

## NON-EXCLUSIVE END USER LICENSE AGREEMENT

This Non-Exclusive End User License Agreement (“Agreement”), effective as of the date of last signature of a Party hereto or upon Licensee accessing the Program (“Effective Date”), is a binding agreement between the University of Central Oklahoma, a public institution of higher education, by and through the Institute for Learning Environment Design located at 100 North University Drive, Edmond, Oklahoma 73034 (“**Licensor**”) and the person or entity identified on the Order Form as the licensee of the Program (“**Licensee**”). Licensor and Licensee may be referred to herein in the singular as a “Party” and collectively as the “Parties.”

LICENSOR PROVIDES PROGRAM SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT LICENSEE ACCEPTS AND COMPLIES WITH THEM. BY CLICKING THE “ACCEPT” BUTTON, CHECKING THE “ACCEPT” BOX ON THE ORDER FORM, AND/OR AFFIRMATIVELY ACQUIESCING TO ANY OTHER MEANS PROVIDED FOR ACCEPTANCE, YOU: (A) ACCEPT THIS AGREEMENT AND AGREE THAT LICENSEE IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT: (I) YOU ARE OF LEGAL AGE TO ENTER THIS AGREEMENT; AND (II) IF LICENSEE IS A CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF LICENSEE AND BIND LICENSEE TO ITS TERMS. IF LICENSEE DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, LICENSOR WILL NOT AND DOES NOT LICENSE THE SOFTWARE TO LICENSEE AND YOU MUST NOT DOWNLOAD, INSTALL, AND/OR IN ANY WAY ACCESS OR VIEW THE PROGRAM AND/OR ANY OF ITS RELATED DOCUMENTATION.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR YOUR OR LICENSEE’S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY PROGRAM THAT LICENSEE DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF LICENSOR’S PROGRAM.

NOW, THEREFORE, the Parties agree as follows:

1. Definitions. For purposes of this Agreement, the following terms have the following meanings:

”**Authorized Users**” means the following persons authorized to use the Program pursuant to either the non-commercial or commercial license granted under this Agreement and solely includes those individuals authorized to use the Program pursuant to the particular license granted under this Agreement, as set forth on the Order Form.

”**Documentation**” means user manuals, technical manuals, blueprints, worksheets, guidelines, and any other materials provided by Licensor, in printed, electronic, or other form, that describe the installation, operation, use, or technical specifications of the Program.

”**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence related to the Program, including, but not limited to, any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights protection, and all similar or equivalent rights or forms of protection, in any part of

the world. Intellectual Property Rights hereby specifically includes attribution to Licensor providing notice any Third Party(-ies) that Licensor is the copyright owner of the Program. Such attribution and notice shall be substantially in the following form: “© 2017 The University of Central Oklahoma, by and through the Institute for Learning Environment Design. All Rights Reserved.”

”**Licensee**” has the meaning set forth in the Preamble.

”**Licensee Content**” has the meaning set forth in Section 15(a)(i) of this Agreement.

”**License Fees**” means the license fees, sums, and/or royalties, including all taxes thereon, paid or required to be paid by Licensee pursuant to this Agreement in consideration for Licensor’s granting of the non-exclusive, commercial license to Licensee per Section 2.2 of this Agreement.

”**Licensor**” has the meaning set forth in the Preamble.

”**Order Form**” means the order form filled out and submitted by or on behalf of Licensee, and accepted by Licensor, for Licensor’s granting of the license to the Program pursuant to either Section 2.1 (non-commercial license) or Section 2.2 (commercial license) of this Agreement; provided that such Order Form may be updated from time to time upon the mutual written agreement of the Parties.

”**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

”**Program**” means the Learning Environment Modeling™ (LEM) Process(es) and methodology(-ies) (including any and all current and/or future version thereof), including without limitation, any and all software, hardware, lesson-based module(s), online orientation design patterns, content-based discussion activities, online debate activities, project-based module(s), as well as any and all Documentation for which Licensee is granted a non-exclusive, non-commercial or commercial license, as expressly set forth in the Order Form.

”**Term**” has the meaning set forth in Section 11.

