

CURRICULUM TECHNOLOGY, LLC MASTER AGREEMENT

1. SCOPE OF AGREEMENT.

- 1.1. **Master Agreement; Order Forms.** This Curriculum Technology, LLC master agreement (“Master Agreement”) between Customer and Curriculum Technology describes the general terms by which Customer may license or purchase, as applicable, an Offering (as defined below) from Curriculum Technology. This Master Agreement, together with the Order Form(s) referencing it, form the entire agreement between the Parties with regard to the Offerings specified in Order Form(s), when such form(s) are accepted by Curriculum Technology. Customer acknowledges that its right to use and/or receive the Offering(s) is limited to the rights expressly set forth in this Agreement.
- 1.2. **Order of Precedence.** In the event a conflict arises between this Master Agreement and the provisions of any Order Form, the terms of this Master Agreement will govern unless the relevant Order Form expressly provides otherwise. No term or provision set forth in any purchase order or other payment documentation will be construed to amend, add to, or supersede any provision of this Agreement.

2. DEFINITIONS.

- 2.1. **“Agreement”** means this Master Agreement, the Order Form(s) and any other exhibits to such Order Form(s) as are agreed-upon in writing by the Parties, as such may be amended from time to time.
- 2.2. **“Authorized End User”** means an individual authorized by the Customer to use or otherwise access an Offering from time to time in the manner set forth in this Agreement.
- 2.3. **“Available Date”** means, with respect to any particular Offering, the date upon which the Offering is made available to Customer pursuant to the terms of the relevant Order Form, regardless of whether Customer utilizes the Offering.
- 2.4. **“Curriculum Technology”** and/or **“Company”** refer to Curriculum Technology, LLC
- 2.5. **“Curriculum Technology Property”** means all materials that are incorporated into or that comprise a part of all Offerings, and all other materials developed and provided to Customer by Curriculum Technology in conjunction with the provision of Offerings, including, but not limited to any computer software (in object code, source code form or as a hosted solution, and including, without limitation, all interfaces), script, programming code, data, database schema, web use statistics, information or HTML script, design elements, formulas, documentation, templates, formatting, CGIs, Javascripts, PL/SQL coding, other applications, content, software or other technology made, conceived, developed or provided by Curriculum Technology or its suppliers and any trade secrets, know-how, methodologies and processes related to Curriculum Technology’s products or services, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights therein, and any Derivative Works thereof.
- 2.6. **“Confidential Information”** means any non-public information disclosed by either Party to the other that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential. Without limiting the generality of the foregoing, Confidential Information will be deemed to include, without limitation, information about a Party’s business, operations, vendors or customers. Curriculum Technology’s Confidential Information will be deemed to include all Curriculum Technology Property; Customer’s Confidential Information will be deemed to include all Customer Property.
- 2.7. **“Customer”** means the customer identified on the relevant Order Form.
- 2.8. **“Customer Content”** means any data, information, graphics or other media files or other content provided by Customer or any end user through use of an Offering.
- 2.9. **“Customer Property”** means all graphic user interface, text, images, music, designs, products, computer programs, drawings, content, end user information, documentation, notes, development aids, technical documentation, information and other materials originally developed by Customer or procured from a third party by Customer, whether used in conjunction with the Offerings or not, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights therein. Customer Property includes any third party software provided by, or procured by, Customer for use in connection with any Offering.
- 2.10. **“Customer Representative”** means any individual authorized to accept and execute Order Form(s).
- 2.11. **“Derivative Works”** shall mean any work of authorship that is based upon or includes any of the Curriculum Technology Property, in any form in which such Curriculum Technology Property may be recast, transformed, or adapted. The term Derivative Works shall not include, and Curriculum Technology shall not obtain any rights with respect to, any Confidential Information of the Customer or any Customer Property used in conjunction with the Curriculum Technology Property but that is not based upon or derived from the Curriculum Technology Property or any portion thereof.
- 2.12. **“Documentation”** means, with respect to any particular Offering, any applicable standard end user specifications and/or operating instructions provided by Curriculum Technology for such Offering, which may be amended from time to time. Documentation does not include any sales or marketing materials.

