

TERMS AND CONDITIONS

The EDUTEK SOLUTIONS, LLC ONLINE SOFTWARE-AS-A-SERVICE (SAAS) TERMS AND CONDITIONS apply to the Agreement (as defined hereinafter) made as of the Effective Date by and among EDUTEK SOLUTIONS, LLC with offices located at 101 North Pine Street, Spartanburg, S.C. 29302 ("EDUTEK SOLUTIONS, LLC") and Customer).

ARTICLE I: SCOPE OF SERVICES

Section 1.01 – Recitals: The above recitals and identification of parties are true and correct.

Section 1.02 – Delivery: EDUTEK SOLUTIONS, LLC shall deliver the Documentation to Customer on the Delivery Date. The Documentation shall be deemed accepted by Customer on the Delivery Date.

Section 1.03 – Acceptance: The Software shall be deemed accepted by Customer for all End Users thirty (30) days after delivery of the Software to Customer unless a Defect Notice is received by EDUTEK SOLUTIONS, LLC from Customer by such thirtieth (30th) day. Upon receiving Defect Notice from Customer, EDUTEK SOLUTIONS, LLC shall review the asserted discrepancy to determine if the discrepancy is valid. If, in the reasonable professional judgment of EDUTEK SOLUTIONS, LLC the discrepancy is valid, EDUTEK SOLUTIONS, LLC shall correct the discrepancy and resubmit the Software for acceptance by Customer. If, in the reasonable professional judgment of EDUTEK SOLUTIONS, LLC such discrepancy is not valid, EDUTEK SOLUTIONS, LLC shall submit to Customer a written explanation of the reasons why such asserted discrepancy is not valid. The written explanation of EDUTEK SOLUTIONS, LLC set forth herein shall be deemed accepted by Customer within ten (10) days after Customer's receipt of the written explanation unless EDUTEK SOLUTIONS, LLC receives from Customer written notice rejecting such explanation and terminating the Agreement within such ten (10) day period. Upon receipt of Defect Notice from Customer by EDUTEK SOLUTIONS, LLC as set forth above, the Software shall be deemed accepted by Customer except as to the discrepancies specified in the Defect Notice.

Section 1.04 – Risk of Loss: Customer assumes risk of loss to the Deliverables and Documentation as of the Delivery Date.

Section 1.05 – Authorized Use: Customer and End User shall use reasonable efforts to prevent Unauthorized Users from accessing the Product and Password. Customer and End User shall use reasonable efforts to prevent Unauthorized Access to the Product and Password.

Section 1.06 – Password: Customer hereby accepts responsibility for, and shall be liable for, all access to the Software in connection with the Password. Customer and End User shall access the Software only using the Password. End User shall be responsible for the confidentiality and maintenance of the Password. End User shall not assign the Password and all assignments of the Password by End User shall be void.

Section 1.07 – Access: Customer hereby authorizes and grants EDUTEK SOLUTIONS, LLC unrestricted remote access twenty-four (24) hours a day, seven (7) days a week to the Software, Computer, and data and information of Customer and End User for purposes of auditing use and providing software technical support.

Section 1.08 – Cooperation: Customer hereby acknowledges that successful performance by EDUTEK SOLUTIONS, LLC of any services regarding the Product or EDUTEK SOLUTIONS, LLC obligations under the Agreement, including without limitation, invoicing, shall require Customer and End User to cooperate with EDUTEK SOLUTIONS, LLC in good faith to provide EDUTEK SOLUTIONS, LLC data, information and access to the Computer, Software, End Users and the Customer's Facility as may be requested by EDUTEK SOLUTIONS, LLC from time to time. Customer hereby agrees to provide such good faith cooperation and information.

ARTICLE II: SUPPORT

Section 2.01 – Defect Resolution: EDUTEK SOLUTIONS, LLC shall correct Defects in the Software within a reasonable time after such Defect is reported to EDUTEK SOLUTIONS, LLC as follows:

(a) Problem Reporting: Upon discovering a Defect, Customer shall report the Defect to EDUTEK SOLUTIONS, LLC ("Service Request").

(b) Telephone Support: Within two (2) hours after receiving a Service Request, EDUTEK SOLUTIONS, LLC shall provide telephone support in the form of consultations, assistance and advice concerning correction of the Defect ("Telephone Support").

(c) Support: If a Defect is not corrected through Telephone Support within forty eight (48) hours after receiving a Service Request, EDUTEK SOLUTIONS, LLC shall conduct tests and analyses, which may include on-site support, as required to reproduce, isolate and correct the Defect using data and information provided to EDUTEK SOLUTIONS, LLC by Customer and shall implement work around processes designed to minimize the impact of the Defect.

Section 2.02 – Performance: The Defect resolution services to be provided by EDUTEK SOLUTIONS, LLC pursuant to Section 2.01 of these Terms and Conditions shall be available 8:00 a.m. to 5:00 p.m. EST, Monday through Friday (excluding holidays). Customer and End User shall cooperate with EDUTEK SOLUTIONS, LLC so that EDUTEK SOLUTIONS, LLC may perform such Defect resolution services by providing data and information reasonably required by EDUTEK SOLUTIONS, LLC to correct Defects.