”**Third Party**” means any Person other than Licensee or Licensor.

”**Update**” has the meaning set forth in Section 7(b).

## 2. License Grant and Scope.

2.1 Non-Exclusive, Non-Commercial, Research License to the Program. Licensor hereby grants to Licensee and Licensee’s Authorized Users specifically identified on any applicable Order Form a non-exclusive, royalty-free, non-commercial, non-transferable, non-sublicensable right and license during the Term of this Agreement to use the Program in connection with Licensee’s and mission as an academic institution of higher education and/or its non-profit mission to promote the general welfare of society, such license being subject to all of the following conditions and qualifications:

- (a) the license granted by this Section 2.1 only applies to those components of the Program that have been actually and formally disclosed to Licensor;
- (b) Licensee and/or Licensee's Authorized Users does not license nor attempt to license the Program to any Third Party;
- (c) the Program is not embodied in any product(s) and/or service(s) sold or provided by Licensee, Licensee's Authorized User, and/or Licensee's affiliates, in any manner; and
- (d) Licensee and/or Licensee's Authorized Users shall at all times properly attribute Licensor as the sole owner and creator of the Program.

2.2 Non-Exclusive, Commercial License to the Program. Subject to and conditioned upon Licensee's payment of any and all monies due to Licensor pursuant to this Agreement and certification by Licensee, including, without limitation, the License Fees set forth in Section 10 of this Agreement, as well as Licensee's strict compliance with any and all terms and conditions set forth in this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-transferable, non-sublicensable, limited license during the Term of this Agreement to use, solely by and through its Authorized Users specifically identified on any applicable Order Form, the Program, solely as set forth in this Section 2 and subject to any and all conditions and limitations set forth in Section 4 of this Agreement (or elsewhere in this Agreement). This license grants Licensee the right, exercisable solely by and through Licensee and/or any of Licensee's Authorized Users, to:

- (a) download, copy, view, access, redistribute, and/or sell the Program solely to any Authorized Users specifically identified in a particular Order Form. All copies of the Program (including the Documentation) made by the Licensee and/or redistributed and/or sold to Authorized Users shall expressly include and/or be subject to the following terms and conditions:
  - (i) the Program is and at all times shall be the sole and exclusive property of the Licensor;
  - (ii) the Program and its use by Licensee and/or Licensee's Authorized Users is and at all times shall be subject to the terms and conditions of this Agreement, which may be modified by Licensor from time to time with or without written notice to Licensee and/or Licensee's Authorized Users; and
  - (iii) must include all trademark, copyright, patent, and other Intellectual Property Rights notices contained in the original and as set forth in this Agreement; and
- (b) use and operate the Program in accordance with this Agreement and as set forth in the Documentation.

3. Third-Party Materials. The Program may include software, content, data, or other materials, including related documentation, that are owned by Persons other than Licensor and that are provided to Licensee on licensee terms that are in addition to and/or different from those contained in this Agreement ("**Third-Party Licenses**"). Licensee is bound by and shall comply with all Third-Party Licenses. Any breach by Licensee or any of its Authorized Users of any Third-Party License is and shall also constitute a breach of this Agreement.

4. Use Restrictions. Licensee shall not, and shall require its Authorized Users not to, directly or indirectly:

(a) use (including make any copies of) the Program beyond the scope of the license granted under to Licensee pursuant to Section 2.1 or 2.2, as applicable;

(b) except as may be permitted by Section 2 and strictly in compliance with its terms, provide any other Person, including any subcontractor, independent contractor, affiliate, or service provider of Licensee, with access to or use of the Program;

(c) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable or otherwise protectable via any form of intellectual property protection, of the Program or any part thereof;

(d) combine the Program or any part thereof with, or incorporate the Program or any part thereof in, any other programs;

(e) if applicable, reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Program or any part thereof;

(f) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with the Program, including any copy thereof;

(g) except as expressly set forth Section 2.1 or Section 2,2 of this Agreement, copy the Program, in whole or in part;

(h) unless expressly permitted via the terms of this Agreement, rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Program, or any features or functionality of the Program, to any Third Party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud, or other technology or service;

(i) use the Program in violation of any applicable law(s) and/or federal and/or state rule(s) and/or regulation(s); and/or

(k) use the Program for purposes of competitive analysis of the Program, the development of a competing product or service, or any other purpose that is to the Licensor's research and/or commercial disadvantage.

