, if Customer fails to pay any Developer invoice in full by the due date or cancels their contractual relationship with Developer and does not pay all amounts then and subsequently due and owing, Developer may, in its sole discretion, remove and/or delete all or any part of the Customer's data retained on servers owned by Developer after sixty (60) days written notice to Customer, unless payment is received within 60 days therefrom. **Customer acknowledges and agrees that Customer is solely responsible for compliance with all federal, state and local laws related to the retention of any and all data arising from, related to, or connected with the use of the Software.**

K. Warranties

1. **General.** Each party represents and warrants that:
 - a. It is an entity duly created and validly existing under the laws of the jurisdiction of its creation;
 - b. It has full power and authority to carry on its business as now being conducted;
 - c. It has full power and authority to enter into this Agreement and to consummate the transactions contemplated hereby and thereby;

- d. This Agreement has been duly executed and delivered by, and constitutes legal, valid and binding obligations of the party, enforceable against the party in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, preference and other laws relating to or affecting enforcement of creditors' rights generally; and
 - e. No dissolution, winding-up, bankruptcy, liquidation or similar proceedings have been commenced, threatened, or are pending in respect of the party.
2. **Warranties by Developer.** Developer represents and warrants that:
- a. Developer either owns all right, title and interest to the Software and Documentation, or has the right to license the Software and Documentation;
 - b. the Software is free and clear of all liens, claims, encumbrances and demands of third parties;
 - c. Developer is unaware of any allegations that the Software or Documentation infringe the intellectual property rights of any third party; and
 - d. the Software substantially conforms to the specifications set forth in its published documentation for a period of thirty (30) days after the Effective Date or for so long as Customer pays the License/Subscription Fees (the "**Warranty Period**").
3. **Warranties by Customer.** Customer represents and warrants that:
- a. Customer is responsible for obtaining all authorizations, consents, releases, and permissions necessary or desirable to store data in the Software platform and its database, to use the Software platform to convert and store Customer data and to view the Software platform's analytics;
 - b. All materials and information delivered to Developer by Customer, and Developer' use thereof in connection with transactions contemplated under this Agreement, does not and shall not infringe any copyright, trademark, trade secret, patent or other intellectual property right of any third party;
 - c. Customer has the right to use, disclose, publish, translate, reproduce, and deliver all materials and information to Developer, both directly and through the Software;
 - d. Customer shall be responsible for acquiring at its own expense all equipment needed for use of the Software, unless otherwise agreed by the parties. Developer shall not be liable or responsible for any loss or delay of Customer data, output, or any other information that pertains to Customer or the functionality of the Software during any period of transit or electronic transmission to the Software platform unless and to the extent attributable to the gross negligence or willful misconduct of Developer;
 - e. Customer shall purchase and maintain any and all Microsoft licenses necessary to utilize the Software platform;
 - f. Customer shall at all times comply with all applicable US federal, state and local law, and all applicable laws of other countries where Customer operates, uses the internet to communicate, or uses the Software including, but not limited to, all laws related to the retention of data;
 - g. Customer is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, and Customer is not listed on any U.S. Government list of prohibited or restricted parties; and
 - h. Customer may not participate in or support any illegal activities through the use of Developer's Software or services.
4. **Pass Through Warranties and Indemnities; Registration.** Any Equipment purchased by Customer from Developer shall be certified as new equipment and shall include the manufacturer's standard end-user warranty for new equipment. With respect to any third-party software or equipment furnished by Developer to Customer, Developer shall secure from the applicable manufacturer(s) such warranties and indemnities as may be available with respect to such third-party software or equipment and shall assign and pass through to Customer all equipment and applicable third-party software manufacturers' end-user warranties and indemnities to the extent legally assignable. In the event such warranties and indemnities are not assignable to Customer, if necessary, Developer shall enforce such warranties and indemnities on Customer's behalf. In addition to the above, Developer shall, at Customer's request, register Customer with any and all third party vendors such that Customer is acknowledged as a support obligation and Customer can receive and obtain notices directly from the third-party vendors. Developer will produce evidence of such registration within thirty (30) calendar days from the date Customer requests that Developer obtain such registration.
5. **Disclaimers.** Developer does not warrant that the Software and Documentation will meet Customer's requirements, or the operation of the Software shall be uninterrupted or error-free. Developer's exclusive liability and Customer's exclusive remedy for any breach of the warranty pursuant to this section shall be correction of the errors or deficiencies that cause the breach of the warranty during the Warranty Period. This warranty shall apply only if Developer's examination discloses to Developer's satisfaction that alleged defects actually exist and were not caused by misuse, unauthorized modifications, neglect, improper installation or testing, attempts to repair, or the like, or by accident, fire, power surge or failure, or other hazard.
6. **No Other Warranties.** DEVELOPER'S SOFTWARE, SERVICES, AND INTELLECTUAL PROPERTY IS PROVIDED "AS IS", AND DEVELOPER MAKES NO PROMISES, REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE CONFIDENTIAL INFORMATION, SOFTWARE, SERVICES, AND INTELLECTUAL PROPERTY, OR ANY PORTION THEREOF, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

L. Limitation of Liability

- 1. IN NO EVENT SHALL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES, REGARDLESS OF HOW ARISING, REGARDLESS OF THE CAUSE OF ACTION, IN TORT, CONTRACT OR OTHERWISE, AND REGARDLESS OF WHETHER ADVISED BEFOREHAND OF THE POSSIBILITY OF SUCH DAMAGES. THESE EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, COST OF REMOVAL OR REINSTALLATION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES,

OUTSIDE COMPUTER TIME, LABOR COSTS, LOSS OF DATA, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF USE, OR INTERRUPTION OF BUSINESS, OR OTHER ECONOMIC LOSS.

2. DEVELOPER'S AGGREGATE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY UNDER THIS AGREEMENT, FOR ANY CLAIM, WHETHER IN CONTRACT (INCLUDING BREACH OF WARRANTY) OR IN TORT (INCLUDING NEGLIGENCE) SHALL BE LIMITED TO 100% OF THE AMOUNT PAID BY CUSTOMER UNDER THIS AGREEMENT. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE OR EXTEND THESE LIMITS.

M. Indemnification

1. Customer is responsible for all actions taken or caused to be taken arising from, related to, or connected with Customer's use of the Software and services. CUSTOMER AGREES TO INDEMNIFY AND HOLD HARMLESS DEVELOPER, DEVELOPER' AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, ATTORNEYS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, FINES, PUNITIVE DAMAGES, AMOUNTS IN INTEREST, EXPENSES AND DISBURSEMENTS OF ANY KIND AND NATURE WHATSOEVER (INCLUDING REASONABLE ATTORNEYS' FEES) UNDER ANY THEORY OF LEGAL LIABILITY ARISING OUT OF OR RELATED TO CUSTOMER'S CONTENT, ACTS OR OMISSIONS OF CUSTOMER, SECURITY BREACHES, ILLEGAL ACTIVITY AND/OR ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF A THIRD PARTY'S COPYRIGHT, TRADE SECRET, PATENT, TRADEMARK, OR OTHER PROPRIETARY RIGHT.
2. Developer shall indemnify and hold Customer harmless from any liability to third parties incurred by Customer for any action based on infringement of a copyright or patent as a result of Customer's use of the Software if: (i) Customer promptly notifies Developer in writing of any such claim or suit, cooperates fully with Developer, and permits Developer to defend or settle such claim or suit on behalf of Customer; (ii) this Agreement remains in effect without interruption from the Effective Date until the date of such claim; (iii) Customer did not use the Software with other software, or otherwise use or alter the Software, except as specifically permitted in the Documentation; (iv) Customer has complied with all of the terms of this Agreement; and (v) the alleged infringement was specifically related to the use of the Software and not the product of the Software.
3. Developer shall have control of the defense of any such claim, including appeals from any judgment thereon and any negotiations for the settlement or compromise thereof, with full authority to enter into a binding settlement or compromise. If a third-party's claim substantially interferes with Customer's use of the Software and the foregoing indemnity obligation is triggered, Developer may, at its sole discretion: (i) replace the Software, without additional charge, with a functionally equivalent and non-infringing product; (ii) modify the Software to avoid the infringement; (iii) obtain a license for the Customer to continue use of the Software and pay any additional fee required for such license; or (iv) terminate the license for the Software.
4. Developer shall have no liability to Customer under this Section with respect to any infringement or claim thereof that is caused by (i) the use of the Software in a manner for which it was neither designed nor contemplated, or (ii) any unauthorized modification of the Software or combination of the Software with any other product that causes the Software thereof to become infringing.
5. Where Developer has provided Customer with modified Software, Enhancements or Updates, Customer is only licensed to use the most current version of the Software that has been provided by Developer and must discontinue all use of prior versions, unless otherwise authorized by Developer in writing.
6. Developer's liability for indemnification under this Section shall be limited to 100% of the amount paid by Customer under this Agreement. This Section states Developer's entire liability and Customer's sole and exclusive remedy with respect to infringements of copyrights and patents by the Software or any component thereof.

N. Termination

1. **Events of Default.** Developer and Customer acknowledge and agree that the following shall constitute events of default ("**Events of Default**") and that the occurrence of one (1) or more of such Events of Default shall constitute a material breach of this Agreement which shall allow a party, as applicable, to seek the rights and remedies set forth in this Section:
 - a. A material breach of this Agreement, provided that such breach, if curable, is not cured within thirty (30) calendar days following receipt of written notice of such breach;
 - b. Customer's failure to timely pay any undisputed amount owed to Developer, provided that such failure is not cured within thirty (30) calendar days following receipt of written notice of such failure;
 - c. Failure of a party to perform any other material obligation under this Agreement, provided that such failure is not cured within thirty (30) calendar days following receipt of written notice of such failure;
 - d. The institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against a party under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States or any state thereof, if such proceedings have not been dismissed or discharged within thirty (30) calendar days after they are instituted; or the insolvency or making of an assignment for the benefit of creditors or the admittance by a party of any involuntary debts as they mature or the institution of any reorganization arrangement or other readjustment of debt plan of a part not involving the United States Bankruptcy Code; or any corporate action taken by the Board of Directors of a party in furtherance of any of the above actions;
 - e. Appointment of a receiver for all or substantially all of a party's assets or any corporate action taken by the Board of Directors of Developer in furtherance of the above action; and
 - f. Failure by Customer to use the Software in compliance with the terms and conditions set forth in this Agreement or written usage guidelines.
2. **Rights and Remedies of the Non-Breaching Party.** Upon the occurrence of an Event of Default, the non-breaching party shall be entitled to immediately terminate this Agreement by providing written notice to the breaching party.
3. **Obligations Upon Termination.** Except as otherwise provided for in this Agreement, upon termination of this Agreement, all rights granted to either party will terminate. Promptly, but in no event more than thirty (30) days after termination of this

Agreement for any reason, or upon discontinuance or abandonment of Customer's possession or use of the Software or equipment, Customer shall:

- a. Cease using the Software;
 - b. Return all hardware and other equipment supplied by Developer;
 - c. Uninstall and erase all Software and Documentation (and any and all portion(s) thereof) from all Customer's storage elements and devices; and
 - d. Return all copies of the Software and Documentation or certify, by a written statement signed by an officer of Customer, the destruction of all copies of the Software and Documentation, including all copies (whole and partial) of the Software and Documentation in Customer's possession or under Customer's control.
4. **Termination Fee.** Customer's commitments and obligations begin on the earlier of (i) the day Developer activates Customer's service and (ii) the Effective Date. Customer acknowledges and agrees Customer received certain benefits from Developer in exchange for services provided by a service contract greater than one (1) month. If Developer terminates Customer's service for nonpayment or other default before the end of any Term, or if Customer terminates Developer services for any reason other than those allowed by this Agreement, Customer agrees to pay Developer a termination fee with respect to the subscription assigned to Customer ("**Early Termination Fee**"), in addition to all other amount owed. The Early Termination Fee is not a penalty, but rather a charge to compensate Developer for Customer's failure to satisfy the service commitment on which Customer's license/subscription is based. An Early Termination Fee will be applied, and paid by Customer, as follows:
- a. if Customer has not provided the proper notice of termination required by this Agreement, then Customer will be required to pay twenty-five percent (25%) of the full SOLA, or the remainder of the full amount owed to Developer under the SOLA, whichever is less;
 - b. if Customer's SOLA includes the purchase of certain specified equipment and third-party software license(s), Customer will be required to pay the full balance of any said equipment and software license(s);
 - c. If Developer incurs any additional termination costs for on premise equipment, leased equipment, or equipment purchased from Developer in association with this Agreement, Customer will be required to pay the full amount of any such termination costs and Customer may be required to return any and all such equipment at Customer's expense.
 - d. Developer may charge Customer a restocking fee for any returned equipment and third-party software license(s) acquired for the provision of Customer's SOLA.
5. **Survival.** The parties agree that the following sections survive any expiration or termination of this Agreement: Section D (License), Section G (Payment Terms), Section I (Intellectual Property Rights), Section J (Records and Audit Rights), Section K (Warranties), Section L (Limitation of Liability), Section M (Indemnification), Section N (Termination), Section O (Confidentiality) and Section X (Miscellaneous).