Section 2.03 – Telephone Consultations: EDUTEK SOLUTIONS, LLC shall provide Customer with reasonable telephone consultations in answering questions concerning use of the Software. EDUTEK SOLUTIONS, LLC will make available support staff by phone and via email between 8:00 a.m. to 5:00 p.m. EST, Monday through Friday (excluding holidays).

Section 2.04 – Security and Backup Services: EDUTEK SOLUTIONS, LLC shall provide backup services during the Term using commercially reasonable procedures. EDUTEK SOLUTIONS, LLC will provide a daily backup via the Internet. EDUTEK SOLUTIONS, LLC shall provide industry-standard security measures for Customer's data in a secure server environment, including encrypted data transmission and applicable firewall protection.

Section 2.05 – Updates: EDUTEK SOLUTIONS, LLC agrees to release Updates to the Software as such Updates become available. EDUTEK SOLUTIONS, LLC shall provide Customer access to all Updates to the Software within thirty (30) days after the date that such Update is released by EDUTEK SOLUTIONS, LLC. EDUTEK SOLUTIONS, LLC shall provide Customer with documentation describing the purpose, function and utility of such Update. EDUTEK SOLUTIONS, LLC shall implement all Updates for the Deliverables. Updates shall be deemed accepted by Customer for each End User upon EDUTEK SOLUTIONS, LLC providing access to such Update.

Section 2.06 – Additional Training and Consulting Services: During the Term, Customer shall have the right to request Additional Training or Consulting Services for an End User from EDUTEK SOLUTIONS, LLC by submitting a Purchase Order to EDUTEK SOLUTIONS, LLC. Upon EDUTEK SOLUTIONS, LLC acceptance of a Purchase Order, EDUTEK SOLUTIONS, LLC shall provide End User with Consulting Services or Additional Training (as the case may be). All Additional Training and Consulting Services shall be performed pursuant to a Purchase Order to EDUTEK SOLUTIONS, LLC on mutually agreeable terms and shall be subject to the discretion of EDUTEK SOLUTIONS, LLC and shall be deemed delivered by EDUTEK SOLUTIONS, LLC and deemed accepted by Customer and such End User upon performance.

Section 2.07 – Schedule: All services to be provided by EDUTEK SOLUTIONS, LLC pursuant to the Agreement, excluding Defect resolution services pursuant to Section 2.01 of these Terms and Conditions, shall be performed by EDUTEK SOLUTIONS, LLC during the hours of 8:00 a.m. through 5:00 p.m. Eastern Standard Time, Monday through Friday (excluding holidays).

Section 2.08 – Customer Responsibilities and Customer Data: Customer hereby acknowledges and agrees that Customer or End User (as applicable) shall be solely responsible for all Information. Such responsibilities of Customer or End User (as applicable) include, without limitation, creating, modifying or inputting the Information. Customer hereby acknowledges and agrees that EDUTEK SOLUTIONS, LLC shall not be responsible for assisting Customer or End User in creating, modifying, or inputting Information. All data created and/or originated by Customer hereunder shall be the property of Customer, and EDUTEK SOLUTIONS, LLC makes no claim of ownership to such data.

ARTICLE III: PAYMENT

Section 3.01 – Start-Up Fee: Customer shall pay EDUTEK SOLUTIONS, LLC the Start-Up and Training Fee in accordance with the Agreement.

Section 3.02 – Subscription Fee: Customer shall pay EDUTEK SOLUTIONS, LLC the Subscription Fee in accordance with the Agreement.

Section 3.03 – Additional Fees: Upon signing and submitting a License Agreement to EDUTEK SOLUTIONS, LLC for an End User subsequent to the Effective Date, all fees associated with the license and maintenance of the Software, including (without limitation) Subscription Fees or additional Start-Up Fees, shall be subject to EDUTEK SOLUTIONS, LLC's then prevailing rates to account for estimated increases in volume, as determined in the reasonable discretion of EDUTEK SOLUTIONS, LLC.

Section 3.04 – Annual Fees: EDUTEK SOLUTIONS, LLC shall have the right to increase the Subscription Fee on each anniversary of the Effective Date by providing Customer with thirty (30) days advance written notice of the then applicable Subscription Fee. The percentage increase in the Subscription Fee each year shall not exceed ten percent (10%) of what the immediately preceding Subscription Fee would have been for the same number of End Users at the time of such anniversary.

Section 3.05 – Consulting Fee: EDUTEK SOLUTIONS, LLC shall perform Additional Training or Consulting Services at the time and material rates of EDUTEK SOLUTIONS, LLC as set forth in a Purchase Order. Any additional services provided by EDUTEK SOLUTIONS, LLC to Customer or End User that are not provided for under the Agreement shall be invoiced to Customer by EDUTEK SOLUTIONS, LLC at the time and material rates of EDUTEK SOLUTIONS, LLC prevailing at the time such services are rendered.

Section 3.06 – Invoicing and Payment: EDUTEK SOLUTIONS, LLC shall invoice Customer pursuant to the Fee Schedule for the Subscription Fee and any costs incurred by EDUTEK SOLUTIONS, LLC in providing services under the Agreement, including, without limitation, any Purchase Orders. Customer shall pay any such invoice in full within thirty (30) days of receipt.

