

# RENAISSANCE®

## Terms of Service and License Renaissance Learning, Inc.

These Terms of Services and License are applicable to any Quote (as defined herein) to provide access to the Applications, Hosting Services and Services identified therein and to Licensee's use of the Applications, the Hosting Services and Services. Each Quote shall be deemed to be part of this Agreement and subject to the terms and conditions set forth herein.

1. **Definitions.** Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them as set forth in **Exhibit A**.
2. **License to Applications and Hosting Services**
  - 2.1 Grant of License. Subject to Licensee's compliance with the terms and conditions of the Agreement, Renaissance grants Licensee a non-exclusive, non-sublicensable, non-transferable, revocable, limited license, during the Subscription Period, to access and to use the Applications and Content provided therein in accordance with Section 2.3 below (the "**License**").
  - 2.2 Hosting Services. Renaissance shall provide Licensee with remote access to the Applications via the Internet (the "**Hosting Services**") for the Licensed Sites. The Applications will be housed at a Renaissance chosen facility, and will operate on servers determined by Renaissance, which may include servers owned by or leased by Renaissance.
  - 2.3 Authorized Use.
    - a. Renaissance Application. The following requirements apply to Renaissance Applications only:
      - i. Student Capacity. The number of unique students permitted to use the Renaissance Applications (excluding Renaissance-U) at any Licensed Site is limited to the Student Capacity set forth in the Quote. Circumventing the Student Capacity by any means is a material breach of the Agreement and may result in immediate termination of the Agreement by Renaissance. Student Capacity is allocated when a unique Licensee student first logs in and performs any activity or when any activity is first assigned to such student. Student Capacity may not be used interchangeably across students and any unused Student Capacity is non-refundable and expires at the end of the applicable Subscription Period. If a unique student no longer attends school at the License Site, Licensee may dis-enroll that unique student as an Authorized User of the Renaissance Application under Product Administration in the Renaissance Application and use that seat for a new unique student at the Licensed Site. Additional Student Capacity may be purchased through the Renaissance Applications or by contacting Renaissance and placing an order for the desired incremental, additional capacity amount, increasing the Student Capacity for that unique Quote. Any incremental, additional Student Capacity purchased shall be subject to these Terms of Services and License. Licensee can view allocated Student Capacity and which students are using the allocated Student Capacity under Product Administration in the Renaissance Applications.
      - ii. Location. Except as set forth in this Section 2.3(b)(ii) or approved in advance by Renaissance, in writing, the Renaissance Applications can only be accessed and used by Authorized Users at the Licensed Site. Licensee shall not make the Renaissance Applications available in whole or in part in any networked or time-sharing environment extending beyond the Licensed Site. Notwithstanding anything to the contrary in this Section 2.3(b)(ii), the following is permitted for an Authorized User subject to the terms and conditions contained in the Agreement: (i) teacher and administrator access to Renaissance-U and the management feature of the Renaissance Applications via the Internet is permitted from outside a Licensed Site; (ii) Homebound Student access to the student portion of the Renaissance Applications via Internet is permitted for up to 60 days during the Subscription Period from such Homebound Student's home using a computer owned or leased by Licensee or such Homebound Student; (iii) student and parent access to the Home Connect feature of the Renaissance Applications via Internet is permitted from such student or parent's home using a computer owned or leased by Licensee, such student or parent; (iv) access to the Renaissance Applications by Authorized Users at a public library on computers owned or leased by such public library only to the extent the Licensed Site is providing a summer reading program authorized by Licensee through such public library (v) access to Accelerated Reader or Accelerated Reader 360 by Authorized Users in connection with a summer reading program

authorized by Licensee and (vi) with respect to a Licensee that is an International School, access to the Renaissance Applications by its Authorized Users outside the Licensed Site subject to the conditions set forth in **Exhibit B**. Licensee shall not make any portion of the Renaissance Applications accessible to parents or students, which are not specifically intended for parent or student use, as the case may be, including, but not limited to, the educator and administrator portion of the Renaissance Applications.

- b. myON Applications. The myON Applications can only be accessed and used by Authorized Users, provided that Authorized Users that are parents shall only access and use the myON Applications to review reports.
- c. Access. Renaissance shall provide Licensee access to the Applications by the date identified in the Quote. Access rights granted to Licensee shall be limited to those access rights necessary to use of the intended functionality of the Applications. Renaissance reserves the right to restrict or prevent access to activities or suspected activities that involve security breaches, hacking, distributed denial of service attacks, or uploading a virus, Trojan horse, time bomb, unauthorized application, or any other harmful form of programming or vandalism.

