

Terms and Conditions

MRI Assessment Application Subscription Agreement Terms and Conditions

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(c) “Licensee Data” means student education record data and other user data (including, without limitation, individually identifiable information) provided by Licensee or Authorized Users to Licensor in connection with the Services.

(d) “Licensee Materials” means any data or materials provided by Licensee or Authorized Users to Licensor, which are used in connection with the Program and the Services, including, for example, any Licensee Data.

(e) “Program” means the MRI Assessment Application, which has been licensed by Licensee from Licensor subject to the terms of this Agreement, in object code form only.

(f) “Services” means the Subscription Services and product support services (as applicable) provided by Licensor as ordered by Licensee and as further described in and pursuant to the terms of this Agreement.

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(b) Product Support Services. Licensees and Authorized Users may call the following number for support: 1-800-342-0236.

3. Grant of Rights.

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(b) License Grant by Licensee. Licensee, on behalf of itself and on behalf of and with the permission of all Authorized Users, hereby grants to Licensor a royalty-free, worldwide, sublicensable, perpetual license to store, maintain, use, reproduce, modify, host on its (and its agents' and contractors') servers, perform, publish, display and distribute to and for Licensee and the Authorized Users, the Licensee Materials in connection with the Program and the Services, and to use or incorporate into the Program and Services (including, without limitation, any System Content) any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Licensee relating to the operation of the Program or Services. **Licensee expressly understands and agrees that Licensor shall share Licensee data (including District names but not including individuals' names) with its partners for research purposes on an ongoing basis, including without limitation, The Gates Foundation.**

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4. Licensee Responsibilities. Without limitation of anything else set forth herein, Licensee shall be solely responsible for the "Licensee Responsibilities" set forth in this Section 4: (a) the quality and accuracy of all Licensee Materials and other information provided to Licensor hereunder; (b) procuring and maintaining any necessary hardware, software and connectivity for accessing and using the Services; (c) ensuring that the Services are not used for or in connection with any spidering, "screen scraping," "database scraping," or harvesting of e-mail addresses or other personal information; (d) ensuring that no information or material which constitutes or contains a virus, spyware, or other harmful component, or which contains any embedded links, advertising, chain letters or pyramid schemes of any kind, is uploaded, posted, published, distributed or otherwise transmitted on or through the Services; (e) ensuring that no information, software, products, services or benefits obtained from the Services are modified, copied, distributed, transmitted, displayed, performed, reproduced, published, licensed, used to create derivative works, transferred, or sold; (f) not reverse-engineering,

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Licensor shall have no obligation to monitor the content of data or other Licensee Materials sourced through or hosted in connection with the Services, but Licensor reserves the right to remove or disclose any information or materials as necessary to satisfy any applicable law, regulation, legal process or governmental request, to protect Licensor property and rights or uses by other customers, and Licensor will use reasonable efforts to notify Licensee reasonably in advance if any such information or materials relate to Licensee. Licensor shall have no liability hereunder for any delay or failure to perform any portion of the Services, which arises as a result of the failure of Licensee to perform any of Licensee's responsibilities or other obligations of Licensee under this Agreement.

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8. Representations & Warranties.

(a) Mutual Warranties. Each party represents and warrants to the other that: (i) it is a duly organized entity, validly existing and in good standing under the laws of the state of its formation; (ii) it has the requisite power and authority to execute and deliver this Agreement and to fully perform its obligations hereunder; and (iii) it is not subject to any contractual or other legal obligation that would reasonably be expected to interfere in any way with its full performance hereof.

(b) Licensee Warranties. Licensee represents and warrants that for all Licensee Materials provided to Licensor hereunder (including, for the avoidance of doubt and without limitation, any Licensee Data), Licensee is solely responsible for obtaining, and Licensee hereby represents and warrants to Licensor that (i) it has obtained, prior to any such provision or disclosure, all of the necessary and applicable rights, permissions and consents to provide the Licensee Materials to Licensor (and for Licensor to use such Licensee Materials) for the purposes of providing the Services and for any other purpose agreed to in writing by the parties from time to time, including without limitation, as may be required by all Applicable Law, (ii) it has obtained such rights, permissions and consents in accordance with all Applicable Law, and (iii) Licensee and its Authorized Users are and will continue to be in compliance in all respects with all Applicable Law.

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9. Indemnification.