Section 3.07 – Taxes: Customer shall pay any and all applicable taxes incurred in connection with the Agreement including (without limitation) any applicable sales or use taxes and any applicable personal property taxes (excluding income taxes assessed against EDUTEK SOLUTIONS, LLC).

Section 3.08 – Late Fees: Any invoiced amount (or portion thereof) which is not paid within thirty (30) days after receipt of such invoice by Customer shall be increased by a late charge equal to one and one-half percent (1½%) for each month (18% per annum) in which such invoiced amount (or portion thereof) is due and not paid.

Section 3.09 – Access Costs: Customer shall be responsible for all costs in accessing the Software, including (without limitation) telecommunications and telephone costs, Internet service provider costs, Internet access software, computer hardware, broadband costs, wireless costs, modem, fees imposed by third parties, or any other costs incurred by Customer or End User in accessing the Software.

ARTICLE IV: TERMINATION

Section 4.01 – Termination Limitations: The Agreement, including, without limitation, the Terms and Conditions, License Agreements and Purchase Orders may only be terminated or cancelled as provided under this Article IV.

Section 4.02 – Term: The Agreement shall be valid for the Term. The License Agreement shall be valid for the License Term.

Section 4.03 – Cancellation: If Customer or End User violates its obligations under the Agreement or License Agreement, EDUTEK SOLUTIONS, LLC shall have the right to cancel the Agreement or such License Agreement. If EDUTEK SOLUTIONS, LLC materially violates its obligations under the Agreement, Customer shall have the right to cancel the Agreement by sending Cancellation Notice to EDUTEK SOLUTIONS, LLC. If EDUTEK SOLUTIONS, LLC materially violates its obligations under the License Agreement, End User shall have the right to cancel the License Agreement by sending Cancellation Notice to EDUTEK SOLUTIONS, LLC. Upon receiving Cancellation Notice, the receiving party shall have thirty (30) days from the date of such notice to either cure any alleged noncompliance, or if the alleged noncompliance cannot be cured within such thirty-day period, to begin curing such alleged noncompliance in good faith. Subject to such opportunity to cure, the cancellation shall be effective as of the thirty-first (31st) day next succeeding the date of Cancellation Notice.

Section 4.04 – Nonpayment: Notwithstanding any provisions to the contrary, EDUTEK SOLUTIONS, LLC shall have the right to disable each Password and deny access to the Software without notice upon Customer's failure to pay an invoice within thirty (30) days after receipt by Customer. Such nonpayment shall constitute a material breach of the Agreement and shall be sufficient cause for cancellation of the Agreement for such Customer and each End User by EDUTEK SOLUTIONS, LLC.

Section 4.05 – Shut-off: Notwithstanding Section 4.03, EDUTEK SOLUTIONS, LLC shall have the right to disable and deny the Password for Customer or an End User and cancel the License Agreement without notice upon an End User or Customer violation of Section 5.05 or upon receipt of notice by EDUTEK SOLUTIONS, LLC challenging Customer's or End User's use of the Software.

Section 4.06 – Deactivation and Removal: Upon termination or cancellation of the Agreement or a License Agreement, EDUTEK SOLUTIONS, LLC shall have the right to disable and deny the Password(s) and cease Customer and End User access to the Software.

Section 4.07 – Effect: Termination of a Purchase Order shall terminate such Purchase Order only. Termination or cancellation of a License Agreement shall terminate or cancel such License Agreement and any Purchase Order for such Customer or End User. Termination or cancellation of the Agreement shall automatically terminate or cancel the Agreement, each Purchase Order and each License Agreement.

Section 4.08 – Return of Materials: Upon termination or cancellation of the Agreement or a License Agreement for Customer or an End User, Customer or End User (as the case may be) shall: (i) cease any and all access to the Software; (ii) destroy all copies of the Software and Documentation and shall provide EDUTEK SOLUTIONS, LLC with a certificate of compliance with this Section signed by an authorized representative of Customer and by End User. Upon termination or cancellation of the Agreement or a License Agreement, Customer shall promptly remove, migrate or convert the Information and Customer shall be responsible for and shall pay all fees and costs in connection therewith.

Section 4.09 – Payments: Upon termination or cancellation of the Agreement, EDUTEK SOLUTIONS, LLC shall be entitled to retain all payments rendered to EDUTEK SOLUTIONS, LLC under the Agreement, including, without limitation, the Terms and Conditions, License Agreements and Purchase Orders in anticipation of services, including, without limitation, all fees and expenses rendered to EDUTEK SOLUTIONS, LLC by Customer hereunder. Termination or cancellation of this Agreement shall not terminate or cancel any payment obligation of Customer under the Agreement, including, without limitation, the Terms and Conditions, License Agreements and Purchase Orders.

Section 4.10 – Continuation: The terms and provisions of Article IV shall survive termination and cancellation of the Agreement and each License Agreement.

ARTICLE V: WARRANTY

Section 5.01 – Software Warranty: EDUTEK SOLUTIONS, LLC represents and warrants that the Software shall perform substantially as represented in the Documentation.

Section 5.02 – Services Warranty: The services to be provided by EDUTEK SOLUTIONS, LLC hereunder shall be performed on a best-efforts basis and shall conform to the standards generally observed in the industry for similar services.