- 2.13. **“Effective Date”** means the effective date set forth in the relevant Order Form.
- 2.14. **“Equipment”** means any hardware and/or firmware provided by Curriculum Technology to Customer.
- 2.15. **“Offering”** means Software, Services, or Equipment, as applicable.
- 2.16. **“Order Form”** a document executed by both parties which lists items to be purchased and/or licensed by Customer as well as other information related to such items, each of which is incorporated into this Agreement.
- 2.17. **“Party”** means either Curriculum Technology or Customer.
- 2.18. **“Software as a Service”** means software services provided by Curriculum Technology as a Curriculum Technology-hosted solution.
- 2.19. **“Services”** means any services provided by Curriculum Technology to Customer, including, without limitation, any Software as a Service (SaaS) services.
- 2.20. **“Software”** means any one of the software products owned by Curriculum Technology and used by Curriculum Technology to provide Services to Customer.
- 2.21. **“Evaluation Copy” or “Test Copy”** means a limited or temporary version of a Software as a Service license, which may be used only for purposes of evaluating the Services by Customer.

3. PROPRIETARY RIGHTS

- 3.1. **Ownership of Customer Property.** As between Customer and Curriculum Technology, Customer Property is and shall remain the sole and exclusive property of Customer.
- 3.2. **Ownership of Curriculum Technology Property.** As between Customer and Curriculum Technology, Curriculum Technology Property is and shall remain the sole and exclusive property of Curriculum Technology or its licensors or suppliers.
- 3.3. **Vesting of Rights.** To the extent, if any, that ownership of any of the Curriculum Technology Property does not reside or automatically vest in Curriculum Technology, Customer hereby transfers and assigns to Curriculum Technology all rights, title interest and goodwill which Customer may have in and to Curriculum Technology Property. Without prejudice to the generality of the foregoing, in the event that ownership of any Curriculum Technology Property vests in Customer for any reason, Customer agrees to execute all such instruments and do all such things as Curriculum Technology may require of Customer to transfer or assign such ownership to Curriculum Technology.
- 3.4. **Non-exclusivity.** Customer acknowledges that it has no rights of exclusivity as to any of the Offerings to be provided by Curriculum Technology, and that Curriculum Technology shall have the right to provide to third parties software, services, and equipment which are the same or similar to those provided to Customer, and to use or otherwise exploit any Curriculum Technology Property in providing such services.
- 3.5. **Curriculum Technology Use of Customer Property.** During the term of this Agreement, if Customer chooses to submit Customer Property and/or Customer Content in conjunction with the Offerings, then Customer grants to Curriculum Technology, solely to perform its obligations hereunder, a non-exclusive, royalty-free license (a) to modify, arrange, combine, copy, store, transmit, distribute, and otherwise use the Customer Property and each element thereof generally and in combination with other elements of the Customer Property and the Curriculum Technology Property in order to provide the Services, and (b) to make archive or backup copies and other copies of the Customer Property and/or Customer Content. Customer hereby grants to Curriculum Technology an unrestricted, irrevocable (subject to a material breach), non-exclusive, perpetual, worldwide license to use the Customer Property during the Term for the purpose of performing its obligations hereunder.
- 3.6. **License to Use of Offerings:** Subject to all of the terms and conditions in this Agreement, Curriculum Technology hereby grants to Customer a limited, nonexclusive, nontransferable, nonsublicenseable, and terminable license to use the Offerings, solely for the purposes described in this Agreement and provided in applicable Order Form(s).
- 3.7. **Customer License to Use, and/or Sublicense the Use of, Customer’s Derivative Works:** Subject to Customer’s compliance all of the terms and conditions of this Agreement, Curriculum Technology hereby grants to Customer a limited license to use those Derivative Works generated by the Customer through the use of the Offerings for Customer’s internal purposes, as may be defined in applicable Order Form(s). In addition, Curriculum Technologies hereby grants to Customer the right to sublicense the use of Customer-generated Derivative Works to third parties via the applicable Offering, subject to the following preconditions: (a) Each such third party sublicensee must enter into a license agreement directly with Curriculum Technology for access to the applicable Offering; and (b) in each case, the Customer must enter into a written agreement with such third parties for such sublicense rights.

Note: For the avoidance of confusion, the foregoing paragraph is intended to allow customers to sublicense access to their works (e.g. curriculum plans, etc.) via Curriculum Technology’s services, to third parties, but only if those third parties have signed a license agreement with Curriculum Technology so that sublicensees are directly licensed to use applicable Offerings (e.g. Curriculum Mapper

and Instruction Planner). Also, such sublicense must be authorized in writing between the customer and such third party (Curriculum Technology will **not** be responsible for supervising or monitoring such sublicensing).