O. Confidentiality

1. **Confidential Information.** "**Confidential Information**" means the Software and any and all (i) technical information of a party to this Agreement, including, without limitation, copyrights, patents, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, systems information, software programs, software source documents, formulae related to such party's current, future, and proposed products and services, and information concerning research, experimental work, development, design details and specifications, and engineering; (ii) non-technical information regarding the business and affairs of a party, including, without limitation, commercial, operational, and financial information, business forecasts and development leads, marketing strategies, plans, and related information, procurement requirements, purchasing and manufacturing information, rates and pricing information, sales and merchandising information, customer lists, customer contract terms, supplier/vendor contract terms, carrier contract terms, schedules of inventory and accounts receivable, and facility blue prints; (iii) other trade secrets and proprietary information of a party; and (iv) notes, analyses, schedules, compilations, studies or other material prepared by a party, whether in written form or recorded electronically or otherwise, containing or based in whole or in part on those items described in (i), (ii), or (iii) above.
2. Information disclosed by the party that discloses information to the other party (the "**Discloser**") shall also be considered Confidential Information by the party that receives information from the Discloser (the "**Recipient**"): (i) if provided in written, electronic, or other tangible form, such information is conspicuously designated as "Confidential" or "Proprietary"; or (ii) if provided orally, is designated to be Confidential Information at the time of disclosure or in writing within five (5) days of the disclosure, or which under the circumstances surrounding disclosure ought to be treated as Confidential Information. Notwithstanding the foregoing, student data shall be considered Confidential Information whether or not it is conspicuously designated as "Confidential" or "Proprietary".
3. **Nondisclosure Obligation.** Each party agrees that it shall not, without the other party's prior written consent, directly or indirectly, through its employees, representatives, agents or otherwise: (a) disclose the Confidential Information to any other person; (b) copy, photograph, photocopy, reduce to writing, record or store in any electronic format, or otherwise reproduce or duplicate the Discloser's Confidential Information, except as reasonably necessary for Recipient to perform in accordance with this Agreement; or (c) take any other actions in connection with the Discloser's Confidential Information that would be detrimental thereto. Each party agrees that it shall treat the Confidential Information of the other party with at least the same degree of care as it accords to its own Confidential Information, which in no case shall be less than reasonable care and in compliance with FERPA, COPPA, PPRA, and all federal, state and local law. Each party agrees that it shall disclose Confidential Information of the other party only to those of its employees, representatives, and agents who need to receive such information in the performance of their work duties and certifies that such employees, representatives, and agents have previously agreed, either as a condition to employment or in order to receive the Confidential Information, to be bound by terms and conditions substantially similar to those of this Agreement.
4. **Notice of Unauthorized Use or Disclosure.** The Recipient shall give written notice to the Discloser of any unauthorized use or disclosure by the Recipient of the Discloser's Confidential Information immediately after discovery of such use or disclosure and further agrees to exert its best efforts to assist the Discloser in remedying any such unauthorized use or disclosure of the Discloser's Confidential Information. If the Recipient is requested to disclose the Discloser's Confidential

Information in violation of the terms of this Agreement, whether by a third party or in response to a valid order by a court or other governmental body or otherwise required by law, the Recipient shall immediately give written notice as soon as reasonably possible to the Discloser of such request and provide the Recipient a reasonable period of time, if possible to determine a course of action prior to agreeing to such disclosure. In addition, the Recipient shall cooperate with and provide reasonable assistance to the Discloser in the event Discloser decides to resist the request to disclose the Discloser's Confidential Information.

5. **Exclusions from Nondisclosure Obligations.** Except to the extent disclosure would be in violation of any data privacy and security laws or FERPA, COPPA, and PPRA, the nondisclosure obligations of this Agreement shall not apply to any portion of the Discloser's Confidential Information in which the Recipient can reasonably establish in writing that: (i) the Confidential Information is part of the public domain through no fault of the Recipient; (ii) the Confidential Information was lawfully in the Recipient's possession free of any obligation of confidentiality at or subsequent to the time it was communicated to the Recipient by the Discloser; (iii) the Confidential Information was developed by employees, representatives, or agents of the Recipient independently of and without reference to any information communicated to the Recipient by the Discloser; (iv) the Confidential Information was communicated by the Discloser to an unaffiliated third party without any obligation of confidentiality; or (v) subject to Subsection O.4, the disclosure of the Confidential Information was in response to a valid order by a court or other governmental body or was otherwise required by law.
6. **Disclosure of Third Party Information.** Neither party shall disclose to the other any information received from a third party if such disclosure constitutes a violation of the proprietary rights of the third party.
7. **Duration.** Notwithstanding the earlier termination of this Agreement, the obligations relating to confidentiality are to remain in effect for a period of five (5) years after the expiration or termination of this Agreement.
8. **Injunctive Relief.** The parties agree that their obligations of confidentiality are necessary and reasonable in order to protect their respective business, and agrees that monetary damages would be inadequate to compensate for any breach of these Sections. Accordingly, the parties agree that any such breach or threatened breach of these Sections may cause irreparable injury and that, in addition to any other remedies that may be available, in law, equity or otherwise, any of the parties shall be entitled to injunctive relief (preliminary or otherwise) in the event of an actual or threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

P. Dispute Resolution

1. **Project Manager Level Performance Review.** The applicable Developer Project Manager and Customer Certified Administrator shall meet as often as shall reasonably be required to review the performance of the parties to resolve any disputes. Written minutes of such meetings shall be kept by Developer for review and approval by Customer. If these representatives are unable to resolve a dispute within ten (10) calendar days after the initial request for a meeting, then the dispute shall be submitted to an executive-level performance review as described below.
2. **Executive-Level Performance Review.** Negotiations shall be conducted by senior executive officers of Customer and Developer. If these representatives are unable to resolve the dispute within ten (10) calendar days after the representatives have commenced negotiations, or twenty (20) calendar days have passed since the initial request for negotiations at this level, then the parties may agree in writing to submit the dispute to mediation.
3. **Voluntary, Non-Binding Mediation.** If executive-level performance review is not successful in resolving the dispute, the parties may, but shall not be obligated to, mutually agree in writing to submit the dispute to non-binding mediation. Mediation must occur within ten (10) business days after the parties agree to submit the dispute to mediation, and the duration of the mediation shall be limited to one (1) business day. The parties mutually shall select an independent mediator experienced in commercial contract software technology disputes, and each shall designate a representative(s) with full negotiation and settlement authority to meet with the mediator in good faith in an effort to resolve the dispute. The specific format for the mediation shall be left to the discretion of the mediator and the designated party representatives and may include the preparation of agreed-upon statements of fact or written statements of position furnished to the other party.
4. **Continued Performance.** Except where clearly prevented by the area in dispute, both parties shall continue performing their obligations under this Agreement while the dispute is being resolved under this Section unless and until the dispute is resolved or until this Agreement is terminated as provided herein.

Q. Anti-Spam Provisions

Developer operates under a strict "No Spam" policy. The sending of any unsolicited e-mail advertising messages from, to, or through Developer Software may result in civil liability against the sender. "Unsolicited bulk" messages include, but are not limited to, commercial advertising, informational announcements, and political or religious tracts. Developer reserves the right to check all known commercial and public databases for information regarding prior history of unsolicited mail sending, and may choose to deny or terminate services based on this information. Individuals identified as "ROKSO" level abusers will be denied service immediately.

R. Capacity Limits

1. Each Developer Software as a Service deployment includes a maximum capacity limit. The SOLA will provide Customer's exact capacity limit as determined by API transactions. The upper limits of transactions are determined on a per minute basis or per hour basis depending upon the SKU selected by Customer and as set forth in the SOLA. Should Customer exceed Customer's included maximum capacity limit, Developer will throttle and/or cap Customer's accessibility to Developer.
2. Developer measures for API transaction utilization by polling the interface to which Customers are connected. At each polling interval, inbound and outbound API transaction usage is measured and stored in a dataset. API-based transactions may result in more transactions than simply the number of end users accessing and utilizing Developer at any given point in time.
3. Each Customer will be capped at the capacity limit purchased in the SOLA. Capacity limits may include the aggregate of

API transaction limits, hardware usage limits, among others, and each such limit category may include additional data size limits, time limits, field limits, and/or task limits. Customer may elect to commit to additional capacity limits by contacting their sales representative. If the Customer commits to additional capacity limits, Customer will be billed at the new capacity limit rate as set forth in the SOLA.

S. System and Network Security

1. Security is an important part of your service, and it is important that Customer understands the security policies we apply to the servers at Developer.
2. To the extent Developer has actual control over systems or facilities, Developer agrees to use commercially reasonable security consistent with its business practices and facilities. The parties acknowledge that the Internet is neither owned nor controlled by any one entity and that one or more third parties may gain access to Developer systems. Electronic mail and other transmissions passing through Developer systems or over the Internet are not secure, and Developer cannot guarantee the security or privacy of any of the information or communications passing through Developer systems. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, DEVELOPER SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A BREACH OF SECURITY THAT DOES NOT RESULT FROM DEVELOPER' GROSS NEGLIGENCE OR FRAUDULENT OR INTENTIONAL MISCONDUCT. Developer will not intentionally monitor or disclose any private electronic communications except to the extent necessary to identify or resolve system problems or as otherwise permitted or required by law. Developer does, however, reserve the right to monitor transmissions, other than private electronic communications, as necessary to provide the services hereunder and otherwise to protect the rights and property of Developer. Notwithstanding the foregoing, Developer does not assume any liability for any action or inaction with respect to such communication or content posted or provided by an authorized or unauthorized third party, and Customer specifically acknowledges and agrees that Developer shall have no liability in this regard and, therefore, holds Developer harmless. Developer is a distributor and not a publisher of Customer data or any other content provided by Customer or others (including end users). Because communication of data and other content over the Internet occurs in real time, Developer cannot, and does not intend to, screen, police, edit, or monitor communications and content. IN NO EVENT WILL DEVELOPER BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A USER'S RELIANCE ON ANY THIRD PARTY DATA OR OTHER CONTENT OBTAINED THROUGH OR FROM CUSTOMER.
3. Developer reserves the right to act immediately regarding security violations. This may include, without limitation, the immediate suspension of access to Software and services without notice.

T. Acceptable Use Policy (AUP)

1. Developer Acceptable Use Policy ("AUP") is intended for Developer products and services with the goal of protecting Developer Subsidiaries, Affiliates, Employees, and Customers. This policy applies to the use of all Developer products, websites, copyrights, and services owned or operated by Developer, as well as any and all data sent, transferred, received, stored, or accessed in the Developer network. Other products or services offered by Developer may have additional terms and conditions that govern over this policy in the case of inconsistencies.
2. This AUP and the following prohibited activities noted below are an integral part of this Agreement with Developer. Developer Software and services are for the lawful use of Developer customers and if Developer finds Customer and end users (also collectively referred to as "you" and "your" in this AUP) in violation of the identified prohibited activities, your services may be subject to suspension and/or removal from Developer network. This AUP is a non-exclusive list of actions prohibited by Developer.
3. It is the sole responsibility of the Customer to properly secure their operating systems (OS), applications, Software, and third party software unless otherwise stated in the SOLA. Developer assumes no legal liability for the actions or data created or posted by its Customers. Each Customer is responsible for all data transmitted, or received by, to, or through Developer Software and services. Customer acknowledges and agrees that Developer does not control the content of network traffic to or from its Software, services or network and makes no representations or warranties regarding same.
4. Developer will cooperate with law enforcement related to any criminal or suspected criminal acts by any means, which Developer may deem necessary including, but not limited to, handing over personal information, data, or hardware to aid law enforcement with their investigations. Law enforcement officials may request that you not be notified about issues relating to criminal acts. Developer reserves the right to comply with all such requests.
5. The purpose of the AUP is to:
 - a. Ensure the security, reliability and privacy of Developer network and systems, and the networks and systems of others.
 - b. Preserve the privacy and security of Developer Customers and other Internet users.
 - c. Discourage irresponsible practices, which degrade the usability of network resources and thus the value of Internet services.
 - d. Avoid situations that may cause Developer to incur legal liability.
6. Developer operates under a strict "No Spam" policy per Section Q of this Agreement. The sending of any unsolicited email advertising messages from, to, or through Developer services may result in civil liability against the sender.
7. Use and access to Developer Software and services is for lawful use only. Using Developer Software, network, services, or systems to store or send content which is illegal according to the laws of United States of America is not permitted for any reason.
 - a. You may not display, transmit, advertise, distribute, or sell harmful materials.
 - b. You may not store or send any material deemed either illegal or inappropriate from Developer Software or networks including, but not limited to, child pornography and the following:
 - (i) Images depicting persons under the age of 18 engaging in unlawful sexual acts.
 - (ii) Pornographic materials viewable by persons under the age of 18 without proof of age.
 - (iii) E-mails, messages, phone messages, or posts with content that is, or may be, threatening or harassing any other individual. Harassment is, by definition, meant to be viewed broadly, whether through content, frequency,