SECTION 5.03 – WARRANTY LIMITATION: THE FOREGOING SOFTWARE WARRANTY IN SECTION 5.01 AND THE SERVICES WARRANTY IN SECTION 5.02 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES OF MERCHANTABILITY. EXCEPTING THE WARRANTIES EXPRESSLY ACKNOWLEDGED HEREUNDER, EDUTEK SOLUTIONS, LLC HEREBY DISCLAIMS AND CUSTOMER AND END USER HEREBY WAIVE ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY. EDUTEK SOLUTIONS, LLC HEREBY DISCLAIMS AND CUSTOMER AND END USER HEREBY WAIVE ANY WARRANTY THAT USE OF OR ACCESS TO THE INTERNET OR THE SOFTWARE BY CUSTOMER OR END USER WILL BE UNINTERRUPTED OR ERROR FREE. EDUTEK SOLUTIONS, LLC HEREBY DISCLAIMS AND CUSTOMER AND END USER HEREBY WAIVE ANY WARRANTY OR GUARANTEE AGAINST UNAUTHORIZED ACCESS BY THIRD PARTIES TO THE SOFTWARE. CUSTOMER AND END USER HEREBY AGREE THAT USE OF THE INTERNET SHALL BE AT THE SOLE AND EXCLUSIVE RISK OF CUSTOMER AND END USER AND SUBJECT TO THE RESTRICTIONS, TERMS AND CONDITIONS, RULES, REGULATIONS, POLICIES, APPLICABLE LAWS, AND CODES OF CONDUCT GOVERNING THE INTERNET.

Section 5.04 – Express Warranties: Customer and End User hereby acknowledge and agree that EDUTEK SOLUTIONS, LLC (including officers, employees, agents, directors and independent contractors of EDUTEK SOLUTIONS, LLC) has not made any express warranties concerning the Product except the warranties in Sections 5.01 and 5.02 of these Terms and Conditions.

Section 5.05 – Lawful Purpose: Customer represents and warrants all Customer and End User access to the Software shall not violate any contract, statute, rule, regulation, or other obligation, including, but not limited to, data privacy and the transmission of technical and personal data, under which Customer or End User is bound. Customer represents and warrants that Customer and End User shall not access the Software to conduct or solicit the performance of any business or activity that is tortious or prohibited by law.

SECTION 5.06 – DATA DISCLAIMER: CUSTOMER AND END USER HEREBY ACKNOWLEDGE AND AGREE THAT CUSTOMER AND END USER SHALL BE SOLELY RESPONSIBLE FOR AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS EDUTEK SOLUTIONS, LLC FOR ANY EXPENSE COST, LOSS, OR LIABILITY ARISING IN CONNECTION WITH THE INTEGRITY, MAINTENANCE, SECURITY, PUBLICITY, LOSS OR BACK-UP OF THE INFORMATION OR THE SOFTWARE, REGARDLESS OF THE LOCATION OF THE INFORMATION OR THE SOFTWARE. THIS SECTION SHALL SURVIVE TERMINATION AND CANCELLATION OF THE AGREEMENT AND EACH LICENSE AGREEMENT.

Section 5.07 – Access: Customer hereby acknowledges and agrees that access to the Software may be affected by local market network telecommunications activity, electronic mail failure, capacity and compatibility with third party communication equipment, communication software, web browsers and Internet (or Intranet) enabled software. EDUTEK SOLUTIONS, LLC hereby disclaims and Customer and End User hereby waive any and all EDUTEK SOLUTIONS, LLC responsibility for any failures in connection with local market network telecommunication activity, electronic mail failure, capacity and compatibility with third party communication equipment, communication software, web browsers and Internet (or Intranet) enabled software.

Section 5.08 – Downtime: Customer hereby acknowledges and agrees that the Software may be inaccessible for a period of time for purposes of maintenance, installation, update implementation, replacements, backup, or modifications of the Software. EDUTEK SOLUTIONS, LLC hereby disclaims, and Customer and End User hereby waive, any and all responsibility of EDUTEK SOLUTIONS, LLC resulting from Customer's or End User's failure to access the Software during such downtime. All scheduled maintenance shall occur during non-peak hours including after 6:00 p.m. weekdays and weekends.

Section 5.09 – Indemnification: Customer shall defend, indemnify and hold harmless EDUTEK SOLUTIONS, LLC and its officers, directors, employees, and agents from and against any and all claims, actions, liabilities, expenses, costs, or losses arising from (i) Customer's or End User's modification of the Product; (ii) Customer's or End User's combination, interface, operation or use of the Product with Third Party Technology; (iii) misuse of the Product by Customer, End User or any Unauthorized User; (iv) the acts (or any failure to act) of Customer or End User hereunder; and (v) any breach by Customer or End User of the obligations of Customer or End User under the Agreement. This Section shall survive termination and cancellation of the Agreement and each License Agreement.

Section 5.10 – Limitation of Damages: EDUTEK SOLUTIONS, LLC shall not be liable for any lost profits, or consequential, exemplary, incidental or punitive damages, regardless of the form of action, whether in contract or in tort, including negligence, and regardless of whether EDUTEK SOLUTIONS, LLC has been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable. Notwithstanding any provision to the contrary, the liability of EDUTEK SOLUTIONS, LLC for any reason and for any cause of action whatsoever in connection with the Agreement, the Product, or the services provided by EDUTEK SOLUTIONS, LLC shall not exceed the total amount of money paid by Customer to EDUTEK SOLUTIONS, LLC within the next preceding twelve (12) months from the date on which such claimed damage or injury arose. This Section shall survive termination and cancellation of the Agreement.