- 3.8. **General License/Usage Restrictions.** Customer agrees not to use any Offering or any Derivative Works (or any part thereof) in any way or for any purpose except for those uses that are expressly authorized by the terms of this Agreement. Without limiting the foregoing, Customer shall not: (a) modify the Offering(s) or create any derivative product of the Offerings except with the prior written consent of Curriculum Technology, provided that the foregoing shall not be construed to prohibit Customer from configuring the Software or Software as a Service to the extent permitted by the solution's standard user interface, (b) sublicense, assign, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Customer's rights under the Agreement other than as expressly provided for herein, or (c) use the Offering(s) to provide services to third parties other than Authorized End Users in the nature of a service bureau, time sharing arrangement or as an application service provider, as such terms are ordinarily understood within the software industry or for any other reason. Customer will not obscure, remove or alter any of the trademarks, trade names, logos, patent, trademark, or copyright notices or markings to the from the Offerings, nor will Customer add any other notices or markings to the Offerings or any portion thereof except as may be permitted by the Software as a Solution's standard user interface. Customer shall not use the Software or Software as a Service in violation of Curriculum Technology's obligations to any third party incurred prior to the Effective Date, provided that Curriculum Technology has notified Customer of such obligation. Further, in the event that Customer exceeds its license limitations, as set forth in an applicable Order Form, additional fees may apply, and Customer shall, on an annual basis, provide Curriculum Technology with documentation as reasonably required by Curriculum Technology to verify its compliance with such license limitations.
- 3.9. **Additional Agreement with Regard to Derivative Works.** In addition to the license(s) granted above, Customer understands and agrees as follows: Curriculum Technology will be authorized to display all Derivative Works to other authorized users of the Offerings on a "review only" basis. Customer grants Curriculum Technology a fully-paid, royalty-free, non exclusive license to display any Customer Property or Customer Content incorporated into Derivative Works for such purpose. Such Derivative Works may include (but may not be limited) to curriculum maps and instruction plans. Customer agrees that it may have view-only access to the works of other users of the Offerings, and in conjunction therewith, Customer agrees that it will not copy or otherwise appropriate any Derivative Work(s) or other intellectual property of other users of the Offerings unless the Customer has previously secured all necessary rights to do so from the entity(ies) that generated the Derivative Work(s) (for all rights that are not in the public domain).
- 3.10. **Customer Property.** Customer represents and warrants that: (a) Customer owns or has sufficient rights in and to the Customer Property, including, without limitation, personal, educational, and financial information contained within the Customer Property, in order for Customer and its Authorized End Users to use, and permit use of, the Offering(s), and (b) the Customer Property does not and shall not contain any content, materials, advertising or services that infringe on or violate any applicable law, regulation, or right of any third party. Customer also acknowledges that Customer Property may be accessed by Curriculum Technology's support or hosting personnel outside of the country of the hosted facility, and hereby authorizes such access. Curriculum Technology does not operate or control the information, services, opinions or other content generated by third parties and disseminated via the Internet via links that may be incorporated in, operated with or otherwise displayed by the Offerings. Curriculum Technology reserves the right to remove from any Offering any Customer Property and/or Customer Content that Curriculum Technology determines, in its sole discretion, may subject Curriculum Technology to liability or may be dangerous, offensive, pornographic, or in violation of applicable law or regulations or the terms of this Agreement. Customer agrees that it shall make no claim whatsoever against Curriculum Technology relating to the Customer Property or Customer Content (or Curriculum Technology's removal thereof pursuant to the preceding sentence) or third party content or arising from any information, product, service or software ordered through or provided by a third party via the Internet.

4. REPRESENTATIONS.

- 4.1. **By Curriculum Technology.** Curriculum Technology represents and warrants that (a) Curriculum Technology and any person executing or otherwise agreeing on Curriculum Technology's behalf to this Agreement has authority to enter into this Agreement, and (b) during the Term Curriculum Technology will comply with all applicable laws and regulations governing all matters set forth herein.
- 4.2. **By Customer.** Customer represents and warrants that (a) Customer and any person executing or otherwise agreeing on Customer's behalf to this Agreement has authority to enter into this Agreement, (b) during the Term it will comply with all applicable laws and regulations governing all matters set forth herein; (c) during the Term it will comply with the then current Curriculum Technology privacy policies, which Curriculum Technology reserves the right to modify, from time to time, effective five (5) days after such modified policies are posted at the relevant link, such posting to constitute effective notice of changes, which privacy policies are hereby incorporated by reference; (d) during the Term Customer shall refrain from using any Offering in a manner that is libelous, defamatory, obscene, infringing or illegal, or otherwise abusing the Offering or the resources available through the Offering; (e) Customer will take appropriate steps to ensure that it does not share access information (including user identification data and passwords) with third parties except as expressly permitted under this Agreement and (f) during the Term, to the extent that Authorized End Users exercise the rights granted to Customer under this Agreement, Customer shall ensure that such Authorized End Users comply with the obligations applicable to such exercise as set forth in this Agreement.