- or size using e-mail or usenet messages.
 - (iv) Software or hardware containing programs such as viruses, worms, trojans or other malicious programs with intent of causing harm to any individual's computer or server.
- 8. Developer expressly forbids the use of copyrighted materials without written permission from the owner of that material. Developer follows all rules and regulations set forth by the Digital Millennium Copyright Act.
- 9. You may not engage in an attempt to infringe, store or send any material deemed either illegal or inappropriate for Developer networks, including but not limited to copyrighted images, software, music, advertising, selling, distributing, or marketing material that infringes a copyright, trademark, or any other proprietary right to any intellectual property including but not limited to photographs, trade secrets, and/or property.
- 10. Developer requires that all Customers and end users provide accurate information regarding name, address, and a working phone number to identify each such Customer and end user.
 - a. You may not use Developer services to impersonate another individual by altering source IP address information or forging e-mail/usenet headers or other identifying information.
 - b. You may not make any attempt to fraudulently conceal, forge, or otherwise falsify one's identity in connection with use of Developer Software or services.
- 11. Customers must not utilize Developer Software or services to distribute fraudulent materials to others including, but not limited to, the following:
 - a. Attempting to buy or sell fraudulent goods or services, or offering fraudulent goods, services, or promotions.
 - b. Forwarding or otherwise propagating chain letters or "e-mail hoaxes," whether or not the recipient wishes to receive them, unless such propagation is both solicited and in the clear context of debunking or discrediting chain letters/hoaxes.
 - c. Falsifying or modifying data to fraudulently disguise you as someone else with the intention of deceiving another user, including but not limited to forging e-mail headers or e-mail "munging" (the deliberate alteration of an e-mail address online with the intent of making the address unusable for web-based programs that build e-mail lists for spamming purposes).
 - d. Transmitting any electronic communication, including e-mail, using the name or address of another person or organization, for purposes of deception.
 - e. Impersonating another individual by altering source IP address information, or forging email/usenet headers or other identifying information.
- 12. The use of Developer Software or services to gather personal information about victims of phishing is strictly forbidden.
 - a. You may not perpetrate, engage in, or take part in the use of phishing scams.
 - b. You may not impersonate another individual by altering source IP address information, or forging email/usenet headers or other identifying information.
 - c. You may not send e-mails with links to bogus websites that look similar to actual sites, or send e-mails about you impersonating a representative of PayPal, EBay, or a bank representative, with the intention of acquiring personal information such as credit card information, social security number, personal e-mails, home addresses, etc.
- 13. Use of Developer Software or services to perform attacks on other servers or computers, outside of or within Developer premises, is strictly forbidden.
 - a. You may not intercept or attempt to intercept, through any method, network traffic intended for other customers.
 - b. You may not use or store any type of software which is designed to, or is likely to, abuse or negatively impact internet service including, but not limited to, port scanners, hacking tools, ping flooding programs, security/root exploits, packet sniffers, and spam software.
 - c. Denial of service including, but not limited to, any form of internet packet flooding, packet corruption, or abusive attack intended to impact the proper functioning of any internet servers or services are forbidden.
 - (i) Use of Software or service to breach or access any server, computer, or software with the intent of gaining access to or destruction of data without the owner's permission or consent.
 - (ii) Use of Software or services to search outside networks for open firewalls or server ports in an attempt to exploit a vulnerability or weakness in the device.
 - (iii) Using Software or services to engage in an attack on a separate entity's server or computer with an unlawful script or program that attempts to guess users credentials.
 - (iv) An attack on a network, server, or computer that creates multiple requests repetitively in an attempt to slow down or crash network connectivity.
 - (v) An attack that creates multiple echo requests and sends them to its target repeatedly in an attempt to slow down or crash the target's network connectivity.
- 14. Complaints about Customer, representatives of Customer, or end-users of a Developer Customer will be forwarded to the Developer Abuse Department for action. If violations of the Developer Acceptable Use Policy occur, Developer reserves the right to terminate services or take action to stop the offending Customer from violating the Developer AUP. Violation of any Developer AUP policy may subject violator and Customer to a fine of up to \$500 USD for each incidence of violation. Failure to respond to or cure an issue of violation within one (1) business day is considered a violation of this AUP.
- 15. It is the responsibility of the Customer to ensure that all of their end-users abide by this AUP.
- 16. Developer sets and uses cookies to enhance your user experience, such as retaining your personal settings.
- 17. Developer reserves the right to modify the AUP at any time, with changes becoming effective immediately upon notification to Customer. Developer will notify you of substantial changes to this AUP, either by posting a prominent announcement on our website and/or by sending a message to the email address you have provided to us that is contained within your user settings.

U. Privacy Agreement (PA)

Developer considers user Privacy Agreement (PA) paramount, and Developer utilizes great care in keeping the information of Customer, students, parents, educators, and end users (also collectively referred to as "you" and "your" in this PA) private and secure.

Additionally, Developer knows that you care how information about you is used and shared, and we appreciate your trust that we will do so carefully and sensibly. To demonstrate our firm commitment to privacy, the following provisions have been created to explain our policies and procedures in relation to all data collected (the "**Privacy Policy**"). This Privacy Policy states our standards for maintenance of data and we will make efforts to meet them. However, we do not guarantee these standards. There may be factors beyond our control that may result in disclosure of data. As a consequence, we disclaim any warranties or representations relating to maintenance or non-disclosure of data.

1. **Developer's Commitment to You.** Developer hereby commits to:
 - a. Not collect, maintain, use or share student personal information beyond that needed for authorized educational/school purposes, or as authorized by the parent/student
 - b. Not sell student personal information
 - c. Not use or disclose student information collected through an educational/school service (whether personal information or otherwise) for behavioral targeting of advertisements to students
 - d. Not build a personal profile of a student other than for supporting authorized educational/school purposes or as authorized by the parent/student
 - e. Not make material changes to school service provider consumer privacy policies without first providing prominent notice to the account holder(s) (i.e., the educational institution/agency, or the parent/student when the information is collected directly from the student with student/parent consent) and allowing them choices before data is used in any manner inconsistent with terms they were initially provided; and not make material changes to other policies or practices governing the use of student personal information that are inconsistent with contractual requirements
 - f. Not knowingly retain student personal information beyond the time period required to support the authorized educational/school purposes, or as authorized by the parent/student
 - g. Collect, use, share, and retain student personal information only for purposes for which we were authorized by the educational institution/agency, teacher or the parent/student
 - h. Disclose clearly in contracts or privacy policies, including in a manner easy for parents to understand, what types of student personal information we collect, if any, and the purposes for which the information we maintain is used or shared with third parties
 - i. Support access to and correction of student personally identifiable information by the student or their authorized parent, either by assisting the educational institution in meeting its requirements or directly when the information is collected directly from the student with student/parent consent
 - j. Maintain a comprehensive security program that is reasonably designed to protect the security, privacy, confidentiality, and integrity of student personal information against risks – such as unauthorized access or use, or unintended or inappropriate disclosure – through the use of administrative, technological, and physical safeguards appropriate to the sensitivity of the information
 - k. Require that our vendors with whom student personal information is shared in order to deliver the educational service, if any, are obligated to implement these same commitments for the given student personal information
 - l. Allow a successor entity to maintain the student personal information, in the case of our merger or acquisition by another entity, provided the successor entity is subject to these same commitments for the previously collected student personal information
2. **Consent by School Districts, Teachers and Parents.**
 - a. If you are a student of any age, you must get permission from your school, parent or teacher to use the Software.
 - b. Developer is not offered directly to students on any basis, and school districts, teachers, or parents must first sign up for primary accounts, and then invite students to use Developer through student accounts. Only school districts, teachers and parents that have obtained licenses, provided consent on behalf of students for Developer to collect and use student data described in this Privacy Policy and opted to allow for student account creation can create or provide enrollment codes for students to create student accounts.
 - c. If Developer learns that a student of any age has created a primary account, that account will be deleted. Further, if Developer learns that we have inadvertently collected personal information from a student of any age with the appropriate consent, we will take the necessary steps to delete it.
3. **What Definitions Apply to the Privacy Policy?**
 - a. "School" or "school district" means a school district, individual public school, charter school or private school which contracts with Developer and licenses the use of Developer for your child where he or she is enrolled.
 - b. "Information" and "personal information" means personally identifiable information ("PII") that, alone or in combination, is linked or linkable to a specific person that would allow a reasonable person, who does not have personal knowledge of the relevant circumstances, to identify the person with reasonable certainty.
4. **What Laws Generally Apply to Student Records?**
 - a. Your children's education records will be protected by Developer as required by the Family Educational Rights and Privacy Act ("FERPA") and applicable state laws regarding the privacy of student records or PII. We will only disclose education records or provide access to them in compliance with FERPA and applicable state laws, and we will require third parties that contract with us and have access to education records to do the same. Developer will not use PII to target a student for advertising, sell PII or use PII to create profiles about a student (other than for purposes of the student's education in a school) when those activities are prohibited by law. Developer will not use, or will seek permission to use, a student's PII for purposes unrelated to providing or improving their education where required by law to do so. If any provision of this Privacy Policy conflicts with FERPA or other federal or state law, Developer will comply with the more protective standard for the education records.
 - b. We understand that children who are under 13 years of age need enhanced safeguards and privacy

- protection, as set forth in the Children's Online Privacy Protection Act ("COPPA"). COPPA protects the information privacy of children under the age of 13 by requiring web site operators and online services to post privacy policies and obtain verifiable parental consent before collecting information from those children.
- c. Developer receives personal information about children who are under the age of 13 strictly from their parents or guardians at the time those children create an account using Developer. The only information received directly from your children is the information they provide (such as test answers, electronic mail and class discussions) in Developer.
 - d. Other than through Developer, Developer does not solicit children to provide personal information. We also do not knowingly contact or collect PII from children under 13.
 - e. Developer also complies with the Protection of Pupil Rights Amendment ("PPRA"), which applies to programs that receive funding from the US Department of Education. The PPRA protects the rights of parents and students by making instructional materials available for inspection by parents if they are used in a survey, analysis, or evaluation in which their children participate when funded by the US Department of Education. We also make sure we have written parental consent before children are required to participate in any survey, analysis, or evaluation funded by the US Department of Education that reveals information concerning (i) political affiliations, (ii) mental and psychological problems potentially embarrassing to the student and his/her family, (iii) sex behavior and attitudes, (iv) illegal, anti-social, self-incriminating and demeaning behavior; (v) critical appraisals of other individuals with whom respondents have close family relationships; (vi) legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers; and (vii) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

5. How Are Student Accounts Created?

- a. We will ask you to create an Developer account to access certain portions of our Software. When you create an account, we will ask for your consent to collect certain types of personal information. Please note that any consent will be entirely voluntary. However, if you do not grant the requested consent to the processing of your personal information, the use of the Developer Software may not be possible.
- b. When school districts or teachers create primary accounts and invite students to create student accounts, they are acting on behalf of parents to give Developer permission to collect the information described in this Privacy Policy, and Developer is acting as a service provider to the school district or teacher.
- c. When the primary account belongs to a school district, student accounts will be populated in coordination with that district. Students will then be provided login information in a manner specific to that district and in accordance with district policy, which may in some cases be through a district-wide "single sign-on" or by communicating an initial login and password to the student.
- d. When the primary account belongs to a teacher or a parent, students are added using a name, nickname or pseudonym by the teacher or parent. Developer then generates enrollment codes that students can use to register student accounts.

6. What Information Does Developer Collect About Students and Teachers?

- a. The information that we collect from logged-in users includes information that you voluntarily provide to us when you sign up for an account and information that is automatically collected when you are logged into the Developer platform. The information collected depends on whether you are a teacher, school, parent or student.
- b. We maintain records for each student account of assignments that have been given (and results that have been submitted) and records of any online assessments taken by the students.
- c. When the primary account belongs to a teacher or a parent, we collect the student name information provided by the teacher or a parent, and then collect a username and password when the student registers. Student records are linked to teacher or parent records, which may include the teacher's or parent's name, email address, grade levels taught, self-reported school and school district information, and geographic information about the district such as its zip code. We also collect information about teacher's title, subject interests and teaching experience.
- d. When the primary account belongs to a school district, initial information about students, teachers and schools is provided from the district's records, and may include unique identifiers that link these records to other records in the district's database system as well as teachers' names and titles and the name of the teacher's school. Districts also may provide information about a student's grade level, the student's username, password and email address, a statewide student identifier and information about the school that the student attends.
- e. In every case we also log certain detailed technical information about all users' interactions with our Software that could be linked with users (including students). This includes the IP addresses that we get when users connect to our Software, information that is sent by web browsers automatically when they connect to our Software (such as the type of web browser, the operating system used and the time zone set on the user's computer), the timing and frequency of how users interact with different content and different components of our Software.