5. Responsibility for Use of the Program. Licensee is and at all times shall be responsible and liable for all uses of the Program through access thereto provided to Licensee, directly or indirectly. Specifically, and without limiting the generality of the foregoing, Licensee is responsible and liable for any and all actions and failures to take required actions with respect to the Program by its Authorized Users or by any other Person to whom Licensee or an Authorized User may provide access to or use of the Program whether such access or use is permitted by or in violation of this Agreement.

6. Compliance Measures.

- (a) The Program may contain technological copy protection or other security features designed to prevent unauthorized use of the Program, including features to protect against any use of the Program that is prohibited under Section 4. Licensee shall not, and shall not attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to, any such copy protection or security feature(s).
- (b) On an annual basis, and otherwise on Licensor's written request, Licensee shall conduct a review of its and its Authorized Users use the Program and certify to Licensor in a written instrument signed by an officer of Licensee that it is in full compliance with this Agreement or, if Licensee discovers any noncompliance:
  - (i) Licensee shall immediately remedy such noncompliance and provide Licensor with written notice thereof. Licensee shall provide Licensor with all access and assistance as Licensor requests to further evaluate and remedy such noncompliance; and
  - (ii) if Licensee's use of the Program exceeds the number of copies or Authorized Users permitted under the particular license (as detailed in the respective Order Form(s)), Licensor shall have the remedies set forth in Section 6(d), in addition to any other remedy(-ies) Licensor may have in law and/or equity.
- (c) During the Term of this Agreement, Licensor may, in Licensor's sole discretion, audit Licensee's use of the Program to ensure Licensee's compliance with this Agreement, provided that (i) any such audit shall be conducted on not less than ten (10) days' prior notice to Licensee, and (ii) no more than two (2) audits may be conducted in any twelve (12) month period except for good cause shown. Licensor also may, in its sole discretion, audit Licensee's systems within twelve (12) months after the end of the Term of this Agreement to ensure Licensee has ceased use of the Program and removed the all copies of the Program from such systems as required hereunder. The Licensee shall fully cooperate with Licensor's personnel conducting such audits and provide all reasonable access requested by the Licensor to records, systems, equipment, information, and personnel, including machine IDs, serial numbers, presentations, and/or related information. Licensor shall conduct audits only during Licensee's normal business hours and in a manner that does not unreasonably interfere with the Licensee's business operations.
- (d) If the audit determines that the Licensee's use of the Program exceeds or exceeded the use

permitted by this Agreement then:

- (i) Licensee shall, if the license granted to Licensee is a commercial license pursuant to Section 2.2, within ten (10) days following the date of Licensor's written notification thereof, pay to Licensor the retroactive License Fees for such excess use and, unless Licensor terminates this Agreement pursuant to Section 6.(d)(iii), obtain and pay any additional fees necessary to bring Licensee's use into compliance as a valid commercial license pursuant to Section 2.2 of this Agreement. In determining the applicable Licensee Fees payable pursuant to the foregoing, (x) unless Licensee can demonstrate otherwise by documentary evidence, all excess use of the Program shall be deemed to have commenced on the Effective Date of this Agreement or, if later, the completion date of any audit previously conducted by Licensor hereunder, and continued uninterrupted thereafter, and (y) the additional License Fees shall be commercially reasonable.
- (ii) If the use exceeds or exceeded the use permitted by this Agreement (including the failure to pay any requisite License Fees) by more than five percent (5%), Licensee shall pay to Licensor, within thirty (30) days following the date of Licensor's written request therefor, Licensor's costs incurred in conducting the audit.
- (iii) If the use exceeds or exceeded the use permitted by this Agreement (including the failure to pay any requisite License Fees) by more than fifteen percent (15%), Licensor shall also have the right to terminate this Agreement and the license granted hereunder, effective immediately upon written notice to Licensee.