5. TERM AND TERMINATION.

- 5.1. **Term.** This Agreement shall commence as of the Effective Date and shall continue in effect until the later of: (a) the expiration of the Initial Term or the Renewal Term, as applicable and as specified on the relevant Order Form, or (b) the expiration or termination of all Order Forms.
- 5.2. **Termination for Breach.** In the event that either Party materially breaches any obligation, representation or warranty under this Agreement, the non-breaching Party may terminate this Agreement in its entirety, or, at the non-breaching Party's option, it may terminate solely the relevant Order Form pursuant to which such breach has occurred, provided in either case that such breach has not been corrected within thirty (30) days after receipt of a written notice of such breach. Without limiting the foregoing, either Party may terminate this Agreement immediately upon written notice to the other Party in the event the other Party materially breaches the provisions of Section 9 or the license usage restrictions in any Order Form.
- 5.3. **Effect of Termination.** Upon termination of this Agreement, all Order Forms shall automatically and immediately terminate, and all licenses granted under this Agreement shall immediately cease. Upon termination, Customer will immediately discontinue all use of materials licensed under this Agreement, and will pay to Curriculum Technology all amounts due and payable hereunder. Also, in the event of any termination prior to the end of any Order Form's term, Customer shall immediately pay Curriculum Technology all fees which are then due or would become due had no termination occurred. Each Party: (a) will immediately cease any use of the other Party's Confidential Information, (b) will delete any of the other Party's Confidential Information from its computer storage or any other media, including, but not limited to, online and off-line libraries; and (iii) will return to the other Party or, at the other Party's option, destroy, all copies of the other Party's Confidential Information then in its possession. Without limiting the foregoing, upon termination of any Order Form (including upon termination of this Agreement in its entirety), the provisions of such Order Form regarding the effect of such Order Form's termination shall also apply.
- 5.4. **Survival.** The termination or expiration of the Agreement shall not relieve either Party of any obligation or liability, nor impair the exercise of rights, accrued hereunder prior to such termination. Without limiting the foregoing, the provisions of Sections 1, 2, 5, 6.1, 7, 8, 9 and 10 of this Master Agreement shall survive the termination of this Agreement for any reason.

6. FEES AND EXPENSES.

- 6.1. **Fees and Payments.** In consideration for Curriculum Technology's performance under this Agreement, Customer agrees to pay Curriculum Technology all fees required by the Order Forms, as applicable, which fees will be due in accordance with the provisions of the relevant Order Form, but in no event later than thirty (30) days after the date of an invoice from Curriculum Technology. Curriculum Technology expressly reserves the right to change the fees payable under any Order Form with respect to any Renewal Term in accordance with general price increases implemented from time to time. All fees for any annual term license or annual Services, and any other Offerings, shall be due and payable upon the date of acceptance of the applicable Order Form. Customer will pay all fees in U.S. dollars unless otherwise set forth in the applicable Order Form. Payments shall be sent to the address indicated on the invoice.
- 6.2. **Late Fees.** Curriculum Technology may charge interest on any overdue amounts at the lower of: (a) the highest permissible rate, or (b) 12% per annum, charged at 1.0% per month from the date on which such amount fell due until the date of payment, whether before or after judgment. Customer acknowledges that any delay in payment for any Initial Term or Renewal Term may result in termination of the Curriculum Technology license and/or an interruption in service at Curriculum Technology's sole discretion.
- 6.3. **Taxes.** The fees hereunder do not include any sales, use, excise, import or export, value-added ("VAT"), goods and services ("GST"), or similar tax or interest, or any costs associated with the collection or withholding thereof, or any government permit fees, license fees or customs or similar fees ("Taxes") levied on the delivery of any software or Equipment or the provision of Services by Curriculum Technology to Customer. Customer will be responsible for payment of such Taxes at point of sale. Curriculum will include applicable Taxes on invoices, and Curriculum Technology has the right to correct the amount/kind of applicable Taxes on Order Forms if necessary to conform to the requirements of applicable law. If Customer is exempt from any such Taxes, then such Taxes shall not be charged to Customer upon Curriculum Technology's receipt of a copy of documentation acceptable to Curriculum Technology that satisfies the requirements of the relevant tax authority to exempt such fees from such Tax (such as Customer's tax exemption certificate, or VAT Registration Number.) All payments due under this Agreement shall be made without any deduction or withholding, unless such deduction or withholding is required by any applicable law, regulation, or rule then in effect. If Customer is required to deduct or withhold, Customer will promptly notify Curriculum Technology of the requirement, timely pay the required amount to the relevant tax authority, provide Curriculum Technology with an official receipt, certified copy or other documentation acceptable to Curriculum Technology evidencing payment, and pay to Curriculum Technology the amount to which Curriculum Technology is otherwise entitled under this Agreement, less the amount required to be deducted or withheld. In the event, and to the extent, that Curriculum Technology is unable to claim an income tax credit for the full amount deducted or withheld (the "Unrecouped Withholding"), Customer shall pay Curriculum Technology, within sixty (60) days following receipt of an invoice from Curriculum Technology, the Unrecouped Withholding.