7. How We Automatically Collect Information

- a. We use the following methods and tools to collect and track the automatically collected information described above.
- b. We set cookies so that we are able to recognize when someone is connecting to our Software who is currently logged in or who has visited before. A cookie is a data file sent to a browser from a web server and stored on the user's computer's hard drive that allows us to recognize that browser when the user returns to our Software. To learn more about browser cookies, including how to manage or delete them, look in the Tools, Help or similar section of your browser, or visit <http://www.allaboutcookies.org>.
- c. Additionally, our video player may store local shared objects, also known as Flash cookies, on users' computers. Local shared objects cannot be managed in the same way as browser cookies. For information on managing Flash cookies, visit <http://helpx.adobe.com/flash-player/kb/disable-local-shared-objects-flash.html>.
- d. We (or our third party service providers) may place a tiny image, also known as a pixel tag, in the emails we send, to tell us when you have opened the email. Our team uses this information to improve emails we send to you, and best tailor them to the needs of school districts, teachers and students.
- e. Like most online services, when you use the Software, we automatically collect and store details of how you used our service, such as your activity on the Software, and the frequency and duration of your usage.
- f. By using our Software you agree to our use of these information collection technologies.
- g. You can disable or delete cookies. However, because cookies allow you to take advantage of some of Developer's essential features, we recommend that you leave them turned on. If you disable or delete cookies, you may not be able to utilize all of Developer's features and functionality.

8. Anonymized Data

- a. We frequently aggregate information in a way that makes it impracticable to use that data to identify a particular person; we also sometimes maintain individual data records with personal identifiers removed, and maintain in a manner in which it is impracticable to relink it to any particular individual. In this Privacy Policy, we refer to such data as "Anonymized Data" and do not consider it to be personal information.

9. What Student Information Can Other Users See?

- a. When the primary account belongs to a school district, the account administrator designated by the district can access all information we collect about students that we make available through our web-based user interface. District administrators can delegate the right to view student information in accordance with district policy. Each teacher within that school district can see only information relating to students' participation in classes taught by that teacher (unless granted additional access by the district account administrator).
- b. Primary account holders who register as teachers or parents can access all information available through our user interface relating to students' interactions with assignments created by that teacher or parent. They cannot see information that we collect in connection with a student's interactions with assignments created by another teacher or parent.

10. What Does Developer Do With Personal Information?

- a. We will not share personal information we collect in any way not described by this Privacy Policy. Except as noted below, we do not share any personal information with third parties for advertising, marketing or other purposes. There is no third party advertising on Developer or within Developer. We do not amass student profiles except in the furtherance of school purposes.
- b. We do not ask or require students to provide information beyond that which is reasonably necessary to use Developer. We do not share any student login information with any third party and we do not automatically collect personal information from student accounts. Information collected from students is never used or disclosed for any third party advertising or any kind of behaviorally targeted advertising. We do collect website usage information through third party analytics services and Anonymized Data to help us improve our experiences for students, but such information does not contain personal information.
- c. We use personal information and any other information collected through the website for the following reasons:
 - (i) to administer our website and access to our Software;
 - (ii) to improve the quality and types of services that we deliver;
 - (iii) to analyze Software usage and the popularity and performance of our Developer product;
 - (iv) to communicate with parents, teachers and school districts by responding to your requests, comments and questions;
 - (v) to obtain consent from parents, teachers and school districts so that a student account may be created;
 - (vi) to diagnose technical problems;
 - (vii) to send users emails regarding service, technical and other administrative matters. These communications may also include information regarding changes in services, new service offerings and important service-related notices, such as security and fraud notices. Such communications will only be delivered to parents, teachers and school districts and will never be delivered to the Software's student users;
 - (viii) to send users alerts to notify them about pertinent activity on the Software, such as messages from colleagues or upcoming assignments ("Notification Alerts"). These Notification Alerts may be sent to all users of the Software, including students;
 - (ix) to provide useful analyses to users and primary account owners;
 - (x) for billing, account management and other administrative matters; or
 - (xi) as required by applicable law or regulation.
- d. We use this information to help us to diagnose technical problems, administer the Software and improve the quality and types of services that we deliver. We may also collect, track and analyze information in aggregate form that does not personally identify users.

11. How We Share Information

- a. We may use third party service providers to provide a variety of services, such as assisting us with providing customer support, hosting the Software, providing us with analytics about how people use our Software, assisting us with marketing the Software to school districts and teachers, sending and tracking responses to email, providing a framework for the delivery of assessment questions and helping us identify and track bugs and errors in the Software. All of our service providers have agreed to confidentiality and data security provisions consistent with this Privacy Policy. Third parties we work with are contractually prohibited from using any personal information for any purpose other than providing the services we request from them.
- b. When a school district is the primary account holder, we share information with third parties at the direction of the school district, and it is the school district's responsibility to make such requests in a manner that is consistent with their internal policies and the law. We may also share information that we collect in the following circumstances:
 - (i) if we believe in good faith that it is necessary to disclose the information under any applicable law or regulation (for example, in response to a court order or a subpoena);
 - (ii) if we believe in good faith that it is necessary to investigate, prevent, or take action regarding illegal activities, suspected fraud, situations involving potential threats to the physical safety of any person;
 - (iii) to investigate and act upon violations of the law or of our terms of use;
 - (iv) with teachers and parents who are the managers of a class so they can see information about their students or children in that class, such as the student's or child's name, school affiliation and activity on assignments (including time of activity and any responses to questions, extending to grades for those assignments);
 - (v) when any user logs into Developer with a third party account (such as a Google or other account), that third party will learn that that user has visited Developer, and that information will be subject to that third party's privacy policy and practices;
 - (vi) with third party products specifically configured by schools or districts to interoperate with Developer;
 - (vii) if the information is Anonymized Data;
 - (viii) with our corporate affiliates, parents and/or subsidiaries; or
 - (ix) in other circumstances in which you expressly consent.
- c. We will not sell student or teacher information except in connection with the sale of Developer's assets or a merger of Developer with another company, and then only on the condition that such information will continue to be covered by the then-applicable Privacy Policy. If there are changes to this Privacy Policy in the future, school districts, teachers and parents may agree to those changes or choose to stop using Developer and we will delete their information and the information about their students.
- d. We may also obtain information, including personal information, from certain third parties (such as Google). Any personal information received from these third parties will be handled in accordance with this Privacy Policy. We sometimes combine information we receive from third parties with the personal information we collect through the Software. Any such combined information will be treated as personal information in accordance with this Privacy Policy.
- e. Please also note that our service providers may be able to combine the data we share with them with the data they collect on their own. For example, if we share information with Google, Google may combine such information with the data they have already collected about you through their website. We are not responsible for such combinations of data and we encourage you to learn about their privacy and security policies before you use this Software or provide our service providers with your personal information.

12. Third Party Websites

- a. Our Software may include some links to other sites. We are not responsible for the data collection practices on those other sites. We advise you to carefully review those sites' privacy policies before submitting personal information there.

13. Our Security Practices

- a. We strive to protect the confidentiality, security and integrity of the personal information we collect from children and adults. We have put in place physical, electronic and administrative procedures to safeguard and to help prevent unauthorized access to and maintain the security of personally identifiable information collected through this Software.
- b. Primary accounts and student accounts are protected by passwords. Please keep these passwords secret to prevent unauthorized access to these accounts. If you think someone has gained unauthorized access to an account, please contact us immediately at an email address to be provided to Customer upon request.
- c. We take reasonable, industry standard measures to protect the confidentiality, security and integrity of personal information collected by our Software. This includes the use of encryption, firewalls and other security technologies to prevent access to the data from unauthorized parties.
- d. All connections between users and our Software are secured via encryption communication technology (SSL/TLS). All passwords are salted and hashed using the practices recommended by NIST (National Institute of Standards and Technology). We use highly rated application hosting providers who agree to perform frequent diagnostics, operating system updates, and network security monitoring. Our engineering team is committed to creating and maintaining systems to protect personal information.
- e. Only employees who need to access user information in order to perform their job (for example, customer service) are granted access to student information.
- f. While we have taken all steps to protect the personal information we collect, and we work to keep our systems in line with industry standards, no system is 100% fail proof and secure. If we discover that the security of personal information has been compromised, we will notify the parent, teacher or school district that established an account with us no more than thirty (30) days after the discovery of such compromise. We will conduct an investigation to determine the scope of the breach or restore the integrity of our system. You consent to our use of email as a means of such notification.

14. Your Choices Related to Your Privacy

- a. In order to process your information, we rely on your consent or our legitimate interests to process your data. You may

withdraw your consent or object to the use of our information at any time, but you may no longer be able to access Developer.

- b. If you have an Developer account, you can edit your information in the account section of the Software. If you are unable to do this through our Software, you can contact us at an email address to be provided to Customer upon request. and we'll help you make changes. We may ask you to verify your identity before we provide you with access to your information.
- c. You have the right to opt out of emails from us by clicking unsubscribe. You may still receive transactional emails from us related to forgotten passwords, account expiration, or other necessary communication.

15. How You Can Delete or Edit Information or an Account

- a. When school districts or teachers create primary accounts and invite students to create student accounts, they are acting on behalf of parents to give Developer permission to collect the information described in this Privacy Policy, and Developer is acting as a service provider to the school district or teacher. For these types of primary account, all requests to review, delete or edit student information must come from the school district or teacher, and parents should make use of the school's policies with respect to reviewing, deleting or editing such information. When parents are the primary account holders, they may delete or edit student information through the Developer user interface or by contacting Developer at an email address to be provided to Customer upon request.
- b. If a school district or school requests deletion of data under the control of the school district or school, we will promptly delete it, subject to any legal requirement to retain or transfer that data.
- c. Note that even following such deletion requests, we may store secure backups until they are deleted in accordance with our document retention policy. We may also preserve information as part of an investigation into violations of the law or our terms of use.
- d. Please note that any information you share with others when using Developer or content other users may have copied, is not a part of your account and may not be deleted when you delete your account. If we share your data with one of our service providers, we will use our best efforts to cause such third party to delete such data when you delete your account.

16. How We Retain and Delete Your Data

- a. We will retain personal information collected in connection with an account only for as long as is necessary to provide the services to the account holder, as required by applicable laws or regulations or otherwise per the terms or a contract with a school or district.
- b. We may maintain Anonymized Data, including usage data, for analytics purposes.

17. Certain Rights for EEA Persons

- a. Individuals in certain countries, such as the European Economic Area (the "EEA"), have certain statutory rights in relation to their personal data. These rights include the right to request access to personal data, as well as to seek to update, delete or correct their personal data. You may exercise these rights by following the steps explained above, which for holders of student accounts means making such a request to the primary account holder. If you have any problems exercising your rights or if you have any additional questions about our use of your personal data, please contact us at an email address to be provided to Customer upon request. for additional information.

18. Data Protection Officer; Data Protection Authority

- a. Developer has a "Data Protection Officer" who is responsible for matters relating to privacy and data protection. This Data Protection Officer can be reached at an email address to be provided to Customer upon request.
- b. You may direct questions to the Data Protection Officer. You also have the right to (i) restrict Developer's use of information that constitutes your personal data, which will cause you to lose access to Developer and (ii) lodge a complaint with your local data protection authority.

19. Identifying the Data Controller and Processor

- a. We endeavor to be fully compliant with the General Data Protection Regulation ("GDPR"), effective as of May 25, 2018. However, we do not intentionally offer goods and services to individuals outside of the United States. Developer operates exclusively in the United States at this time and Developer's operations are subject to United States law. If you are located outside of the United States, please be aware that any information you provide to us will be transferred to and stored in the United States or other countries that may have data privacy laws that are less protective than the laws where you reside. Subject to the foregoing limitations, we may act, depending on the circumstances, as either or both a Controller and a Processor of personal data (as those terms are defined in the GDPR). We act as the Controller of information when we ask you to provide to create an account and information that we automatically collect when you use the Software. We act as the Processor of user-generated content and information provided to us by school districts and teachers.

20. Location of Data and Processing

- a. If you are located outside of the United States, please note that personal data will be processed in the cloud by our cloud service provider (currently Microsoft Azure), which offers sufficient guarantees to implement appropriate technical and organizational safeguards that meet the GDPR's standards. We have a data processing agreement in place with our cloud service provider, ensuring compliance with the GDPR and, in the event of any unauthorized access to, or use of, personal data, the appropriate authorities will be notified. All information is transmitted to us by our cloud service provider, will be processed in the United States, and will be handled and protected under the terms of this Privacy Policy and applicable U.S. laws, which may not be as protective as the laws in your country. By using the Software, you agree to this.

21. Notice of Changes to This Policy

- a. We may occasionally update this Privacy Policy. You can see when it was last updated by looking at the new effective date at the top of this page.
- b. If we make any significant changes we'll post them prominently on our website and notify you by other means as required by law. Your continued use of Developer after a revision to the Privacy Policy indicates your acceptance and agreement to the then current or revised Privacy Policy. We recommend that you periodically review the Privacy Policy to make sure you understand and are up-to-date on how we're keeping your information safe.