(a) Indemnity. To the extent permitted by law, each party (the "indemnifying party") will defend, indemnify and hold harmless the other party (the "indemnified party"), its affiliates and its and their members, directors, officers, shareholders, employees, contractors and agents from and against any claims, liabilities, losses, damages, costs, and expenses, including but not limited to reasonable attorneys' fees and costs, associated with any third party claim arising out of or in connection with an alleged breach by the indemnifying party of any obligation, representation or warranty set forth in this Agreement. The indemnified party will promptly notify the indemnifying party in writing of any claim and allow the indemnifying party to control the defense and all related settlement negotiations. The indemnified party will fully cooperate with the indemnifying party, at the indemnifying party's sole cost and expense. Notwithstanding anything to the contrary herein, Licensor shall have no obligation to indemnify, defend or hold Licensee harmless in the event Licensee (or any Authorized User): (1) fails to comply with its obligations and/or the specification(s) in this Agreement; (2) uses the Program, System Content or the Services in connection with other products and/or services not provided by Licensor; (3) modifies the Program, System Content or the Services without the consent of Licensor; or (4) uses the Program, System Content or the Services in a manner inconsistent with this Agreement or any other instructions or specifications provided to Licensee by or on behalf of Licensor. Further, to the extent permitted by law, Licensee agrees to defend, indemnify and hold harmless Licensor, its officers, directors, employees, agents, consultants, customers, clients and partners, from and against any claims, liabilities, obligations, losses, damages, costs, fees, penalties, fines, charges or other expenses of any kind (including, but not limited to, reasonable attorneys' fees), arising out of or in connection with Licensor's receipt of, access to or use of any Licensee Materials as contemplated hereunder.

10. Limitation of Liability.

(a) EXCEPT AS SET FORTH HEREIN, NEITHER LICENSOR NOR ITS SUPPLIERS SHALL IN ANY EVENT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE, INABILITY TO USE, OR THE SERVICES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS OR SERVICES, COST OF REPLACEMENT GOODS OR SERVICES, LOSS OF TECHNOLOGY, DATA, LICENSEE INFORMATION, RIGHTS OR SERVICES, OR INTERRUPTION OR LOSS OF USE OF SERVICE, INFORMATION OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT OR OTHERWISE. SOME JURISDICTIONS DO NOT ALLOW

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(b) IN NO EVENT SHALL LICENSOR'S AGGREGATE CUMULATIVE LIABILITY FOR ANY DAMAGES, DIRECT OR INDIRECT, IN CONNECTION WITH THE SERVICES, SYSTEM CONTENT OR THE PROGRAM EXCEED THE AMOUNTS PAID BY LICENSEE HEREUNDER DURING THE SIX (6) MONTHS PRECEDING THE DATE THE CLAIM FIRST AROSE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT OR OTHERWISE. LICENSOR HEREBY DISCLAIMS, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL WARRANTIES BY ITS SUPPLIERS AND ALL LIABILITY BY SUPPLIERS FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, OR CONSEQUENTIAL, ARISING FROM, CONNECTED WITH, OR RELATED TO THE USE OF THE SERVICES, SYSTEM CONTENT, OR THE PROGRAM.

11. Term and Termination.

(a) Term. The initial term shall begin on the Effective Date and shall remain in effect for one (1) year thereafter. After the initial term, Licensee may elect to renew the Agreement for additional one-year renewal terms, and Licensee shall provide Licensor with written notice of its decision to renew within at least 30 days prior to the end of the then-current initial or renewal term. Licensor reserves the right to increase Fees for renewal terms, and shall provide Licensee with prior notice of any such increase for the Services for renewal terms following the initial term of service as identified in a Purchase Order. Licensor reserves the right to discontinue providing the Services at any time.

(b) Termination for Convenience. Licensee may terminate this Agreement at any time during the Term, for any reason or no reason at all, by giving Licensor no less than thirty (30) days prior written notice. If Licensee elects to terminate early, Licensee shall not receive a prorated refund of the unused portion of any fees paid in advance.

(c) Termination With Breach. Either party may terminate this Agreement upon 30 days written notice to the other party of a material breach by the other party of its obligations set forth herein and an opportunity to cure, provided that if Licensee terminates this Agreement as a result of Licensor's uncured breach, Licensor's sole obligation will be to promptly refund any fees actually paid by Licensee for any period during which Licensor did not perform the Services as provided herein.

(d) Return of Licensee Data. Upon non-renewal or termination of this Agreement, upon Licensee's written request only, Licensor shall return Licensee Data maintained by Licensor in connection with the Program or Services. Data may be requested in the form of a CSV export file or a SQL database backup. After thirty (30) days following non-renewal or termination of this Agreement, Licensor shall have no obligation to maintain or return Licensee Data to Licensee. Licensee understands and acknowledges that while Licensor performs periodic backups of data for disaster recovery purposes, it does not keep an ongoing archive of the Licensee Data. Keeping an ongoing archive of Licensee Data is the sole responsibility of Licensee.

12. Confidential Information.

(a) Definition. "Confidential Information" means information disclosed by or on behalf of one party (the "Disclosing Party") to the other (the "Receiving Party") that is in written, graphic, or other tangible form and is marked "Confidential" or "Proprietary." Licensor's Confidential Information includes the Program, Services, System Content and documentation, including any and all trade secrets therein, as well as this Agreement, and all other information disclosed to Licensee in such a way that Licensee should reasonably understand that it is confidential, regardless of whether it is marked. Licensee's Confidential Information includes Licensee Data, regardless of whether it is marked.