- 6.4. **Expenses.** Except as provided in this Agreement, each party will be responsible for its own expenses incurred in rendering its performance or exercising its rights under this Agreement, including, without limitation, the cost of facilities, work space, computers and computer time, development tools and platforms, utilities management, personnel and supplies. In addition, if Curriculum Technology is required by applicable law, legal process or government action or for a Customer audit to produce information, files, documents or personnel as witnesses with respect to this Agreement or the products or services provided to Customer by Curriculum Technology, Customer shall reimburse Curriculum Technology for any professional time and expenses including reasonable external or internal legal costs incurred to respond to the request, unless Curriculum Technology is a party to the proceeding or the subject of the investigation.
- 6.5. **Purchase Orders.** Customer agrees that if its internal procedures require that a purchase order be issued as a prerequisite to payment of any amounts due to Curriculum Technology, it will timely issue such purchase order and inform Curriculum Technology of the number and amount thereof. Customer agrees that the absence of a purchase order, other ordering document or administrative procedure may not be raised as a defense to avoid or impair the performance of any of Customer's obligations under this Agreement, including payment of amounts owed to Curriculum Technology.

7. WARRANTIES, LIMITATIONS OF LIABILITY AND INDEMNIFICATION.

- 7.1. **Disclaimer of Warranty.** (A) THE OFFERINGS ARE PROVIDED "AS IS," AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, CURRICULUM TECHNOLOGY AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL REPRESENTATIONS AND/OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND/OR ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED; (B) NEITHER CURRICULUM TECHNOLOGY NOR ITS LICENSORS WARRANT THAT THE FUNCTIONS OR INFORMATION CONTAINED IN THE SOFTWARE AND/OR SERVICES WILL MEET ANY REQUIREMENTS OR NEEDS CUSTOMER MAY HAVE, THAT THE SOFTWARE AND/OR SERVICES WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION, THAT ANY DEFECTS OR ERRORS IN THE SOFTWARE AND/OR SERVICES WILL BE CORRECTED, OR THAT THE SOFTWARE AND/OR SERVICES ARE COMPATIBLE WITH ANY PARTICULAR COMPUTER SYSTEM OR SOFTWARE; AND (C) CURRICULUM TECHNOLOGY AND ITS LICENSORS MAKE NO GUARANTEE OF ACCESS TO OR OF ACCURACY OF THE CONTENT CONTAINED IN OR ACCESSED THROUGH THE OFFERINGS.
- 7.2. **Limitations of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT FOR BREACH BY CUSTOMER OF SECTIONS 3.6, 3.7 AND/OR 9 OF THIS AGREEMENT, AND EXCEPT FOR EACH PARTY'S OBLIGATIONS UNDER ARTICLE 8, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY OF THE FOLLOWING TYPES OF LOSS OR DAMAGE ARISING IN ANY WAY OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE OFFERINGS, WHETHER OR NOT SUCH PARTY WAS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE: (A) ANY LOSS OF BUSINESS, CONTRACTS, PROFITS, ANTICIPATED SAVINGS, GOODWILL OR REVENUE; (B) ANY LOSS OR CORRUPTION OF DATA OR (C) ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES). EXCEPT FOR THE INDEMNITY SET FORTH IN SECTION 8.1, IN NO EVENT SHALL CURRICULUM TECHNOLOGY OR ITS LICENSORS' CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE CLAIM, EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER UNDER THIS AGREEMENT FOR THE AFFECTED OFFERING DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT, ACT OR OMISSION GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.
- 7.3. **Essential Basis.** The Parties acknowledge and agree that the disclaimers, exclusions and limitations of liability set forth in this Section 7 form an essential basis of this Agreement, and that, absent any such disclaimers, exclusions or limitations of liability, the terms of this Agreement, including, without limitation, the economic terms, would be substantially different.
- 7.4. **Indemnification.** a. Indemnification by Customer. In addition to any indemnification obligations set forth in an applicable Schedule or Order Form, Customer will indemnify, defend and hold harmless Curriculum Technology, its affiliates and their respective directors, officers, employees, agents, successors and assigns (each a "Curriculum Technology Indemnitee") from and against any and all losses, damages or expenses (including, without limitation, reasonable attorneys' fees and costs) arising from any claim, suit or proceeding brought by a third party against a Curriculum Technology Indemnitee arising out of Customer's (i) gross negligence or willful misconduct; or (ii) breach of representation and warranty under the Agreement.
- 7.5. **Indemnification by Curriculum Technology.** In addition to any indemnification obligations set forth in an applicable Schedule or Order Form, Curriculum Technology will indemnify, defend and hold harmless Customer, its affiliates and their respective directors, officers, employees, agents, successors and assigns (each a "Customer Indemnitee") from and against any and all losses, damages or expenses (including, without limitation, reasonable attorneys' fees and costs) arising from any claim, suit or proceeding brought by a third party against a Customer Indemnitee arising out of Curriculum Technology's gross negligence or willful misconduct. For the avoidance of doubt, the indemnification obligations set forth in this Section 7.5 shall not apply to infringement, which is addressed under Section 8 of this Agreement.