22. If you don't agree with any future changes to the Privacy Policy, please contact us to terminate your account

- a. You may contact us at an email address to be provided to Customer upon request.

23. Special Considerations by State

- a. Our Privacy Policy is consistent with our obligations pursuant to the state-specific policies and laws regarding the collection of student data including, without limitation, Arizona's Student Accountability Information System (A.R.S. §§ 15-1041 to 15-1046), Arkansas' Student Online Personal Information Protection Act (Ark. Code Ann. § 6-18-109), California's Student Online Personal Information Protection Act (Cal. Bus. & Prof. Code §§ 22584–22585; SOPIPA) and the Early Learning Privacy Information Protection Act (Cal. Bus. & Prof. Code § 22586), California's Privacy of Pupil Records (Cal. Educ. Code §§ 49073–49079.7), California's Eraser Law (Cal. Bus. & Prof. Code §§ 22580–22582), California's Shine the Light Law (Cal. Civ. Code § 1798.83), California's Age-Appropriation Design Code Act (AB 2273, Cal. Civ. Code §§ 1798.99.28 to 1798.99.40), Colorado's Colorado Privacy Act (C.R.S. Title 6, Art. 1), Colorado's Student Data Transparency and Security Act (C.R.S. § 22-16-101), Colorado's S.B. 41 Children's Data Privacy Amendments, Connecticut's Personal Data Privacy and Online Monitoring Act (CTDPA) (Conn. Gen. Stat. Ann. §§ 42-515 to 42-525), Connecticut's Student Data Privacy Act (Conn. Gen. Stat. Ann. §§ 10-234aa to 10-234ff), Connecticut's S.B. 3 Child Online Safety Amendments, Delaware's Personal Data Privacy Act (H.B. 154), Delaware's Student Data Privacy Act (14 Del. C. §§ 8101A to 8106A), District of Columbia's Protecting Students Digital Privacy Act of 2016 (D.C. Code §§ 38-831.01 to 38-831.05), Florida's Digital Bill of Rights (§§ 501.701 to 501.722), Florida's S.B. 188 (1002.222 Fla. Stat.), Florida's Student Online Personal Information Act (§ 1006.1494 Fla. Stat.), Georgia's Student Data Privacy, Accessibility, and Transparency Act (Ga. Code Ann., §§ 20-2-660 to 20-2-668; S.B. 89), Hawaii's Student Online Personal Information Protection law (HRS §§ 302a-499 to 302a-500), Idaho's Student Data, Transparency and Accountability Act of 2014 (Idaho Code § 33-133), Indiana' Consumer Data Protection Act (S.B. 5), Illinois' Online Personal Protection Act (105 ILCS 85/1-85/99), Iowa's Consumer Data Protection Act (S.F. 262), Iowa's Student Personal Information Protection law (Iowa Code Ann. § 279.71), Kansas' Student Data Privacy Act and Student Data Personal Protection Act (K.S.A. 72-6312 to 72-6334), Kentucky's Consumer Data Protection Act (H.B. 15), Kentucky's law relating to prohibited uses of PISI by cloud computing service providers (KRS 365.734), Louisiana' Children's First Act (La. R.S. 17:3914), Maine's Student Information Privacy Act (Me. Rev. Stat. tit. 20 § 951-953), Maryland's Student Data Privacy Act of 2015 (Md. Code Ann. Educ. § 4-131), Massachusetts' Regulations on Access to Student Records (603 Code Mass. Regs. 23.02 to 23.07), Michigan's Student Online Personal Protection Act (MCL 388.1291 to 388.1295), Minnesota's Consumer Data Privacy Act (HF 4757), Minnesota's Student Data Privacy Act (Minn. Stat. Ann. §§ 13.32(1), (13)-(15) and 13.463), Missouri's Student Data law (MO Rev. Stat. § 161.096), Montana's Consumer Data Privacy Act (S.B. 384), Montana's Pupil Online Personal Information Protection Act (Mont. Code Ann. §§ 20-7-1325 and 1326), Nebraska's Data Privacy Act (LB 1074), Nebraska's Student Online Personal Protection Act (Neb. Rev. St. §§ 79-2,153 to 79-2,155), Nevada's Privacy of Data Concerning Pupils (NRS 388.281-388.296), New Hampshire's S.B. 255-FN, New Hampshire's Student Online Personal Information Act (N.H. RSA § 189:68-a), New York Education Law (§§ 2-c and 2-d), North Carolina's Student Online Privacy and Protection law (N.C.G.S. §§ 115C-401.2 to 115C-402.5, New Jersey's Data Privacy Act (S.B. 332), Oklahoma's Student Data Accessibility, Transparency, and Accountability Act of 2013 (Okla. Stat. tit. 70 § 3-168), Oregon's Consumer Privacy Act (S.B. 619), Oregon's Student Information Protection Act (O.R.S. §§ 336.184 and 336.187), Rhode Island's Data Transparency and Privacy Protection Act (H7787 and S 2500), Rhode Island's Student Data Cloud Computing law (R.I. Gen Laws § 16-104-1), Tennessee's Information Protection Act (H.B. 1181), Tennessee's Data Accessibility, Transparency, and Accountability Act (T.C.A. §§ 49-1-701 to 49-1-708), Texas' Data Privacy and Security Act (H.B. 4), Texas' H.B. 2087 (Tex. Educ. Code §§ 32.151 to 32.157), Utah's S.B. 163 Student Information Amendments and S.B. 164 Student Data Privacy Amendments (Utah Code §§ 53E-9-301 to 53E-9-310), Vermont's Student Privacy law (9 V.S.A. §§ 2443 to 2443f), Virginia's Consumer Data Protection Act (VA Code §§59.1-57 to 59.1-585), Virginia's Pupil Records law (Va. Code Ann. § 22.1-289.01), Washington State's Student User Privacy in Education Rights Act (SUPER) (RCW § 28A.604.010 to 28A.604.050), and West Virginia's Student Data Accessibility, Transparency, and Accountability Act (W. Va. Code § 18-2-5h). If you are a California resident, California law may provide you with additional rights regarding our use of your personal information in addition to the named statutes above. Given the jurisdiction thresholds currently existing under the California Consumer Privacy Act (CCPA), Developer does not believe it is subject to the CCPA. However, should factors change in the future that bring Developer under the jurisdiction of the CCPA, you will be provided all rights under the CCPA. As state laws change, we will update our Privacy Policy accordingly. Once again, we recommend that you periodically review the Privacy Policy to make sure you understand and are up-to-date on how we're keeping your information safe.

V. Service Level Agreement

The Developer Service Level Agreement (SLA) is a separate document available upon request that covers server hardware & operating systems, power, bandwidth, support, & networking unless otherwise stated in the Service Order License Agreement (SOLA) and/or Statement of Work (SOW). The SLA includes a 98% uptime guarantee on all deployments each calendar year. If Developer fails to meet the SLA Performance Criteria, SLA credits will be issued to your Customer account pursuant to Section G.12 of this Agreement.

W. Network Status

The Developer network encompasses several data centers. Specific information regarding your account and data may be obtained from Developer by contacting the email address to be provided to Customer upon request.

From scheduled maintenance windows that occur weeks or months in the future, to emergency windows that pop up from time-to-time; we do our best to keep up-to-the-minute information available, around-the-clock.

X. Miscellaneous

1. **Publicity.** Customer hereby consents to Developer's use of Customer's name in Customer list to be used in connection with the marketing of Developer's business and products.
2. **Assignment.** Upon reasonable written notice to Customer, Developer may and is entitled to transfer and/or assign, in whole or in part, its rights and obligations under this Agreement and in any SOLA, SOW, license agreement and/or Change Order, to an affiliate or any other entity known to Developer (a "Permitted Assignee"). Any such assignment and/or transfer of this Agreement, and any rights, obligations, and/or duties hereunder, shall have the effect of creating privity of contract by and between Customer and the Permitted Assignee, and Customer shall deal directly with the Permitted Assignee as though such Permitted Assignee were the original service provider under the Agreement. Upon any such assignment, transfer, and/or assumption, Customer covenants and agrees to discharge and release Developer from all liabilities under this Agreement arising after the date of such assignment or transfer. Upon execution of an assignment, transfer, and/or assumption instrument by and between Developer and a Permitted Assignee, Customer may request a copy of such executed instrument.

Customer acknowledges that a Permitted Assignee may subcontract the Services or any portion of the Services to Developer, and in that event, Developer shall constitute nothing more than a subcontractor.

IT IS EXPRESSLY AGREED BY CUSTOMER, AS A MATERIAL CONSIDERATION FOR THE EXECUTION OF THIS AGREEMENT BY DEVELOPER, THAT WITH REGARD TO ANY PERMITTED ASSIGNMENT, TRANSFER, AND/OR ASSUMPTION, IN WHOLE OR IN PART, OF THE RIGHTS AND OBLIGATIONS HEREUNDER, DEVELOPER MAKES NO REPRESENTATIONS, WARRANTIES, UNDERSTANDINGS, STIPULATIONS, OR PROMISES PERTAINING TO A PERMITTED ASSIGNEE, INCLUDING WITHOUT LIMITATION LIGHTHOUSE ADVISORY, OR ITS ABILITY TO EFFECTUATE THE TERMS AND CONDITIONS OF THIS AGREEMENT OR ANY SOLA, SOW AND/OR CO, AND CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR INFORMATION RELATED TO LIGHTHOUSE ADVISORY OR ANY OTHER PERMITTED ASSIGNEE.

Customer may not assign this Agreement or any right or obligation hereunder without the prior written consent of Developer. Any attempted assignment in violation of the preceding sentence shall be void.

3. **No Third-Party Beneficiaries.** The Software and services provided to Customer under this Agreement are provided solely for the benefit of Customer. This Agreement and the services provided hereunder are not intended to create any rights for or to confer any rights upon any third party.
4. **No Waiver.** No term or provision contained in this Agreement shall be deemed waived unless such waiver shall be in writing and signed by Developer.
5. **Notices.** All notices given under this Agreement shall be given to the address of the appropriate party set forth in the introductory blanks and paragraph of this Agreement and shall be given by certified or registered mail.
6. **Non-Solicitation.** Both Developer and Customer agree that they shall not directly or indirectly solicit for employment, employ or otherwise retain employees of each other during the Term of this Agreement and thereafter for a period of two (2) years without the express written consent of the other party.
7. **Governing Law.** Customer acknowledges and agrees that this Agreement is made under, will be governed by and construed in accordance with the laws of the State of Texas without regard to its choice of law rules. Customer acknowledges and agrees that all actions and proceedings arising directly or indirectly from this Agreement shall be exclusively litigated in courts (state or federal) serving Bexar County, Texas, and Customer expressly submits and consents to the jurisdiction and venue of such courts and waives any defense of forum non-conveniens.
8. **Equitable Relief.** Notwithstanding anything contained in this Agreement to the contrary, the parties shall be entitled to seek injunctive or other equitable relief whenever the facts or circumstances would permit a party to seek such equitable relief in a court of competent jurisdiction. The parties agree and acknowledge that any breach of Section D (License Grant), Section I (Intellectual Property Rights) or Section O (Confidentiality) may cause immediate and irreparable injury to the non-breaching party, and monetary damages shall be inadequate to compensate for such breach.
9. **Attorneys' Fees.** If either party breaches this Agreement then that party shall pay all costs (including attorneys' fees and court costs) incurred by the other party in enforcing this Agreement or seeking to recover damages for the breach.
10. **Export Regulations.** The Software, including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer acknowledges and agrees to comply strictly with all such regulations and acknowledge that Customer has the responsibility to obtain licenses to export, re-export, or import the Software.
11. **Force Majeure.** Neither party shall be liable to the other for any failure, delay or interruption in the performance of this Agreement due to causes entirely beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes, acts of God, acts of public enemy, acts of governmental authority, floods, riots or rebellion.
12. **High Risk Activities.** The Software is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems,

in which the failure of the software could lead directly to death, personal injury, or severe physical or environmental damage ("**High Risk Activities**"). Developer specifically disclaims any express or implied warranty of fitness for High Risk Activities.