Licensor's remedies set forth in this Section 6(d) are cumulative and are in addition to, and not in lieu of, all other remedies the Licensor may have at law or in equity, whether under this Agreement or otherwise.

## 7. Maintenance and Support.

- (a) Subject to Section 7(c), the license granted hereunder entitles Licensee to basic Program maintenance and support services described on Schedule B, a copy of which is attached hereto, and which may be updated from time to time on Licensor's websites located at <http://iled.uco.edu>; <http://iledsolutions.org>; <http://learn.iledsolutions.org>; <http://app.iledsolutions.org>)
  - (i) such support shall be for one (1) year following the date set forth on the Order Form; and
  - (ii) thereafter, solely if Licensee purchases additional support services.

Such support services shall be provided on the terms and conditions set forth in Schedule B, which also non-bindingly lists an estimate of costs associated with the additional support services extending past the one (1) year date listed on the Order Form.

- (b) Maintenance and support services, as set forth in Section 7(a) herein, shall include provision of, as applicable, updates, upgrades, bug fixes, patches, and other error corrections (collectively, “**Updates**”) as Licensor makes generally available free of charge to all licensees of the Program then entitled to maintenance and support services. Licensor may develop and provide Updates in its sole discretion, and Licensee agrees that Licensor has no obligation to develop any Updates at all or for any particular issue(s). Licensee further agrees that all Updates will be deemed Program, and related documentation will be deemed Documentation, all subject to all terms and conditions of this Agreement. Licensee acknowledges that Licensor may provide some or all Updates via download from a website designated by Licensor and that Licensee’s receipt thereof will require an internet connection, which connection is Licensee’s sole responsibility. Licensor has no obligation to provide Updates via any other media. Maintenance and support services do not include any new version or new release of the Program that Licensor may issue as a separate or new product, and Licensor, at its sole and exclusive discretion, shall determine whether any issuance qualifies as a new version, new release, new product, or Update.
- (c) Licensor reserves the right to condition the provision of maintenance and support services, including any and all Updates, on Licensee’s registration of the copy of Program for which support is requested, including registration of Licensee’s contact information and other information required by Licensor at its sole discretion, such registration to occur online via a website address provided by Licensor to Licensee. However, Licensor has no obligation to provide maintenance and support services, including Updates:
- (i) for any but the most current [or immediately preceding] version or release of the Program;
  - (ii) for any copy of Program for which all previously issued Updates have not been installed;
  - (iii) if Licensee is in any way in breach of any provision of this Agreement; and/or
  - (iv) for any Program that has been modified other than by, or with the authorization of, Licensor, or that is being used with any hardware, software, configuration, or operating system not specified in the Documentation or expressly authorized by Licensor in writing.

8. Collection and Use of Information.

- (a) Licensee acknowledges that Licensor may, directly or indirectly through the services of Third Parties, collect and store information regarding use of the Program and about equipment on which the Program is installed or through which it otherwise is accessed and used, through:
- (i) the provision of maintenance and support services; and
  - (ii) security measures included in the Program as described in Section 6.

- (b) Licensee agrees that the Licensor may use such information for any purpose related to any use of the Program by Licensee or on Licensee's equipment, including but not limited to:
  - (i) improving the performance of the Program or developing Updates; and
  - (ii) verifying Licensee's compliance with the terms of this Agreement and enforcing the Licensor's rights, including all Intellectual Property Rights in and to the Program.

9. Intellectual Property Rights. Licensee expressly acknowledges, understands, and agrees that the Program (and Documentation) are provided under solely under a non-exclusive license pursuant to the terms and conditions set forth in this Agreement. Accordingly, Licensee does not acquire any ownership interest in the Program (and Documentation) under this Agreement, or any other rights thereto, other than to use the same in accordance with the particular license granted and subject to all terms, conditions, and restrictions set forth in this Agreement. Licensor hereby reserves and shall retain its entire right, title, and interest in and to the Program (and Documentation), and any and all Intellectual Property Rights arising out of or relating to the Program, except as expressly granted to the Licensee in this Agreement. Licensee shall use commercially reasonable efforts to safeguard the Program (including all permitted copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access. Licensee shall promptly notify Licensor if Licensee becomes aware of any infringement of the Licensor's Intellectual Property Rights in the Program and fully cooperate with Licensor, in any legal action taken by Licensor to enforce its Intellectual Property Rights.