8. INFRINGEMENT.

- 8.1. **Curriculum Technology Infringement Obligations.** If any third party brings a claim against Customer alleging that the Offering infringes a U.S. or European patent or a copyright under applicable law of any jurisdiction in which Customer is using the Offering, Customer must promptly notify Curriculum Technology in writing and make no admission in relation to such alleged infringement. Provided that Customer has promptly fulfilled all of the foregoing obligations and is not in material breach of the Agreement, Curriculum Technology shall at its own expense and option: (a) indemnify, defend, and settle such claim, (b) procure Customer the right to use the Offering, (c) modify or replace the Offering to avoid infringement; or (iv) refund the applicable fee paid for the current term. In the event that Curriculum Technology exercises option (a) above, it shall have the sole and exclusive authority to defend and/or settle any such claim or action, provided that Curriculum Technology will keep Customer informed of, and will consult with any independent legal advisors appointed by Customer at Customer's own expense regarding the progress of such defense.
- 8.2. **Exceptions.** Curriculum Technology shall have no liability to Customer under Section 8.1 or otherwise for any claim or action alleging infringement based upon: (a) any use of the Offering in a manner other than as specified by Curriculum Technology, (b) any combination of the Offering with other products, equipment, devices, software, systems or data not manufactured or provided by Curriculum Technology to the extent such claim is directed against content not provided by Curriculum Technology, (c) the Customer Content, or the use of the Customer Content, or (d) any modifications or customization of the Offering by any person other than Curriculum Technology or a Curriculum Technology-authorized third party (any of the foregoing as described in subsections (a) through (d), separately and collectively, "Customer Matters").
- 8.3. **Customer Infringement Obligations.** Customer shall, at its own expense, indemnify and, at Curriculum Technology's option, defend Curriculum Technology and each other Curriculum Technology Indemnitee against any losses, damages or expenses (including, without limitation, reasonable attorneys' fees and costs) arising from any claim, suit or proceeding brought by a third party against a Curriculum Technology Indemnitee arising out of a Customer Matter and shall pay any damages finally awarded or settlement amounts agreed upon to the extent based upon a Customer Matter (any of the foregoing indemnifiable matters, each a "Curriculum Technology Claim"), provided that Customer will not settle any Curriculum Technology Claim unless such settlement completely and forever releases each Curriculum Technology Indemnitee with respect thereto or unless Curriculum Technology provides its prior written consent to such settlement. Curriculum Technology agrees (a) to provide Customer with prompt written notice of any Curriculum Technology Claim, and (b) to provide such assistance as Customer may reasonably request, at Customer's expense, in order to settle or defend any such Curriculum Technology Claim.
- 8.4. **Exclusive Remedy.** THE FOREGOING PROVISIONS OF THIS SECTION 8 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF EACH PARTY, AND THE EXCLUSIVE REMEDY OF EACH PARTY WITH RESPECT TO CLAIMS BY ANY THIRD PARTY ALLEGING INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT.