13. **Severability.** If any of the above provisions are held to be in violation of applicable law, void, or unenforceable in any jurisdiction, then such provisions are herewith waived to the extent necessary for this Agreement to be otherwise enforceable in such jurisdiction. However, if in Developer's opinion deletion of any provisions of this Agreement by operation of this paragraph unreasonably compromises the rights or liabilities of Developer or its licensors, Developer reserves the right to terminate this Agreement.
14. **Relationship of Parties.** The parties hereto are independent contractors. Neither party has any express or implied right or authority to assume or create any obligations on behalf of the other or to bind the other to any contract, agreement or undertaking with any third party. Nothing in this Agreement shall be construed to create a partnership, joint venture, employment or agency relationship between Developer and Customer.
15. **Counterparts.** This Agreement may be executed in any number of counterparts, including via electronic signatures and scans/emails, each of which when so executed and delivered shall be deemed to be an original and all of which together shall be deemed to be one and the same agreement.
16. **Entire Agreement.** This Agreement and any Exhibit attached hereto are the entire agreement between Customer and Developer relating to the Software and Documentation and: (i) supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to its subject matter; and (ii) prevails over any conflicting or additional terms of any quote, order, acknowledgment, procurement document or similar communication between the parties during the Term of this Agreement unless an SOLA, SOW or CO is executed by an officer of Developer with the intent that such SOLA, SOW or CO is to control. No modification, amendment or supplement to this Agreement or the Exhibits attached hereto will be binding, unless in writing and signed by a duly authorized representative of each party. When interpreting this Agreement and terms and conditions of other referenced documentation, precedence shall be given to terms and conditions in the following descending order:
 - a. Statement of Work(s);
 - b. Schedules and Exhibits, if any, to these Primary Terms and Conditions;
 - c. These Primary Terms and Conditions
 - d. Software License Agreement;
 - e. Service Order License Agreement;
 - f. Invoice;
 - g. Proposal; and
 - h. Quote.

Exhibit A: White Label Agreement Terms and Conditions

THESE WHITE LABEL AGREEMENT TERMS AND CONDITIONS ARE A LEGAL AGREEMENT (THE “AGREEMENT”) BETWEEN YOU (“CUSTOMER”) AND THE DEVELOPER. THIS AGREEMENT GOVERNS YOUR USE OF DEVELOPER’S PRODUCT, SOFTWARE, AND SERVICES. IT IS IMPORTANT THAT YOU READ AND UNDERSTAND THE FOLLOWING TERMS. BY CLICKING THROUGH ON THE MICROSOFT AZURE PLATFORM TO ACCESS THIS AGREEMENT, YOU ARE AGREEING THAT THESE TERMS WILL APPLY AND YOU WILL BE BOUND BY SUCH TERMS IF YOU REQUEST ANY DEVELOPMENT SERVICES FROM DEVELOPER.

1. Definitions.

- a. “Authorized User(s)” means: (i) Customer, Affiliates and their collective students, employees, authorized agents, and other personnel and agents on staff or otherwise associated with Customer; (ii) Texas Education Exchange, (iii) third party agents, consultants, auditors and other independent contractors performing services for Customer and Affiliates; (iv) any governmental, accrediting or regulatory bodies lawfully requesting or requiring access to data; (v) a facility manager; and (vi) such other parties as the Parties may mutually agree.
- b. “Confidential Information” means any and all (i) technical information of Developer or any Customer of Developer, including, without limitation, copyrights, patents, techniques, sketches, drawings, models, inventions, know-how, methods, processes, apparatus, equipment, algorithms, systems, software programs, software source documents, source code, formulae related to current, future, and proposed products and services, and information concerning research, experimental work, development, design details and specifications, and engineering; (ii) non-technical information regarding the business and affairs of Developer or any Customer of Developer, including, without limitation, commercial, operational, and financial information, business forecasts and development leads, marketing strategies, plans, and related information, procurement requirements, purchasing and manufacturing information, rates and pricing information, sales and merchandising information, customer lists, customer contract terms, supplier/vendor contract terms, carrier contract terms, schedules of inventory and accounts receivable, and facility blue prints; (iii) other trade secrets and proprietary information of Developer or any Customer of Developer; and (iv) notes, analyses, schedules, compilations, studies or other material prepared by Developer or any Customer of Developer, whether in written form or recorded electronically or otherwise, containing or based in whole or in part on those items described in (i), (ii), or (iii) above.
- c. “Developer Documentation” means all printed or electronic materials arising from, relating to or connected with the Development Services that are created or modified by Developer, including, but not limited to: (i) all of the written, printed, electronic or other format materials published or otherwise made available by Developer to its licensees that relate to the functional, operational and/or performance capabilities of the Development Services and (ii) all user, operator, system administration, technical, support and other manuals and all other written, printed, electronic or other format materials published or otherwise made available by Developer to its licensees that describe the functional, operational and/or performance capabilities of the Development Services.
- d. “Development Services” means the services provided by Developer to Customer on an as-needed basis as set forth in any statement of work (each an “SOW”).
- e. “Intellectual Property” means (i) trademarks, service marks, brand names, product names, certification marks, trade dress, assumed names, trade names and other indications of origin (whether registered or not); (ii) patents, patent applications and invention disclosures; (iii) trade secrets and other confidential or non-public business information, including ideas, formulas, compositions, discoveries and improvements, chip sets, digital signal processing techniques, ASIC designs, know-how, manufacturing and production processes and techniques, and research and development information (whether patentable or not), drawings, product and system design specifications, detailed design documentation, designs, laboratory books and notebooks, test results, plans, proposals and technical data, business and marketing plans and customer and supplier lists and information; (iv) writings and other copyrightable works of authorship, including computer programs (including, but not limited to, all source code, object code and executable code), data bases, data models, manuals, sales and marketing materials, and documentation thereof, and all copyrights to any of the foregoing (whether registered or not); (v) mask works (whether registered or not); (vi) moral rights; and (vii) registrations of, and

applications to register, any of the foregoing with any governmental authority and any renewals or extensions thereof.

- f. "Licensed Materials" means all printed or electronic materials arising from, relating to or connected with the Development Services, Confidential Information, and any other information provided by Customer to Developer pursuant to this Agreement; provided, however, Licensed Materials does not include feedback from Customer arising from, related to, or connected with the Development Services.
 - g. "Parties" means Customer and Developer collectively; and "Party" means Customer or Developer individually.
 - h. "Pre-Existing Intellectual Property" means any Intellectual Property created, licensed or owned by a Party prior to the Effective Date (as hereinafter defined).
2. **Term.** The term of this agreement shall commence on the date that Customer clicked-through the Microsoft Azure platform to access this Agreement (the "Effective Date") and shall remain in effect until (i) Developer has completed the Development Services and (ii) Customer has paid all fees pursuant to this Agreement in full to Developer (the "Term").
3. **Development Services Explanation.**
- a. **In General.** Developer will provide the services listed in the applicable SOW for the specific services selected by the Customer, and each such SOW shall be incorporated herein without additional action by either party.
4. **Intellectual Property Rights.**
- a. **Title and License Grants.** Customer shall retain all rights, title and interest in any of its Licensed Materials; provided, however, commencing on the Effective Date and continuing for the Term of the Agreement, Customer grants to Developer a personal, non-exclusive, non-sublicensable, and non-transferable license to use, modify, compile or otherwise create the Development Services and the Developer Documentation from the Licensed Materials in accordance with this Agreement. Subject to licensing rights granted herein, any and all right, title and interest in and to a Party's Pre-Existing Intellectual Property shall remain with that Party.
 - b. **Work for Hire.** Customer shall be the sole and exclusive owner of all rights (including, without limitation, copyrights and rights of publicity) in and to the Development Services and Developer Documentation. Developer specifically agrees that the Development Services, Developer Documentation, and any future-created work for Customer is considered "Work for Hire" within the meaning of the Copyright Act of 1976, as amended, and that Customer is to be the "author" within the meaning of the Act for all such purposes. All such copyrightable works, as well as all copies of such works in whatever medium fixed or embodied, shall be owned exclusively by Customer as of its creation, and Developer hereby expressly disclaims any and all interest in any of such copyrightable works and waives any right of droit morale, moral rights, and/or similar rights, however denominated, in any jurisdiction of the world.
 - i. Notwithstanding the above paragraph, once the Term has ended, Customer grants to Developer, and Developer accepts, a perpetual, worldwide, non-exclusive, non-transferable, and non-sublicensable license to research, develop, make, have made, use, import, export, market, offer for sale, sell and have sold the Development Services, the Developer Documentation and any know-how gained in developing the same for the limited purposes of (i) performing additional projects for Customer and (ii) furthering Developer's commercial business practices.
 - c. **Reservation of Rights.** Developer claims and reserves all rights and benefits afforded under federal and international copyright laws. Any right not expressly granted to Customer by this Agreement is hereby expressly reserved by Developer. Other than the Work for Hire provision in subsection b above, nothing in this Agreement shall be deemed to authorize Customer to use any copyright, name, trademark, service mark, or patent or other intellectual property right of Developer.
 - d. **Customer Data.** Title to Customer Documentation pursuant to Customer's use of the Software, including all copies thereof, shall be in and remain with Customer. Commencing on the Effective Date and continuing for the Term of this Agreement, Customer grants to Developer a personal, non-exclusive, non-sublicensable, irrevocable, and non-transferable license to use all materials and information provided by Customer, Customer data and output data internally in accordance with the terms and conditions of this Agreement.

- e. Hardware. Developer is and shall at all times remain the exclusive owner of all hardware upon which, and from which, all Developer services are provided hereunder, unless otherwise stated in this Agreement. All hardware purchased by Customer not provided by Developer is and shall at all times remain the exclusive property of Customer.

5. Support Services.

Except as may be set forth specifically in the applicable SOW, technical support shall be provided as follows:

- a. Basic Support. Developer shall provide the following “Basic Support Services” to Customer for the Term of this Agreement:
 - i. Telephone support during normal business hours Monday – Friday 9:00am US Central Time to 5:00pm US Central Time exclusive of Holidays at 888-222-6910.
 - ii. Email support during normal business hours Monday – Friday 9:00am US Central Time to 5:00pm US Central Time exclusive of Holidays at an email address to be provided to Customer upon request.
 - iii. Updates, Enhancements or patches to the Development Services on an as-needed basis without charge.
 - iv. Corrective maintenance to the Development Services.
- b. Additional Support. Developer will provide the following “Additional Support Services” to Customer for the Term of this Agreement if paid for by Customer at pricing set forth in the applicable SOW:
 - i. Developer will provide reasonable off-site training in the use of the Development Services to Customer’s Authorized Users.
 - ii. Developer will reasonably assist Customer in the task of loading the Development Services on the equipment provided by Customer as specified in the applicable SOW.
 - iii. Developer will reasonably make available to Customer, at Developer’s sole discretion, “Other Services” at Customer’s request including, but not limited to, additional on and/or offsite training, post-install on-site implementation services, consulting and forms design services. Pricing quotes for Other Services will be provided by Developer upon request.
- c. Performance. With respect to the Additional Support Services and Other Services, Developer shall:
 - i. perform such services in a professional, competent and businesslike manner and in accordance with industry practices and standards generally applicable to such services;
 - ii. have the right, with Customer’s input, to determine the method, details, and means of performing such services;
 - iii. provide such services in accordance with a mutually agreed upon implementation work plan;
 - iv. perform such services primarily at Developer’s premises except when such services require Developer to travel to the Customer’s site; and
 - v. respond to support requests on a first-come, first-serve basis but with special consideration for criticality of issue and will make every effort to respond within 24 hours within the scope of normal business operating days.
- d. Certified Administrator. Customer acknowledges and agrees to have at least one employee or third-party contractor that has been deemed a Certified Administrator by Developer on their current version of the Software. The Certified Administrator must have completed training and/or certification classes with

Developer's certified instructors on the administration of the Development Services. Customer also acknowledges and agrees that in order to obtain whole version product upgrades, their Certified Administrator(s) may be required to attend training and/or certification classes that explain how to upgrade and administrate the new version of the product. These classes are offered as Other Services.

