

TERMS AND CONDITIONS

1. SERVICES

1.1 Subject to all terms and conditions of this Agreement and Customer's compliance therewith, Company hereby grants Customer a limited, personal, non-sublicensable, non-transferable, royalty-free, nonexclusive license to access and use the Services (as defined by the Order Form), which may include the Company's website(s) and platform together with all related information, tools, data, APIs, content and documentation solely for (i) Customer's educational purposes and (ii) other purposes separately authorized by Company in writing. The Services are subject to modification from time to time at Company's sole discretion for any purpose deemed appropriate by Company. Company will use reasonable efforts to give Customer prior notice of material modifications.

1.2 Subject to all terms and conditions of this Agreement and Customer's compliance therewith, Company shall use commercially reasonable efforts to (a) make the Services available to Customer and (b) perform the Professional Services described in an applicable Order Form. Notwithstanding the foregoing, Company may suspend Customer's access to the Services (i) for scheduled or emergency maintenance or (ii) in the event Customer is in material breach of this Agreement, including failure to pay any amounts due to Company. Company will use commercially reasonable efforts to provide notice to Customer prior to any scheduled maintenance

1.3 The parties acknowledge that certain information is to be provided by Customer ("Customer Data"). Company will not be liable for any failure to perform Services that is caused by Customer's delay in or failure to provide Customer Data. Customer grants Company a world-wide, non-exclusive, royalty-free license during the Service Term to use and distribute Customer Data solely for the purpose of fulfilling Company's obligations hereunder this Agreement. Additionally, Company may use aggregated and de-identified Customer Data

solely for the internal purpose of improving the Services. Customer represents and warrants that it owns all right, title and interest in and to the Customer Data. Customer shall indemnify Company for any claim that the Customer Data (i) infringes or violates the intellectual property or other rights of a third party or (ii) violates applicable law (including but not limited to the Family Education Rights and Privacy Act (FERPA)).

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, and will not permit any third party to: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services or any software, documentation or data related to the Services (provided that reverse engineering is prohibited only to the extent such prohibition is not contrary to applicable law); modify, translate, or create derivative works based on the Services; use the Services for timesharing or service bureau purposes or for any purpose other than its own use for the benefit of its end users and customers; or use the Services other than in accordance with this Agreement and in compliance with all applicable laws and regulations (including but not limited to FERPA), intellectual property, consumer and child protection, obscenity or defamation).

2.2 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, server, software, operating system, networking, web servers, long distance and local telephone service (collectively, "Equipment"). Customer shall be responsible for ensuring that such Equipment is compatible with the Services and complies with all configurations and specifications set forth in Company's published policies then in effect. Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to

administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent. Additionally, Customer agrees to be bound by any end-user software agreements that govern the installation and use of such Equipment.

2.3 Customer will cooperate with Company in connection with the performance of this Agreement by making available such personnel and information as may be reasonably required, and taking such other actions as Company may reasonably request. Customer will also cooperate with Company in establishing a password or other procedures for verifying that only designated employees of Customer have access to any administrative functions of the Services.

2.4 Customer will be responsible for maintaining the security of Customer's account passwords (including but not limited to administrative and user passwords), and for all uses of Customer account with or without Customer's knowledge or consent.

3. CONFIDENTIALITY

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after three years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required by law. In any event, Company may use for development, diagnostic and corrective purposes any data and information it collects relating to the Services.

3.2 Both Parties will have the right to disclose the existence but not the terms and conditions of this Agreement, unless such disclosure is approved in writing by both Parties prior to such disclosure, or is included in a filing required to be made by a Party with a governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis as reasonably necessary to potential investors or acquirers.

4. INTELLECTUAL PROPERTY RIGHTS

4.1 Except as expressly set forth herein, Company alone (and its licensors, where applicable) will retain all intellectual property rights relating to the Services or any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any third party relating to the Services, which are hereby assigned to Company. Customer will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this Agreement. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Services, or any intellectual property rights.

4.2 Company shall hold Customer and its respective officers, directors, employees, agents harmless from liability to unaffiliated third parties resulting from infringement by the Services of any United States patent or any copyright or misappropriation of any trade secret. The foregoing obligations do not apply with respect to portions or components of the Services (i) not created by Company including Customer Data, (ii) resulting in whole or in part in accordance from Customer specifications, (iii) that are materially modified after delivery by Company, (iv) combined with other commercially unforeseen products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of is not strictly in accordance with this Agreement. Company's indemnification obligations under this Section are contingent on Customer providing Company: (i) prompt written

notice of the claim; (ii) the unconditioned right to control the defense and settlement of such claim; and (iii) reasonable cooperation in the defense of such claim, at Company's expense.

5. PAYMENT OF FEES

5.1 Customer will pay Company the then applicable fees for the Services within the Service Capacity (the "Fees"). Currently applicable Fees are set forth in the Order Form. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email).

5.2 Customer will pay all applicable service fees in advance. Company will bill all additional fees through an invoice and full payment for invoices issued in any given month must be received by Company fifteen (15) days after the mailing date of the invoice, or the Services may be suspended. Unpaid Fees are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.

5.3 If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's Customer Support department.

6. TERMINATION

6.1 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or ten (10) days in the case of nonpayment), if the other party breaches any of the terms or conditions of this Agreement. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other party's making an assignment for

the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business. Customer will pay in full for the Services up to and including the last day on which the Services are provided. Upon any termination, Company may, but is not obligated to, delete archived data.

6.2 All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

7. WARRANTY DISCLAIMER

COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. THE SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

8. LIMITATION OF LIABILITY

IN NO EVENT WILL COMPANY BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, THE DELAY OR INABILITY TO USE THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. THE TOTAL LIABILITY OF COMPANY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE THE FEES PAID TO COMPANY

HEREUNDER IN THE TWELVE MONTH PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

9. U.S. GOVERNMENT MATTERS

9.1 The Services are subject to the trade laws and regulations of the United States and other countries, including the Export Administration Regulations (EAR, 15 CFR Part 730 et seq.) and the sanctions programs administered by the Office of Foreign Assets Control (OFAC, 31 CFR Part 500). Customer will not import, export, re-export, transfer or otherwise use the Services in violation of these laws and regulations, including by engaging in any unauthorized dealing involving (i) a U.S. embargoed country (currently Cuba, Iran, North Korea, Sudan and Syria), (ii) a party included on any restricted person list, such as the OFAC Specially Designated Nationals List, or the Commerce Department's Denied Persons List or Entity List, or (iii) the design, development, manufacture, or production of nuclear, missile, or chemical or biological weapons. By using the Services, Customer represents and warrants that Customer is not located in any such country or on any such list. Customer will not engage in activity that would cause Company to be violation of these laws and regulations, and will indemnify Company for any fines, penalties or other liabilities incurred by Company for Customer's failure to comply with this provision.

10. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements,

communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provision.