9. CONFIDENTIALITY.

- 9.1. **Nondisclosure and Nonuse.** Each Party receiving Confidential Information agrees not to use such Confidential Information except for the purposes set forth in this Agreement, and pursuant to such use shall disclose such Confidential Information only to those directors, officers, employees and agents of such Party (a) whose duties justify their need to know such information, and (b) who have been clearly informed of their obligation to maintain the confidential, proprietary and/or trade secret status of such Confidential Information. Each Party receiving Confidential Information shall treat such information as strictly confidential, and shall use the same care to prevent disclosure of such information as such Party uses with respect to its own confidential and proprietary information, provided that in any case it shall not use less than the care a reasonable person would use under similar circumstances. Each Party acknowledges that it has all requisite authority under applicable laws to provide the other Party with access to Confidential Information.
- 9.2. **Notice.** The receiving Party will promptly notify the disclosing Party in the event the receiving Party learns of any unauthorized possession, use or disclosure of the Confidential Information and will provide such cooperation as the disclosing Party may reasonably request, at the disclosing Party's expense, in any litigation against any third parties to protect the disclosing Party's rights with respect to the Confidential Information.
- 9.3. **Terms of Agreement.** Except as otherwise provided by law, neither Party shall disclose the terms of the Agreement to any third party; provided, however, that either Party may disclose the terms of this Agreement to its professional advisers, or to any potential investor or acquirer of a substantial part of such Party's business (whether by merger, sale of assets, sale of stock or otherwise), provided that such third party is bound by a written agreement or legal duty on terms at least as strict as those set out in this Section 9 to keep such terms confidential.
- 9.4. **Exceptions to Confidential Treatment.** Notwithstanding the foregoing, the preceding provisions of this Section 9 will not apply to information that: (a) is publicly available or in the public domain at the time disclosed, (b) is or becomes publicly available or enters the public domain through no fault of the recipient, (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto, (d) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure, (e) is independently developed by the recipient, or (f) is approved for release or disclosure by the disclosing Party without restriction. Each Party may disclose Confidential Information to the limited extent necessary: (a) to comply with the

order of a court of competent jurisdiction or other governmental body having authority over such Party, provided that the Party making the disclosure pursuant to the order will first have given notice to the other Party and made a reasonable effort to obtain a protective order, (b) to comply with applicable law or regulation requiring such disclosure, provided that the Party making the disclosure pursuant to such law or regulation will first have given notice to the other Party, or (c) to make such court filings as may be required to establish a Party's rights under this Agreement. Notwithstanding anything in this Section to the contrary, and, subject to applicable law, Curriculum Technology shall have the right to share individual Authorized End User Confidential Information to the extent it has received consent for such sharing from such Authorized End User.

- 9.5. **Contact Information.** Customer hereby authorizes Curriculum Technology to include and use individual Customer contact information (i.e., primary contact, system administrator, billing contact) in contact lists for emails, mailings, and faxes from Curriculum Technology relating to Curriculum Technology-provided products and services, support, product and service matters, newsletters, user groups and events, and to provide contact information to third parties whose products or services Customer has purchased through Curriculum Technology for the purpose of providing those products and services or support or maintenance for the products and services. Customer acknowledges that it has the right to provide such consent, and Curriculum Technology acknowledges that it will not use or distribute the contact information except as explicitly set forth above.
- 9.6. **Other Rights.** Customer hereby grants Curriculum Technology the limited right to collect aggregated usage statistics with respect to the Offerings. Such usage statistics are and shall be aggregated and not identifiable of any individual, including any Authorized End User. To the extent that any Offering contains an Auto Report feature for this purpose, Customer will not disable the Auto Report feature of the Offering, or undertake any action which has the effect of preventing such feature from operating correctly or the effect of modifying the information reported thereby. Customer hereby grants to Curriculum Technology the limited right to use Customer's name, logo and/or other marks for the sole purpose of listing Customer as a user of the applicable Offering in Curriculum Technology's promotional materials. Curriculum Technology agrees to discontinue such use within fourteen (14) days of Customer's written request.