10. Payment. For any licenses granted pursuant to Section 2.2 of this Agreement, any and all License Fees and, if applicable, and fees and expenses associated with the support and maintenance of the Program, are payable in accordance with the provisions set forth in the applicable Order Form and are non-refundable. Any renewal of the license or maintenance and support services hereunder shall not be effective until the fees for such renewal have been paid in full when due.

11. Term and Termination.

- (a) This Agreement and the license granted hereunder shall remain in effect for a period of one (1) years from the Effective Date of this Agreement, unless sooner terminated as set forth herein (the "**Term**"). This Agreement may only be renewed and/or extended upon written agreement executed by and between the Parties, and, if such Agreement is a commercial license pursuant to Section 2.2 of this Agreement, such renewal and extension to be subject to commercially reasonable terms and negotiated in good faith.
- (b) Licensee may terminate this Agreement by ceasing to use and destroying all copies of the Program and providing written certification of the destruction of such copies of the Program to Licensor.
- (c) Licensor may terminate this Agreement, effective upon written notice to Licensee, if Licensee, materially breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after Licensor provides written notice

thereof. For avoidance of doubt, if the license granted by this Agreement is a commercial license pursuant to Section 2.2 of this Agreement, Licensee's failure to pay any Licensee Fees and/or any other monies due to Licensor pursuant to Section 10 shall and does hereby constitute a material breach of this Agreement.

- (d) Licensor may terminate this Agreement, effective immediately, if Licensee files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property.
- (e) Upon expiration or earlier termination of this Agreement, the license granted hereunder shall immediately also terminate, and Licensee shall cease using and destroy all copies of the Program and Documentation. No expiration or termination shall affect Licensee's obligation to pay all Licensee Fees (and/or any other monies due and payable to Licensor from Licensee pursuant to this Agreement) that may have become due before such expiration or termination, or entitle Licensee to any refund.

12. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

- (a) IN NO EVENT SHALL LICENSOR OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND/OR REPRESENTATIVES, INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE PROGRAM; LOST REVENUES OR PROFITS; DELAYS, INTERRUPTION, OR LOSS OF SERVICES, BUSINESS, OR GOODWILL; LOSS OR CORRUPTION OF DATA; LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION, OR SHUTDOWN; FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION; FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; OR BREACHES IN SYSTEM SECURITY; OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) IN NO EVENT SHALL LICENSOR'S AND ITS AFFILIATES', OR ANY OF ITS/THEIR RESPECTIVE OFFICERS', DIRECTORS', EMPLOYEES', AGENTS', AND/OR REPRESENTATIVES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS' AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND

OTHERWISE, EXCEED FIVE HUNDRED DOLLARS (\$500.00)

- (c) THE LIMITATIONS SET FORTH IN SECTION 12(a) AND SECTION 12(b) SHALL APPLY EVEN IF THE LICENSEE'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

13. Export Regulation. The Program may be subject to US export control laws, including the US Export Administration Act and its associated regulations. The Licensee shall not, directly or indirectly, export, re-export, or release the Program to, or make the Program accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. The Licensee shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Program available outside the US.

14. Accountability.

(a) Books and Records. Licensee shall keep proper financial records and books of account in accordance with the Federal Accounting Standards Advisory Board's Generally Accepted Accounting Principles. Licensee's books and records shall accurately reflect any and all information necessary for the accurate determination of payments (including any and all License Fees) due under this Agreement. Licensee shall retain such financial books and records for a minimum of five (5) years following their creation.

(b) Audits.