(b) Obligations. Each party will protect the other party's Confidential Information with at least the same care that it uses to protect its own information of similar importance, but with at least reasonable care. Each party will only use the other's Confidential Information for the purposes of this Agreement, and will only disclose the other's Confidential Information to those

of its employees, contractors and subcontractors who need to know it for the purposes of this Agreement. Each party also will return (or destroy, if the other party so requests) the other party's Confidential Information after the other party's request or upon termination of this Agreement.

(c) Exclusions. The obligations described in Section 12(b) do not apply to Confidential Information that the Receiving Party can prove: (i) became publicly known through no fault of the Receiving Party; (ii) it obtained from a source that is not prohibited from disclosing it; (iii) it developed without using the Disclosing Party's Confidential Information; or (iv) it possessed before the Effective Date as shown by the Receiving Party's files and records.

(d) Injunctive Relief. Notwithstanding any other provision of this Agreement, Licensee acknowledges that the unauthorized disclosure of Licensor's Confidential Information could cause substantial harm that could not be remedied by the payment of damages alone. Accordingly, Licensor shall be entitled to seek preliminary and permanent injunctive relief and other equitable relief for any breach of this Section 12.

(e) Notice of Misuse & Survival. Licensee shall promptly notify Licensor in the event Licensee becomes aware that Licensee, its employees, agents, or contractors have violated this Section 12. For the avoidance of doubt, the provisions of this Section 12 shall survive the termination or expiration of this Agreement.

13. Miscellaneous.

(a) Audit. Licensee agrees to maintain accurate and detailed records of the number of and other information relating to the Authorized Users licensed to use the Program and Services hereunder, as well as the number of student profiles maintained in connection with the Program and Services. Licensor shall have the right to verify the number of Authorized Users. Licensee agrees that Licensor shall have the right to audit Licensee's records for compliance with this Agreement at any time during Licensee's normal business hours upon reasonable notice, during the term. Licensee agrees that it shall pay the deficiency, and if any underpaid fees are in excess of five percent (5%) of the total fees due under this Agreement, then Licensee shall pay the deficiency and Licensor's reasonable costs of conducting the audit.

(b) Entire Agreement. This Agreement, together with any registration form, and any and all Exhibits hereto and documents linked to and incorporated herein by reference, shall constitute the parties' entire agreement with respect to the Services. All Exhibits and linked documentation are incorporated into this Agreement by reference, and all references to "this Agreement" in any Exhibit include all other Exhibits hereto. This Agreement may not be modified by Licensee except by written instrument signed by both parties and referring to the particular provisions to be modified. This Agreement may not be modified by a Purchase Order issued by Licensee. This Agreement may be modified or updated by Licensor. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original for all purposes, and together shall constitute one and the same agreement.

(c) Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with and shall be governed by the internal laws of the State of New York, excluding its conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods and Uniform Computer Information Transaction Act are expressly disclaimed. Any suit or other proceeding to enforce or interpret this Agreement shall be brought in, and each party hereby consents to the jurisdiction and venue of, the courts of Suffolk County in the State of Massachusetts, United States of America or of any federal court located in such state.

(d) Notices. Any notices under this Agreement shall be in writing and shall be hand delivered or sent by registered mail return receipt requested. If such notice is given to Licensee, it shall be sent to the address specified by Licensee during the registration process, (or any other address as Licensee may designate in writing to Licensor). For Licensor, notices shall be sent to: Houghton Mifflin Harcourt, 125 High Street, Boston, MA 02110, Attn: EVP & General Counsel.

(e) Force Majeure. Neither party shall be in default if its failure to perform any obligation

under this Agreement (other than obligations to make payments when due) is caused solely by supervening conditions beyond that party's reasonable control, including acts of God, war, terrorism, civil commotion, strikes, labor disputes, Internet service interruptions or slowdowns, vandalism or "hacker" attacks, or governmental demands or requirements.

(f) Publicity. No public statement, press release or other announcement relating to this Agreement or the Services or the other party shall be issued by either party hereunder without the prior written consent of the other party. Notwithstanding the foregoing, Licensor may use Licensee's name in customer lists.

(g) Injunctive Relief. Licensee acknowledges that the breach or threatened breach of this Agreement could give rise to irreparable injury to Licensor which would be inadequately compensated in money damages. Accordingly, Licensor may seek a restraining order and/or an injunction prohibiting such breach in addition to any other legal remedies which may be available. Licensee agrees that Licensor will not be required to post a bond in seeking injunctive relief under this Agreement.

(h) Export Controls. Licensee agrees not to directly or indirectly export or re-export the Program except as authorized by the laws and regulations of the United States and any other applicable jurisdiction. Licensee will not permit the Program to be accessed and used at any location or by any person that would violate such laws and regulations. To the extent permitted by law, Licensee will defend, indemnify and hold Licensor harmless from and against any violation of such laws or regulations by Licensee or any of Licensee's agents, officers, directors or employees.

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