Section 5.11 – Force Majeure: EDUTEK SOLUTIONS, LLC shall not be liable for any failure to perform its obligations under the Agreement because of circumstances beyond the control of EDUTEK SOLUTIONS, LLC, which such circumstances shall include, without limitation: natural disaster; terrorism; riot; sabotage; labor disputes; war; any acts or omissions of any government or governmental authority; declarations of governments; transportation delays; computer failure; hardware failure; telecommunications failure; electronic mail failure; power failure; failure of Customer or End User to cooperate with the reasonable requests of EDUTEK SOLUTIONS, LLC; breach of the Agreement or a License Agreement by Customer or End User; misuse of the Product by Customer, End User or third parties; and any other events reasonably beyond the control of EDUTEK SOLUTIONS, LLC.

Section 5.12 – Guarantee: Customer hereby guarantees performance of the obligations of End User under the Agreement, including, without limitation, these Terms and Conditions, the License Agreement and any and all Purchase Orders.

Section 5.13 – Vendor Services: Customer and End User hereby acknowledge and agree that the Information is transmitted for use with the Software via Vendor Services and EDUTEK SOLUTIONS, LLC makes no representations or warranties concerning the Vendor Services, including (without limitation) EDUTEK SOLUTIONS, LLC does not warrant: (i) the integrity or reliability of the data transmitted using the Vendor Services; (ii) the accuracy, completeness, or usefulness of the data; (iii) the results obtained from the Vendor Services; or (iv) that access to the Vendor Services will be uninterrupted. Customer and End User hereby acknowledge and agree that use of the Vendor Services shall be at the sole and exclusive risk of Customer and End User and subject to the rules, restrictions, rules, regulations, applicable laws and Vendor Terms governing the Vendor Services. Customer and End User shall comply with all Vendor Terms, including executing any and all Vendor Terms as required by a third-party vendor for use of the Vendor Services. Customer and End User shall defend, indemnify, and hold EDUTEK SOLUTIONS, LLC and its officers, directors, employees, agents, consultants and subcontractors harmless from and against any expenses, costs, claims, damages, or liabilities in connection with use of Vendor Services by Customer or End User. This Section shall survive termination and cancellation of the Agreement and each License Agreement.

Section 5.14 – Third Party Software Warranty: Customer and End User hereby acknowledge that Third Party Software is incorporated and used in connection with the Software. EDUTEK SOLUTIONS, LLC shall assign to Customer any warranties provided by Owner of Third Party Software in connection with Third Party Software, as permitted under any Vendor Terms. EDUTEK SOLUTIONS, LLC makes no guarantee or warranty with respect to Third Party Software. Customer and End User hereby acknowledge and agree that use of Third Party Software shall be at the sole and exclusive risk of Customer and End User and subject to the restrictions, rules, regulations, applicable laws and Vendor Terms by the Owner of Third Party Software governing Third Party Software. Customer and End User hereby acknowledge and agree that Customer or End User's sole remedy in connection with defects with Third Party Software shall be from the Owner of Third Party Software. Customer and End User shall defend, indemnify, and hold EDUTEK SOLUTIONS, LLC and its officers, directors, employees, agents, consultants and subcontractors harmless from and against any expenses, costs, claims, damages, or liabilities in connection with use of Third Party Software by Customer or End User. This Section shall survive termination and cancellation of the Agreement.

Section 5.15 – Copy of Data: EDUTEK SOLUTIONS, LLC shall provide to customer back-up copies of Customer's data upon request by customer; provided, however, EDUTEK SOLUTIONS, LLC reserves the right to charge Customer for providing such back-up copies. In the event of termination of the Agreement (other than by reason of a breach by Customer), EDUTEK SOLUTIONS, LLC will make available a copy of Customer's data, at no cost to Customer, within 30 days of such termination, if so requested by Customer at the time of termination.

Section 5.16 – Infringement: If final judgment from a court of competent jurisdiction is entered against Customer or End User for claims that the Software violates trade secrets, trademark, copyright or patent rights of a third party, EDUTEK SOLUTIONS, LLC shall perform one or more of the following actions (as determined in the exclusive discretion of EDUTEK SOLUTIONS, LLC within one (1) year of the date judgment in favor of such third party's claim is rendered by a court of competent jurisdiction:

(1) Replacement: Replace the Software with a non-infringing software product of substantially equivalent functional and performance capability;

(2) Modification: Modify the Software to avoid the infringement without substantially eliminating the functional and performance capabilities of the Software; or

(3) Obtain License: Obtain a license for use of the Software from the third-party claiming infringement for use of the Software.

EDUTEK SOLUTIONS, LLC shall have the right to participate, and Customer and End User shall permit and authorize EDUTEK SOLUTIONS, LLC to participate, in the defense of any such claim or action through legal counsel. The foregoing remedy does not apply, and EDUTEK SOLUTIONS, LLC shall have no obligation in connection with or relating to: (i) Customer's or End User's modification of the Software; (ii) Customer or End User failure to use the Software in accordance with the Documentation; (iii) Customer or End User failure to use the most current release or version of the Software; (iv) Customer's or End User's combination, interface, operation or use of the Software with third party technology; and (v) misuse of the Software. The remedies set forth herein shall be the sole and exclusive remedies of Customer under the Agreement for any and all claims of indemnification relating to infringement.