- e. Super Administrator. Customer shall designate one or more Super Administrators in accordance with data privacy and security requirements of any applicable federal, state or local law, including but not limited to FERPA. Through the Super Administrator(s), Customer shall be responsible for assigning and maintaining Roles and Custom Roles (both as defined in the data privacy and security requirements of FERPA) and in order to ensure disclosure of personally identifiable information solely to users with a legitimate need to carry out the purposes of this Agreement.
 - f. Directory Maintenance. Customer is responsible for maintaining a directory of User IDs for all Authorized Users and associating each User ID with one or more roles. Customer is responsible for ensuring that its Authorized Users use only their respective assigned User IDs and do not use another's User ID. Customer will adopt and maintain such security precautions for User IDs and passwords to prevent their disclosure to, and use by, unauthorized persons.
 - g. Disclosures. Through the Super Administrator, Customer will implement a process to ensure that data aggregated by Developer for analysis is disclosed only to authorized representatives of Customer. The Super Administrator may approve disclosures of personally identifiable information to a third party application provider only if specifically authorized by Customer or if the third party application provider is an authorized representative of a State Educational Agency with respect to its functions for evaluating and ensuring compliance with federal and state supported education programs, Customer has entered a written or electronic agreement with such third party application provider to obtain services from such provider, the disclosures are needed to provide such services, and such agreement provides that the personally identifiable information will be used only for that purpose and that the personally identifiable information will be destroyed when the service is terminated or when the Customer data is no longer needed for that purpose.
 - h. Scheduled Maintenance. Developer reserves the right to take down applicable servers hosting the Development Services to make improvements or changes or to conduct routine maintenance checks ("Scheduled Maintenance"). Developer will use commercially reasonable efforts to give at least eight (8) hours' notice prior to any Scheduled Maintenance and to perform Scheduled Maintenance Monday through Friday from 7:00pm to 5:00am US Central Time or weekend hours. Developer will not be responsible for any damages or costs incurred by Customer, if any, for Scheduled Maintenance. Development Services archival will occur after the end of each school year, during and after which time read-only access will be available provided student data and output data is still available.
6. **Payment Terms.** Customer shall pay Developer the fees specified in the applicable SOW or other agreement, as the case may be. Failure to timely pay the required fees is a material breach of this Agreement.
- a. Other Service Fees. Customer shall pay Developer all fees for Other Services, including but not limited to Hosting, Custom Extension Features, Extended Support, Implementation Services, and On-Site Service, as billed and incurred based on rates set forth in the applicable SOW, as may be modified by Developer in its sole discretion from time to time. Any invoice relating to Other Services shall detail: (i) the services performed (e.g., each activity, task and/or critical path milestone); (ii) the identity of the Developer personnel performing the Other Services, if applicable; and (iii) the number of hours and corresponding fees attributable to each such person's performance of the Other Services, if applicable.
 - b. Annual Support Fees. Developer will not charge Customer a fee for any of the Basic Support Services.
 - c. Hourly Service Fees. For any services offered by Developer on an hourly basis ("Hourly Services"), Customer shall specify the period of time for which the Hourly Services are requested, or cancel at any time. The minimum period of time for which Hourly Services may be requested is one (1) hour and Customer will be billed in full hourly increments, such that no breakdown by minutes shall be permitted unless specifically authorized by Developer at the sole discretion of Developer
 - d. Additional Service Fees and Upgrade Fees. Additional services and upgrades, not including Hourly Services, ordered on first (1st) day of a new billing cycle will appear as full charges on the monthly invoice for that month,

which will be billed on the first (1st) day of the subsequent month, and will continue each month thereafter on the normal billing cycle. Additional services and upgrades ordered after the first (1st) day of the month will be pro-rated to the end of the month and billed as a one-time pro-rata charge.

- e. **One Time Fees.** One time fees such as setup fees, administrative fees and late fees are due and payable at the time they are incurred, and/or agreed upon in writing or via ticket with Developer's approval. One time fees such as bandwidth overages and storage layer overages are due and payable as part of the invoice following the billing cycle in which they are incurred, and are based on standard rates, or as otherwise agreed upon in writing or via ticket with Developer's approval.
 - f. **Time and Method of Payment.** All fees payable to Developer under this Agreement shall be detailed, categorized and clearly stated on an invoice in accordance with the terms and conditions set forth in this Section. Unless otherwise agreed by the parties, all amounts payable under this Agreement shall be payable in U.S. Dollars. All payments to Developer are non-refundable. Developer shall invoice Customer as set forth in this Section, and Customer shall pay all net undisputed amounts due to Developer under this Agreement by the due date.
 - g. **Late Payments.** Developer reserves the right to charge interest at the maximum rate allowed by law on all amounts past due, and to assert appropriate liens to ensure payment. The rights and remedies set forth herein are in addition to any other rights or remedies, at law or in equity, Developer may have against Customer in connection with any non-payment. Customer agrees to pay Developer one-and-one-half percent (1½%) per month for all invoices over 30 days old. Access to Development Services will be suspended and/or put on hold if the Customer fails to pay by the due date, and will remain suspended until invoices become current subject to the terms included herein. It is the Customer's responsibility to make sure that Developer receives payment by the payment due date and Customer's failure to make timely payment constitutes a material breach of this Agreement. Returned checks or rejected credit cards will cause an immediate disruption to your service. Services will be re-activated only after the Customer cures any and all such payment breaches.
 - h. **Invoicing.** Developer shall invoice Customer for the Development Services and any additional services or upgrades pursuant to the applicable SOW.
 - i. **Disputed Amounts.** For disputed invoices or the disputed portion of an invoice, Customer shall provide to Developer, in writing, within ten (10) business days of receiving the subject invoice, a detailed statement of exceptions of the disputed amounts. In any event, Customer shall nevertheless be responsible for the timely payment of any disputed invoice. Developer and Customer shall attempt to resolve any invoice disputes in a timely, good faith manner. If Developer agrees with Customer's basis for disputing an invoice, then Developer shall refund any amounts already paid by Customer with regard to such invoice. Provided the timely payment of any disputed amounts and all other invoices have been paid, all of Developer's obligations shall continue unabated during the duration of the dispute resolution.
 - j. **Additional Products.** Developer agrees to offer for licensing to Customer, upon development, any additional products or software brought to market by Developer during the Term of this Agreement. The parties agree to negotiate pricing for such additional products or software in good faith.
 - k. **Taxes and Other Charges.** All Developer fees are exclusive of any applicable sales, use, value-added, other federal, state or local taxes, or any import duties or tariffs imposed on the Development Services, services and/or transactions made the subject of this Agreement, and Customer shall be responsible for paying all foreign, federal, state, and local sales, use, value added, excise duty and any other taxes assessed with respect to any Development Services and additional services or upgrades, except that Developer shall be responsible for any corporate franchise taxes imposed on Developer by law and for any taxes based on its net income or gross receipts.
7. **Billing Policy.** Developer shall provide invoices and any quotes, proposals, estimates, sales orders, and other billing-related documentation, as the case may be, to Customer by the methods set forth in the applicable SOW.
8. **Records and Audit Rights.** Customer shall keep full, complete, clear and accurate records with respect to Customer's and district members' use of the Development Services. On Developer's request, not more frequently than annually, an officer of Customer shall certify to Developer that the Development Services and Developer Documentation are being used in accordance with this Agreement and specifically, are limited to districts in the state of Texas. In lieu of such certification, at Developer's request (no more than once each calendar year) and within thirty (30) days after receiving written notice, Customer shall permit a Developer representative or an independent auditor mutually agreed to by Developer and Customer to have access during Customer's regular business hours, to all equipment, records, and

documents of Customer that may reasonably contain information bearing upon Customer's use of the Development Services and Developer Documentation under the terms of this Agreement. Developer's audit rights shall survive any termination or expiration of this Agreement.

9. Warranties.

a. General. Each party represents and warrants that:

- i. It is an entity duly created and validly existing under the laws of the jurisdiction of its creation;
- ii. It has full power and authority to carry on its business as now being conducted;
- iii. It has full power and authority to enter into this Agreement and to consummate the transactions contemplated hereby and thereby;
- iv. This Agreement has been duly executed and delivered by, and constitutes legal, valid and binding obligations of the party, enforceable against the party in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, preference and other laws relating to or affecting enforcement of creditors' rights generally; and
- v. No dissolution, winding-up, bankruptcy, liquidation or similar proceedings have been commenced, threatened, or are pending in respect of the party.

b. Warranties by Developer. Developer represents and warrants that:

- i. Developer either owns all right, title and interest to the Development Services and Documentation, or has the right to license the Development Services and Documentation;
- ii. The Development Services are free and clear of all liens, claims, encumbrances and demands of third parties;
- iii. Developer is unaware of any allegations that the Development Services or Documentation infringe the intellectual property rights of any third party; and
- iv. The Development Services substantially conforms to the specifications set forth in its published documentation for a period of thirty (30) days after the Effective Date or for so long as Customer pays the fees as outlined in Paragraph 5 (the "Warranty Period").

c. Warranties by Customer. Customer represents and warrants that:

- i. Customer is responsible for obtaining all authorizations, consents, releases, and permissions necessary or desirable to store data in the Development Services platform and its database, to use the Development Services platform to convert and store Customer data and to view the Development Services platform's analytics;
- ii. All materials and information delivered to Developer by Customer, and Developer's use thereof in connection with transactions contemplated under this Agreement, do not and shall not infringe any copyright, trademark, trade secret, patent or other intellectual property right of any third party;
- iii. Customer has the right to use, disclose, publish, translate, reproduce, and deliver all materials and information to Developer, both directly and through the Development Services;
- iv. Customer shall be responsible for acquiring at its own expense all equipment needed for use of the Development Services, unless otherwise agreed by the Parties. Developer shall not be liable or responsible for any loss or delay of Customer's data, output, or any other information that pertains to Customer or the functionality of the Development Services during any period of transit or electronic transmission to the Development Services platform unless and to the extent attributable to the gross negligence or willful misconduct of Developer;

- v. Customer shall purchase and maintain any and all Microsoft licenses necessary to utilize the Development Services platform;
 - vi. Customer shall at all times comply with all applicable US federal, state and local law, and all applicable laws of other countries where Customer operates, uses the internet to communicate, or uses the Development Services including, but not limited to, all laws related to the retention of data;
 - vii. Customer is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, and Customer is not listed on any U.S. Government list of prohibited or restricted parties; and
 - viii. Customer may not participate in or support any illegal activities through the use of the Developer's Development Services or services.
- d. Pass Through Warranties and Indemnities: Registration. Any Equipment purchased by Customer from Developer shall be certified as new equipment and shall include the manufacturer's standard end-user warranty for new equipment. With respect to any third-party software or equipment furnished by Developer to Customer, Developer shall secure from the applicable manufacturer(s) such warranties and indemnities as may be available with respect to such third-party software or equipment and shall assign and pass through to Customer all equipment and applicable third-party software manufacturers' end-user warranties and indemnities to the extent legally assignable. In the event such warranties and indemnities are not assignable to Customer, if necessary, Developer shall enforce such warranties and indemnities on Customer's behalf. In addition to the above, Developer shall, at Customer's request, register Customer with any and all third party vendors such that Customer is acknowledged as a support obligation and Customer can receive and obtain notices directly from the third-party vendors. Developer will produce evidence of such registration within thirty (30) calendar days from the date Customer requests that Developer obtain such registration.
- e. Disclaimers. Developer does not warrant that the Development Services and Documentation will meet Customer's requirements, or the operation of the Development Services shall be uninterrupted or error-free. Developer's exclusive liability and Customer's exclusive remedy for any breach of the warranty pursuant to this section shall be correction of the errors or deficiencies that cause the breach of the warranty during the Warranty Period. This warranty shall apply only if Developer's examination discloses to Developer's satisfaction that alleged defects actually exist and were not caused by misuse, unauthorized modifications, neglect, improper installation or testing, attempts to repair, or the like, or by accident, fire, power surge or failure, or other hazard.
- f. No Other Warranties. DEVELOPER'S DEVELOPMENT SERVICES, SERVICES, AND INTELLECTUAL PROPERTY IS PROVIDED "AS IS", AND DEVELOPER MAKES NO PROMISES, REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE CONFIDENTIAL INFORMATION, DEVELOPMENT SOFTWARE, SERVICES, AND INTELLECTUAL PROPERTY, OR ANY PORTION THEREOF, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. Indemnification

- a. Customer is responsible for all actions taken or caused to be taken arising from, related to, or connected with Customer's use of the Development Services and services. CUSTOMER AGREES TO INDEMNIFY AND HOLD HARMLESS DEVELOPER, DEVELOPER'S AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, ATTORNEYS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, FINES, PUNITIVE DAMAGES, AMOUNTS IN INTEREST, EXPENSES AND DISBURSEMENTS OF ANY KIND AND NATURE WHATSOEVER (INCLUDING REASONABLE ATTORNEYS' FEES) UNDER ANY THEORY OF LEGAL LIABILITY ARISING OUT OF OR RELATED TO CUSTOMER'S CONTENT, ACTS OR OMISSIONS OF CUSTOMER, SECURITY BREACHES, ILLEGAL ACTIVITY AND/OR ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF A THIRD PARTY'S COPYRIGHT, TRADE SECRET, PATENT, TRADEMARK, OR OTHER PROPRIETARY RIGHT.
- b. Developer shall indemnify and hold Customer harmless from any liability to third parties incurred by Customer for any action based on infringement of a copyright or patent as a result of Customer's use of the Development Services if: (i) Customer promptly notifies Developer in writing of any such claim or suit, cooperates fully with

Developer, and permits Developer to defend or settle such claim or suit on behalf of Customer; (ii) this Agreement remain in effect without interruption from the Effective Date until the date of such claim; (iii) Customer did not use the Development Services with other software, or otherwise use or alter the Development Services, except as specifically permitted in the Documentation; (iv) Customer has complied with all of the terms of this Agreement; and (v) the alleged infringement was specifically related to the use of the Development Services and not the product of the Development Services.

- c. Developer shall have control of the defense of any such claim, including appeals from any judgment thereon and any negotiations for the settlement or compromise thereof, with full authority to enter into a binding settlement or compromise. If a third-party's claim substantially interferes with Customer's use of the Development Services and the foregoing indemnity obligation is triggered, Developer may, at its sole discretion: (i) replace the Development Services, without additional charge, with a functionally equivalent and non-infringing product; (ii) modify the Development Services to avoid the infringement; (iii) obtain a license for the Customer to continue use of the Development Services and pay any additional fee required for such license; or (iv) terminate the license for the Development Services.
- d. Developer shall have no liability to Customer under this Section with respect to any infringement or claim thereof that is caused by (i) the use of the Development Services in a manner for which it was neither designed nor contemplated, or (ii) any unauthorized modification of the Development Services or combination of the Development Services with any other product that causes the Development Services thereof to become infringing.
- e. Developer liability for indemnification under this Section shall be limited to 100% of the amount paid by Customer under this Agreement. This Section states Developer's entire liability and Customer's sole and exclusive remedy with respect to infringements of copyrights and patents by the Development Services or any component thereof.