10. MISCELLANEOUS MATTERS.

- 10.1. **Severability.** Should any term or provision of this Agreement be finally determined by a court of competent jurisdiction to be void, invalid, unenforceable or contrary to law or equity, the offending term or provision shall be construed (a) to have been modified and limited (or if strictly necessary, deleted) only to the extent required to conform to the requirements of law, and (b) to give effect to the intent of the Parties (including, without limitation, with respect to the economic effect of the Agreement), and the remainder of this Agreement (or, as the case may be, the application of such provisions to other circumstances) shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.
- 10.2. **Conflict Resolution.** This Agreement shall for all purposes be governed by and interpreted in accordance with the laws of the State of Illinois. In the event of any dispute between the parties which arises out or relates to this Agreement, such disputes shall be finally determined by binding arbitration in Chicago, IL in accordance with the law of the State of Illinois and the rules of the American Arbitration Association ("AAA"). All such disputes shall be determined by three arbitrators selected jointly by the parties, and in the event that the parties cannot agree on one or more arbitrators, such arbitrators shall be selected by AAA. All proceedings and documentation arising out of relating to such arbitration shall be considered Confidential Information hereunder. Each Party irrevocably submits to the exclusive jurisdiction of such arbitration panel. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
- 10.3. **Modification and Waiver.** No modification, amendment, supplement, or other change to this Agreement will be effective unless set forth in writing and signed by duly authorized representatives of Curriculum Technology and Customer. No waivers under this Agreement will be effective unless expressly set forth in writing and signed by a duly authorized representative of the Party against whom enforcement thereof is sought. The failure of either Party to insist upon strict performance of any provision of this Agreement, or to exercise any right provided for herein, shall not be deemed to be a waiver of such provision or right with respect to subsequent claims (unless expressly so stated in a valid amendment or waiver), and no waiver of any provision or right shall affect the right of the waiving Party to enforce any other provision or right herein.
- 10.4. **Assignment.** No right or obligation of Customer under this Agreement may be assigned, delegated or otherwise transferred, whether by agreement, operation of law or otherwise, without the express prior written consent of Curriculum Technology, and any attempt to assign, delegate or otherwise transfer any of Customer's rights or obligations hereunder, without such consent, shall be void. Subject to the preceding sentence, this Agreement shall bind each Party and its permitted successors and assigns.
- 10.5. **Marketing/PR.** Customer agrees to be included and/or actively participate in public relations activities, including, but not limited to, press releases, traditional and social media engagement, blogs, etc. All activities are at the discretion of Curriculum Technology and will be approved by the Customer before publication. Customer and Curriculum Technology shall work together to ensure completion of all PR/media activities as soon as practical after contract Effective Date.

- 10.6. **Remedies.** The Parties agree that any breach of confidentiality or proprietary rights would cause irreparable injury for which no adequate remedy at law exists; therefore, the Parties agree that equitable remedies, including without limitation, injunctive relief and specific performance, are appropriate remedies to redress any such breach or threatened breach of this Agreement, in addition to other remedies available to the Parties. All rights and remedies hereunder shall be cumulative, may be exercised singularly or concurrently and shall not be deemed exclusive except as provided in Section 8. If any formal dispute resolution is brought to enforce any obligations hereunder, the prevailing Party shall be entitled to receive its legal fees, costs and other collection expenses, in addition to any other relief it may receive.
- 10.7. **Notices.** Any notice or communication permitted or required hereunder shall be in writing and shall be delivered in person or by courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, and, in the case of notices to Curriculum Technology, sent to Curriculum Technology LLC, Attn: President PO Box 4120 # 64911, Portland, OR 97208-4120 or to such other address as shall be given in accordance with this Section 10.7, and, in the case of Customer, to the address on the applicable Order Form, and shall in each case be effective upon receipt.
- 10.8. **Force Majeure.** Except with regard to payment obligations, neither Party will be responsible for any failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts or inability to obtain any export or import license or other approval or authorization of any government authority.
- 10.9. **U.S. Government Users.** The following applies to any end user that is a U.S. Government entity: Each of the components that comprise the Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Software with only those rights set forth herein. Contractor/manufacturer is Curriculum Technology LLC, 9450 SW Gemini Dr # 64911, Beaverton, OR 97008-7105. All rights not specifically granted in this Agreement are reserved by Curriculum Technology.
- 10.10. **Export Control.** Customer shall not export or allow the export or re-export the Offering, any components thereof or any Confidential Information of Curriculum Technology without the express, prior, written consent of Curriculum Technology and except in compliance with all export laws and regulations of the U.S. Department of Commerce and all other U.S. agencies and authorities, including without limitation, the Export Administration Regulations of the U.S. Department of Commerce Bureau of Export Administration (as contained in 15 C.F.R. Parts 730-772), and, if applicable, relevant foreign laws and regulations.
- 10.11. **Relationship.** Curriculum Technology and Customer are independent contracting parties. This Agreement shall not constitute the Parties as principal and agent, partners, joint venturers, or employer and employee.
- 10.12. **Entire Agreement.** This Master Agreement, together with the Order Form(s), Schedule(s) and other Exhibit(s) constitutes the entire, full and complete Agreement between the Parties concerning the subject matter of the Agreement and supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties, and this Agreement prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the Parties relating to its subject matter. Any component of this Agreement, including any Order Form thereto, may be executed in counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument. Facsimile signatures will be considered original signatures