ARTICLE VI: INTELLECTUAL PROPERTY

Section 6.01 – Ownership and Title: Title to the Product and all technology, including (without limitation) web sites or interface technology, in connection with the Software (excluding Third Party Technology), shall be the exclusive property of EDUTEK SOLUTIONS, LLC, including all ownership rights to patents, copyrights, trademarks, Confidential Information and trade secrets in connection therewith.

Section 6.02 – Confidential Information: Each party to this Agreement shall not disclose Confidential Information except to Authorized Persons. Each party shall not duplicate, use or disclose Confidential Information except as otherwise permitted under the Agreement.

Section 6.03 – Trade Secrets: Customer and End User hereby acknowledges and agrees that the Confidential Information of EDUTEK SOLUTIONS, LLC derives independent economic value (actual or potential) from not being generally known to other persons who can obtain economic value from its disclosure or use and from not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; is the subject of reasonable efforts under the

circumstances to maintain its secrecy; and is a trade secret as defined under the South Carolina Trade Secrets Act, Section 35-8-10, et seq, of the Code of Laws of South Carolina.

Section 6.04 – Proprietary Information: Customer and End User shall not remove or alter any copyright notices, trademark notices or proprietary legends affixed by EDUTEK SOLUTIONS, LLC or a third party on the Product.

Section 6.05 – No Contest: Customer and End User shall not contest or aid in contesting the ownership or validity of the trademarks, trade secrets, Confidential Information, service marks or copyrights of EDUTEK SOLUTIONS, LLC.

Section 6.06 – EDUTEK SOLUTIONS, LLC Marks: Customer and End User hereby acknowledge that the EDUTEK SOLUTIONS, LLC Marks are owned exclusively by EDUTEK SOLUTIONS, LLC. EDUTEK SOLUTIONS, LLC shall retain all rights, titles and ownership interests in the EDUTEK SOLUTIONS, LLC Marks. All use of EDUTEK SOLUTIONS, LLC Marks by End User and all goodwill developed therefrom shall inure to the exclusive benefit of and on behalf of EDUTEK SOLUTIONS, LLC.

Section 6.07 – Reverse Engineering: Customer and End User shall not reverse engineer the Software and shall not allow the Software to be reverse engineered.

Section 6.08 – Modifications: Customer and End User shall not modify the Product and shall not allow the Product to be modified without the prior written consent of EDUTEK SOLUTIONS, LLC. If the Product is modified, such modifications shall be the sole and exclusive property of EDUTEK SOLUTIONS, LLC, and EDUTEK SOLUTIONS, LLC shall own all of the rights, title and interests to such modifications and any resulting computer software, including, without limitation, any and all copyrights, patents and trade secrets related thereto.

Section 6.09 – Copies: Customer and End User shall not copy the Software and the Documentation and shall not allow the Software and Documentation to be copied without the prior written consent of EDUTEK SOLUTIONS, LLC except Customer may copy the Deliverables for the exclusive purpose of implementing the Deliverables or any Updates on a Customer-owned computer.

Section 6.10 – Third Party Technology: Customer hereby acknowledges that the Software incorporates Third Party Technology (in whole or in part) for use in connection with the Software. Customer acknowledges that use of the Third-Party Technology when accessing the Software is subject to Vendor Terms for such Third Party Technology as provided by the vendor of the Third Party Technology. EDUTEK SOLUTIONS, LLC makes no warranty or representation concerning the Third-Party Technology.

Section 6.11 – License: The execution of the Agreement or the disclosure of Confidential Information hereunder shall not be construed as the grant of a license to Customer or End User to use the Confidential Information to develop proprietary products or derivative works, or to use any proprietary products or derivative works resulting from the Confidential Information.

Section 6.12 – Continuation: The terms and provisions of this Article VI shall survive termination and cancellation of the Agreement and each License Agreement.

ARTICLE VII: MISCELLANEOUS

Section 7.01 – Assignments: Subject to the prior written consent of EDUTEK SOLUTIONS, LLC, which shall not be unreasonably withheld, Customer shall have the right to assign Customer's rights under the Agreement and License Agreement (as applicable); however, the Agreement may not be assigned to a EDUTEK SOLUTIONS, LLC competitor. EDUTEK SOLUTIONS, LLC shall have the right to assign its rights under the Agreement and License Agreement upon written notice to Customer. End User shall not assign the Agreement or License Agreement.

Section 7.02 – Public Announcements: All public announcements of the relationship of EDUTEK SOLUTIONS, LLC and Customer or End User under the Agreement and License Agreement shall be subject to the prior written approval of EDUTEK SOLUTIONS, LLC and Customer or End User (as the case may be). EDUTEK SOLUTIONS, LLC, Customer, and End User shall not, directly or indirectly make or authorize any public statements concerning the Agreement, License Agreement, or the parties without the express prior written consent of EDUTEK SOLUTIONS, LLC, Customer, and End User (as the case may be). Notwithstanding anything to the contrary, EDUTEK SOLUTIONS, LLC shall have the right to publicly identify Customer and End User as a customer reference in any EDUTEK SOLUTIONS, LLC materials, including, without limitation, promotional and marketing materials or Internet websites.