11. **Limitation of Liability.**

- a. IN NO EVENT SHALL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES, REGARDLESS OF HOW ARISING, REGARDLESS OF THE CAUSE OF ACTION, IN TORT, CONTRACT OR OTHERWISE, AND REGARDLESS OF WHETHER ADVISED BEFOREHAND OF THE POSSIBILITY OF SUCH DAMAGES. THESE EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, COST OF REMOVAL OR REINSTALLATION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OUTSIDE COMPUTER TIME, LABOR COSTS, LOSS OF DATA, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF USE, OR INTERRUPTION OF BUSINESS, OR OTHER ECONOMIC LOSS.

DEVELOPER'S AGGREGATE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY UNDER THIS AGREEMENT, FOR ANY CLAIM, WHETHER IN CONTRACT (INCLUDING BREACH OF WARRANTY) OR IN TORT (INCLUDING NEGLIGENCE) SHALL BE LIMITED TO 100% OF THE AMOUNT PAID BY CUSTOMER UNDER THIS AGREEMENT. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE OR EXTEND THESE LIMITS.

12. **Termination.**

- a. **Events of Default.** Developer and Customer acknowledge and agree that the following shall constitute events of default ("Events of Default") and that the occurrence of one (1) or more of such Events of Default shall constitute a material breach of this Agreement which shall allow a party, as applicable, to seek the rights and remedies set forth in this Section:
 - i. A material breach of this Agreement, provided that such breach, if curable, is not cured within thirty (30) calendar days following receipt of written notice of such breach;
 - ii. Customer's failure to timely pay, or cause to be paid, any undisputed amount owed to Developer, provided that such failure is not cured within thirty (30) calendar days following receipt of written notice of such failure;
 - iii. Failure of a party to perform any other material obligation under this Agreement, provided that such failure is not cured within thirty (30) calendar days following receipt of written notice of such failure;

- iv. The institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against a party under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States or any state thereof, if such proceedings have not been dismissed or discharged within thirty (30) calendar days after they are instituted; or the insolvency or making of an assignment for the benefit of creditors or the admittance by a party of any involuntary debts as they mature or the institution of any reorganization arrangement or other readjustment of debt plan of a part not involving the United States Bankruptcy Code; or any corporate action taken by the Board of Directors of a party in furtherance of any of the above actions;
 - v. Appointment of a receiver for all or substantially all of a party's assets or any corporate action taken by the Board of Directors of Developer and/or Customer in furtherance of the above action; and
 - vi. Failure by Customer to use the Development Services in compliance with the terms and conditions set forth in this Agreement or written usage guidelines.
- b. **Rights and Remedies of the Non-Breaching Party.** Upon the occurrence of an Event of Default, the non-breaching party shall be entitled to immediately terminate this Agreement by providing written notice to the breaching party.
- c. **Obligations Upon Termination.** Except as otherwise provided for in this Agreement, upon termination of this Agreement, all rights granted to either party will terminate. Promptly, but in no event more than thirty (30) days after termination of this Agreement for any reason, or upon discontinuance or abandonment of Customer's possession or use of the Development Services, Customer shall ensure that all outstanding fees are paid in full.
- d. **Survival.** The parties agree that the following sections survive any expiration or termination of this Agreement: Section 4 (Intellectual Property Rights), Section 6 (Payment Terms), Section 8 (Records and Audit Rights), Section 9 (Warranties), Section 11 (Limitation of Liability), Section 12 (Termination), Section 13 (Obligations of Customer), Section 14 (Obligations of Developer), and Section 15 (Miscellaneous).
13. **Obligations of Customer.** Customer shall provide such technical support and Licensed Materials to Developer as Developer deems to be reasonably necessary to enable Developer to perform its obligations under this Agreement.
14. **Obligations of Developer.**
- a. **Duties.** Developer shall use its best efforts to provide the Development Services to Customer. The determination of whether Developer's performance is satisfactory shall be made by Customer in its discretion, taking into consideration the guidelines and other performance criteria provided or communicated to Developer by Customer.
 - b. **Expenses.** Except as otherwise provided for in this Agreement, Developer shall be solely responsible for all its costs and other expenses incurred in connection with the establishment, operation and performance of its business and its obligations hereunder, and Customer shall have no liability, obligation or responsibility therefore.
 - c. **Authorized Statements.** Developer is authorized to represent to Customers and prospective customers of Customer only such facts about the Service(s) as Customer itself states in its services descriptions, advertising, and promotional materials or as may be stated in other non-confidential, written materials furnished by Customer.
 - d. **Confidentiality.**
 - i. **Nondisclosure Obligation.** Developer agrees that it shall not, without Customer's prior written consent, directly or indirectly: (i) disclose Confidential Information to any other person; (ii) copy, photograph, photocopy, reduce to writing, record or store in any electronic format, or otherwise reproduce or duplicate Confidential Information, except as reasonably necessary for Developer to perform in accordance with this Agreement; or (iii) take any other actions in connection with Confidential Information that would be detrimental thereto. Developer agrees that it shall treat Confidential Information with at least the same degree of care as it accords to its own Confidential Information, which in no case shall be less than reasonable care. Developer agrees that it shall disclose Confidential Information only to Customer's employees, representatives, and agents who need to receive such information in the performance of their work duties and certifies that such

employees, Developers, and agents have previously agreed to be bound by terms and conditions substantially similar to those of this Agreement.

- ii. Notice of Unauthorized Use or Disclosure. Developer shall give written notice to Developer of any unauthorized use or disclosure by Developer of Confidential Information immediately after discovery of such use or disclosure and further agrees to exert its best efforts to assist Developer in remedying any such unauthorized use or disclosure of Confidential Information. If Developer is requested to disclose Confidential Information in violation of the terms of this Agreement, whether by a third party or in response to a valid order by a court or other governmental body or otherwise required by law, Developer shall immediately give written notice as soon as reasonably possible to Developer of such request and provide Developer a reasonable period of time, if possible to determine a course of action prior to agreeing to such disclosure. In addition, Developer shall cooperate with and provide reasonable assistance to Developer in the event Customer decides to resist the request to disclose Confidential Information.
 - iii. Exclusions from Nondisclosure Obligations. The nondisclosure obligations of this Agreement shall not apply to any portion of Confidential Information in which Developer can reasonably establish in writing that: (i) the Confidential Information is part of the public domain through no fault of Developer; (ii) the Confidential Information was lawfully in Developer's possession free of any obligation of confidentiality at or subsequent to the time it was communicated to Developer by Customer or a Customer of Customer; (iii) the Confidential Information was developed by Developer independently of and without reference to any information communicated to Developer by Customer or any Customer of Customer; (iv) the Confidential Information was communicated by Customer or a Customer of Customer to an unaffiliated third party without any obligation of confidentiality; or (v) subject to Section 14(d)(ii), the disclosure of the Confidential Information was in response to a valid order by a court or other governmental body or was otherwise required by law.
 - iv. Disclosure of Third Party Information. Neither Party shall disclose to the other any information received from a third party if such disclosure constitutes a violation of the proprietary rights of the third party.
 - v. Duration. Notwithstanding the earlier termination of this Agreement, the obligations relating to confidentiality are to remain in effect until such time as the Confidential Information becomes publicly known, through no act or failure to act on Developer's part.
- e. Injunctive Relief. The Parties agree that their obligations of confidentiality are necessary and reasonable in order to protect their respective business, and agrees that monetary damages would be inadequate to compensate for any breach of these Sections. Accordingly, the Parties agree that any such breach or threatened breach of these Sections may cause irreparable injury and that, in addition to any other remedies that may be available, in law, equity or otherwise, any of the parties shall be entitled to injunctive relief (preliminary or otherwise) in the event of an actual or threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

15. Miscellaneous.

- a. White Labeling. Developer hereby consents to Customer marketing the Development Services under Customer's chosen branding.
- b. Publicity. Customer hereby consents to Developer's use of Customer's name in Customer list to be used in connection with the marketing of Developer's business and products.
- c. Relationship of Parties. The parties hereto are independent contractors. Neither party has any express or implied right or authority to assume or create any obligations on behalf of the other or to bind the other to any contract, agreement or undertaking with any third party. Nothing in this Agreement shall be construed to create a partnership, joint venture, employment or agency relationship between Developer and Customer.
- d. Assignment. Developer may assign or pledge this Agreement including its right to receive any payments hereunder without Customer's consent provided that such assignment will not change the obligations of Developer to Customer. Customer may not assign this Agreement or any right or obligation hereunder without the prior written consent of Developer. Any attempted assignment in violation of the preceding sentence shall be void.

- e. Third-Party Beneficiaries. The Development Services and services provided to Customer under this Agreement are provided solely for the benefit of Customer and its Authorized User(s). This Agreement and the services provided hereunder are not intended to create any rights for or to confer any rights upon any third party not specified herein.
- f. No Waiver. No term or provision contained in this Agreement shall be deemed waived unless such waiver shall be in writing and signed by Developer.
- g. Notices. All notices given under this Agreement shall be given to the address of the appropriate party set forth in the introductory paragraph of this Agreement and shall be given by certified or registered mail.
- h. Non-Solicitation. Both Developer and Customer agree that they shall not directly or indirectly solicit for employment, employ or otherwise retain employees of each other during the Term of this Agreement and thereafter for a period of two (2) years without the express written consent of the other party.
- i. Governing Law. Customer acknowledges and agrees that this Agreement is made under, will be governed by and construed in accordance with the laws of the State of Texas without regard to its choice of law rules. Customer acknowledges and agrees that all actions and proceedings arising directly or indirectly from this Agreement shall be exclusively litigated in courts (state or federal) serving Bexar County, Texas, and Customer expressly submits and consents to the jurisdiction and venue of such courts.
- j. Equitable Relief. Notwithstanding anything contained in this Agreement to the contrary, the parties shall be entitled to seek injunctive or other equitable relief whenever the facts or circumstances would permit a party to seek such equitable relief in a court of competent jurisdiction. The parties agree and acknowledge that any breach of Section 4 (Intellectual Property Rights), Section 13 (Obligations of Customer) or Section 14 (Obligations of Developer) may cause immediate and irreparable injury to the non-breaching party, and monetary damages shall be inadequate to compensate for such breach.
- k. Attorneys' Fees. If either party breaches this Agreement then that party shall pay all costs (including attorneys' fees and court costs) incurred by the other party in enforcing this Agreement or seeking to recover damages for the breach.
- l. Export Regulations. The Development Services, including technical data, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer acknowledges and agrees to comply strictly with all such regulations and acknowledge that you have the responsibility to obtain licenses to export, re-export, or import the Development Services.
- m. Force Majeure. Neither party shall be liable to the other for any failure, delay or interruption in the performance of this Agreement due to causes entirely beyond the control of that party including, without limitation, strikes, boycotts, labor disputes, embargoes, acts of God, acts of public enemy, acts of governmental authority, floods, riots or rebellion.
- n. High Risk Activities. The Development Services is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the software could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Developer specifically disclaim any express or implied warranty of fitness for High Risk Activities.
- o. Severability. If any of the above provisions are held to be in violation of applicable law, void, or unenforceable in any jurisdiction, then such provisions are herewith waived to the extent necessary for this Agreement to be otherwise enforceable in such jurisdiction. However, if in Developer's opinion deletion of any provisions of this Agreement by operation of this paragraph unreasonably compromises the rights or liabilities of Developer or its licensors, Developer reserves the right to terminate this Agreement.
- p. Relationship of Parties. The parties hereto are independent contractors. Neither party has any express or implied right or authority to assume or create any obligations on behalf of the other or to bind the other to any contract, agreement or undertaking with any third party. Nothing in this Agreement shall be construed to create a partnership, joint venture, employment or agency relationship between Developer and Customer.

- q. Conflicting Terms. This Agreement prevails over any conflicting terms of the Primary Terms and Conditions during the Term of this Agreement, however, the SOWs attached hereto and which terms are incorporated herein shall prevail over any conflicting terms of this Agreement and the Primary Terms and Conditions during the Term of this Agreement. No modification, amendment or supplement to this Agreement or the Exhibits attached hereto will be binding, unless in writing and signed by a duly authorized representative of each party; provided, however, for purposes of this section, only officers of Developer may be authorized representatives of Developer.

- r. Counterparts. This Agreement may be executed in any number of counterparts, including via electronic signatures and scans/emails, each of which when so executed and delivered shall be deemed to be an original and all of which together shall be deemed to be one and the same agreement.