- (i) Licensor shall have the right to inspect, copy, and audit the financial books and records of Licensee and/or Authorized Users with reasonable notice at least once each calendar year during normal business hours in order to verify the correctness of the payments due under this Agreement.
- (ii) Within forty-five (45) days of notice of a deficiency in any amounts due under this Agreement or any amounts due under this Agreement but unpaid that are discovered by an audit as described in Section 14(b)(i), Licensee shall pay Licensor the full amount of any deficiency plus five percent (5%) interest above prime as set by J.P. Morgan Chase Bank, New York, NY as of the date of notice of any deficiency.
- (iii) Licensee shall pay any and all reasonable collection costs incurred by Licensor to collect on any deficiency in the amounts due under this Agreement, whether amounts past due or underreported, such costs including, but not limited to, reasonable attorney's(s') fees, whether or not suit is commenced against Licensee and/or Authorized Users.

15. Infringement.

(a) Notice of Infringement.

- (i) Upon becoming aware of any declaratory judgment action or actual or threatened infringement of the Program and/or Licensee Content, Licensee or Licensor shall notify the other Party of such actual or threatened infringement and/or any facts that may affect the validity, scope, and/or enforceability of the Program. For purposes of this Agreement, "Licensee Content" shall mean any customized individual content owned, controlled, created, and/or provided by Licensee which is integrated into or used in conjunction with the Program, but expressly does not include the Program. Licensee Content is and shall at all times be solely and exclusively owned by Licensee.

(b) Enforcement.

- (i) Licensee, at its own expense, may respond to any declaratory judgment action or prosecute or defend actual or threatened infringement of Licensee Content that is discovered by Licensee or about which Licensee receives notice from Licensor.
- (ii) If required by applicable law and to the extent such action involves any aspect of the Program resulting from and/or related to Licensee Content, Licensor shall jointly respond to any declaratory judgment action or prosecute or defend actual or threatened infringement of Licensee Content (and/or the Program in accordance with this Section) with Licensee, and, in such event, Licensee shall bear all expenses related to such legal action(s), including, but not limited to, actual attorney's(s') fees and costs, and Licensee shall pay to Licensor fifty percent (50%) of any excess recoveries over Licensee's expenses in such legal action(s).
- (iii) In any infringement suit or dispute related to Licensee Content and/or the Program resulting from and/or related to Licensee Content, Licensor and Licensee agree to cooperate with each other. At the request and the expense of a Party, the other Party will permit access to all of its relevant personnel, records, papers, and information during regular business hours.

16. Miscellaneous.

- (a) All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be instituted in a court of competent jurisdiction in the State of Oklahoma, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such legal suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.
- (b) Licensor will not be responsible or liable to Licensee, or deemed in default or breach hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion,

invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning, or Licensee equipment, loss and destruction of property, or any other circumstances or causes beyond Licensor's reasonable control.

- (c) All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the third (3<sup>rd</sup>) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the addresses set forth on the Order Form (or to such other address as may be designated by a Party from time to time in accordance with this Section 15(c)).
- (d) This Agreement, together with the Order Form, and any exhibits attached hereto, constitutes the sole and entire agreement between Licensee and Licensor with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.
- (e) Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Licensor's prior written consent, which consent Licensor may give or withhold in its sole discretion. No delegation or other transfer will relieve Licensee of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 15(e) is void *ab initio*. Licensor may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Licensee's consent. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective permitted successors and assigns.
- (f) This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- (g) This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- (h) If any term or provision of this Agreement is finally held invalid, illegal, or unenforceable in

any jurisdiction by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

- (i) For purposes of this Agreement, (a) the words “include,” “includes,” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections and Exhibits refer to the Sections and Exhibits contained in and/or attached to this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Order Form and all Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.
- (j) The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.
- (k) This Agreement may be executed in multiple counterparts. All such counterparts, when so executed, shall be deemed to constitute one final agreement as if one document had been signed by all Parties to this Agreement. Each such counterpart, upon execution and delivery of all counterparts, shall be deemed to be a complete and original of this Agreement. A telecopy or facsimile transmission of a signed counterpart of this Agreement shall be sufficient to bind the Party or Parties whose signature(s) appear thereon.

**SCHEDULE A**  
**[ORDER FORM]**

**SCHEDULE B**  
**[MAINTENANCE AND SUPPORT]**