Section 7.03 – Entire Agreement: The Agreement, including these Terms and Conditions, the License Agreement, and all other exhibits attached thereto, contains the entire understanding of the parties and supersedes previous verbal and written agreements between the parties concerning use of the Software and Documentation. In the event the Agreement, the License Agreement, or the Terms and Conditions conflict, the Terms and Conditions shall prevail.

Section 7.04 – Amendments and Modifications: Waivers, alterations, modifications or amendments of a provision of the Agreement, including, without limitation, the Terms and Conditions, or License Agreement, shall not be binding unless such waiver, alteration, modification or amendment is in writing and signed by an authorized representative of all parties.

Section 7.05 – Severability: If a provision of the Agreement, including, without limitation, the Terms and Conditions, or License Agreement is rendered invalid, the remaining provisions shall remain in full force and effect.

Section 7.06 – Captions: The headings and captions of the Agreement are inserted for reference convenience and do not define, limit or describe the scope or intent of the Agreement or License Agreement or any particular section, paragraph, or provision thereof.

Section 7.07 – Counterparts: The Agreement may be executed in multiple counterparts, each of which shall be an original, but which together shall constitute one and the same instrument.

Section 7.08 – Governing Law: The Agreement is governed by the laws of the State of South Carolina, and the parties hereby consent to jurisdiction in the state and federal courts of Spartanburg County, South Carolina.

Section 7.09 – Notice: Notices shall be in writing. Notices shall be deemed delivered when delivered by Certified or Registered Mail – Return Receipt Requested, by commercial express delivery service or by hand to the address set forth below for EDUTEK SOLUTIONS, LLC, to the address set forth on the Agreement for Customer, and to the address set forth on the License Agreement for End User. Notice shall be deemed given on the date of receipt - as evidenced in the case of Certified or Registered Mail by Return Receipt and in the case of commercial express delivery by electronic or written delivery confirmation.

Mailing Address:

Edutek Solutions, LLC
P.O. Box 3056
Spartanburg, SC 29304

Physical Address:

Edutek Solutions, LLC
101 North Pine Street
Spartanburg, SC 29302

Section 7.10 – Pronouns/Gender: Pronouns and nouns shall refer to the masculine, feminine, neuter, singular or plural, as the context shall require.

Section 7.11 – Bankruptcy: If any party must institute, defend, appear or attend a bankruptcy proceeding as a result of the filing of bankruptcy by another party to the Agreement or License Agreement, fees and expenses shall be paid by the filing party. If any party has a bankruptcy proceeding filed against it, the other parties shall recover attorney fees, expert witness fees, and other costs incurred by such other parties in connection with the bankruptcy proceeding, hearing or trial.

Section 7.12 – Waiver: Waiver of breach of the Agreement shall not constitute waiver of another breach. Failing to enforce a provision of the Agreement shall not constitute a waiver or create an estoppel from enforcing such provision.

Section 7.13 – Relationship of the Parties: Nothing herein shall be construed as creating a partnership, employment relationship, or agency relationship between the parties, or as authorizing either party to act as agent for the other. Each party shall maintain its separate identity.

Section 7.14 – Assurances: Each party hereby represents and warrants that all representations, warranties, recitals, statements and information provided under the Agreement are true, correct and accurate to the best of its knowledge.

ARTICLE VIII: DEFINITIONS

Section 8.01 – Definitions: The following definitions shall apply to the Agreement, including, without limitation, any License Agreement, any Purchase Order and these Terms and Conditions:

- (1) Access:** The term “access” and variants thereof shall mean to store data in, retrieve data from or otherwise approach or make use of (directly or indirectly) through electronic means or otherwise.
- (2) Additional Training:** The term “Additional Training” shall mean any and all instruction and training on using and operating the Software (excluding Initial Training), provided to End User by EDUTEK SOLUTIONS, LLC pursuant to a Purchase Order signed by Customer.
- (3) Agreement:** The term “Agreement” shall mean that certain EDUTEK SOLUTIONS, LLC Online SOFTWARE-AS-A-SERVICE (SAAS) Agreement executed by and between EDUTEK SOLUTIONS, LLC and Customer, including the License Agreement and these Terms and Conditions, which are incorporated into the Agreement and made a part thereof.
- (4) Authorized Person:** The term “Authorized Person” shall mean Customer, employees of Customer and any other users approved by Customer, who agree in writing to maintain the confidentiality of the Confidential Information; and persons or organizations who are authorized in writing by EDUTEK SOLUTIONS, LLC to receive Confidential Information and who agree in writing to maintain the confidentiality of Confidential Information.
- (5) Cancellation Notice:** The term “Cancellation Notice” shall mean that written notice sent by one party to the Agreement or License Agreement to the non-complying party because of breach by such non-complying party describing the noncompliance to the non-complying party.
- (6) Confidential Information:** The term “Confidential Information” shall mean all information disclosed by a party to the Agreement or License Agreement to another party to the Agreement or License Agreement that is identified by the disclosing party as proprietary or confidential at the time such information comes into the possession or knowledge of the receiving party and that is not: (i) already known to the receiving party; (ii) in the public domain; (iii) validly conveyed to the receiving party by a third party; (iv) released by the disclosing party without restriction; (v) independently developed by the receiving party; and (vi) required by court order to be released by the receiving party. For purposes of this definition, all information concerning the Agreement, License Agreement, and the Product shall be deemed Confidential Information of EDUTEK SOLUTIONS, LLC.
- (7) Consulting Services:** The term “Consulting Services” shall mean those certain consulting, configuration, support, or other ad-hoc services provided to Customer or End User by EDUTEK SOLUTIONS, LLC pursuant to a Work Order signed by Customer and EDUTEK SOLUTIONS, LLC.
- (8) Customer:** The term “Customer” shall mean the party identified as Customer on the signature page of the Agreement.
- (9) Customer Facility:** The term “Customer Facility” shall mean the term “Customer Facility” as set forth in the Agreement.

- (10) Defect:** The term "Defect" shall mean programming or software design errors that substantially impair the performance, utility, and functionality of the Software as represented in the Documentation.
- (11) Defect Notice:** The term "Defect Notice" shall mean that certain written notice from Customer to EDUTEK SOLUTIONS, LLC identifying Defects.
- (12) Deliverables:** The term "Deliverables" shall mean the term "Deliverables" as set forth in the Agreement.
- (13) Delivery Date:** The term "Delivery Date" shall have the same meaning as the term "Delivery Date" as set forth in the Agreement.
- (14) Documentation:** The term "Documentation" shall mean the term "Documentation" as set forth in the Agreement.
- (15) Effective Date:** The term "Effective Date" shall mean the term "Effective Date" as set forth in the Agreement.
- (16) End User:** The term "End User" shall have the same meaning as the term "End User" as set forth in the Agreement.
- (17) Fee Schedule:** The term "Fee Schedule" shall mean the term "Fee Schedule" as set forth in the Agreement.
- (18) Information:** The term "Information" shall mean any and all information of a person or company that is receiving services from or through Customer or End User.
- (19) Initial Training:** The term "Initial Training" shall have the same meaning as the term "Initial Training" as set forth in the Agreement.
- (20) License Term:** The term "License Term" shall mean the term "License Term" as set forth in the Agreement.
- (21) License Agreement:** The term License Agreement shall mean the term "License Agreement" as set forth in the Agreement.
- (22) Password:** The term "Password" shall mean the term "Password" as set forth in the Agreement.
- (23) Product:** The term "Product" shall mean the Software and Documentation.
- (24) Purchase Order:** The term "Purchase Order" shall mean that certain Purchase Order submitted by Customer to EDUTEK SOLUTIONS, LLC for Additional Training or Consulting Services signed by Customer.
- (25) Remote Access:** The term "Remote Access" shall mean the term "Remote Access" as set forth in the Agreement.
- (26) Software:** The term "Software" shall mean the term "Software" as set forth in the Agreement.
- (27) Start-Up Fee:** The term "Start-Up Fee" shall mean the term "Start-Up Fee" as set forth in the Agreement.
- (28) Subscription Fee:** The term "Subscription Fee" shall mean the term "Subscription Fee" as set forth in the Agreement.
- (29) Subscription Term:** The term "Subscription Term" shall have the same meaning as the term "Subscription Term" as set forth in the Agreement.
- (30) EDUTEK SOLUTIONS, LLC Marks:** The term "EDUTEK SOLUTIONS, LLC Marks" shall mean any and all trademarks, trade names, service marks or trade dresses of EDUTEK SOLUTIONS, LLC.
- (31) Term:** The term "Term" shall mean the term "Term" as set forth in the Agreement.
- (32) Third Party Software:** The term "Third Party Software" shall mean the executable code for that certain server-based computing software owned by the Owner of Third Party Software.
- (33) Third Party Technology:** The term "Third Party Technology" shall mean any and all third party technology made available by EDUTEK SOLUTIONS, LLC or a third party vendor and used in connection with the Software, including (without limitation) computers and equipment.
- (34) Unauthorized Access:** The term "Unauthorized Access" shall mean any access to the Product or Password except for: the exclusive purposes of Customer's or End User's Use of Software; demonstrating the performance, utility and functions of the Product; or training employees of Customer in the use of the Product.
- (35) Unauthorized User:** The term "Unauthorized User" shall mean any individual who accesses the Product or Password except for: employees of Customer authorized by Customer to access the Software for the purposes of Customer; demonstrating the performance, utility and functions of the Software; or training employees of Customer in the use of the Software.
- (36) Update:** The term "Update" shall have the meaning as the term "Update" as set forth in the Agreement.
- (37) Vendor Services:** The term "Vendor Services" shall mean those certain services provided directly from third party vendors for the transmission of information and data (for example, customer-selected Internet services).
- (38) Vendor Terms:** The term "Vendor Terms" shall mean any and all terms and conditions, policies, and procedures concerning use of the Vendor Services or Third Party Technology between EDUTEK SOLUTIONS, LLC, End User and a third party.

SIGNATURES

EDUTEK SOLUTIONS, LLC

Entity Name: Edutek Solutions, LLC

Signature: _____

Name: _____

Date: _____

CUSTOMER

Entity Name: _____

Signature: _____

Name: _____

Date: _____