#### 2.4 Account Set Up.

- a. Renaissance shall create an administrator account to enable Licensee's administrator access the Applications and provide Licensee with the identification number, password, encryption key, or other access codes to access the administrator account (the "**Admin Login Information**").
- b. Renaissance shall assist Licensee with loading the Licensee Data and creating user names and passwords for each Authorized User to use the Applications (the "**Onboarding Services**"). To the extent Licensee has purchased any Data Integration Services as identified in the Quote, Renaissance grants Licensee a non-exclusive, non-sublicensable, non-transferable, revocable, limited license, during the Subscription Period, to access and integrate the API provided by Renaissance with Licensee's Student Information System to enable the Applications to obtain and update Licensee Data in the Applications. Any use of the Applications through the Admin Login Information or any other accounts created by Licensee (collectively, the "**Login Information**") will be considered use by the Licensee. Licensee agrees not to sell, transfer, or assign its Login Information or allow others to use it except Authorized Users. Licensee agrees to immediately notify Renaissance of any unauthorized use of its Login Information or any other breach of security or confidentiality thereof,

and in such event Renaissance shall have the right, without limitation of any other rights under the Agreement, at law or in equity, to terminate the Agreement and/or take any steps necessary to prevent the unauthorized use.

#### 2.5 Reserved.

2.6 Service Level. Renaissance shall use reasonable commercial efforts to ensure that the Hosting Services are Operational during at least 99% of each calendar month of the Subscription Period. "**Operational**" means functioning so as to allow normal operation for the intended purpose of the Applications for Authorized Users to access the Applications hosted on the Hosting Services. The inability of the Licensee to access the Hosting Services due to its own hardware or software issues or internet connectivity issues is not sufficient to constitute the services non-operational. Notwithstanding the foregoing, the service level does not apply to (i) maintenance as described in Section 2.8 and (ii) any application or service provided by a third party, including, without limitation, Third Party Services, does not include availability impacted by scheduled maintenance or planned updates and is subject to Licensee complying with the system requirements set forth at <https://www.renaissance.com/system-requirements/>.

2.7 Third Party Services. The Applications and Hosting Services may operate using third party applications and services obtained separately by Licensee ("**Third Party Services**"). Renaissance is not responsible for the operation or functionality of such Third Party Services. While Renaissance may configure its Applications and Hosting Services to operate with Third Party Services, Renaissance cannot and does not guarantee that such Third Party Services will operate correctly or that the Third Party Services will be available during the entire Subscription Period and Renaissance does not endorse the Third Party Services.

2.8 Maintenance. Renaissance reserves the right to update the Applications and Hosting Services and provide maintenance releases related to the Applications and Hosting Services. All updates and maintenance releases that are deployed shall be deemed subject to all applicable terms and conditions in the Agreement. Licensee does not have any right hereunder to receive any new versions of the Applications that Renaissance may, in its sole discretion, release from time to time.

2.9 Technological Changes. As technology advances it becomes necessary for software application providers to discontinue support for older operating systems and third-party applications. It is the responsibility of Licensee to keep its computers, networks, operating systems, and third-party applications up-to-date and functional. For the avoidance of doubt, this includes Licensee being responsible for any hardware or software upgrades required to operate Applications and/or revisions thereto.

### 3. Professional Services

- 3.1 Professional Services. If identified in the Quote, Renaissance will provide the Professional Services identified therein in accordance with terms and conditions set forth in the Agreement including those terms and conditions set forth in **Exhibit C** attached hereto.
- 3.2 Quality of Services. Renaissance agrees to perform the Professional Services with care, skill, and diligence, in accordance with the applicable professional standards currently recognized in the educational software applications industry, and shall be responsible for the professional quality and completeness of all Professional Services furnished hereunder.
- 3.3 Deliverables. Renaissance shall own all right, title and interest in and to all Deliverables and any other work product, regardless of medium, created in the performance of Professional Services hereunder; provided, however, that Licensee is granted a non-transferable, non-sublicensable, non-exclusive, limited license to use the Deliverables for Licensee's internal, authorized purposes for the duration of the term of the Subscription Period.
- 3.4 Reschedule Professional Services. For those Professional Services that require Renaissance to be present at Licensee's facility or any other facility chosen by Licensee, if Licensee reschedules the date for provision of such Professional Services, Licensee shall pay Renaissance a one-time fee equal to \$200 to the extent Renaissance had already booked its travel arrangements.
- 3.5 Cancellation of Professional Services. Notwithstanding the termination provisions of this Agreement and subject to this Section 3.5, the Parties agree that Licensee only has the right to cancel any particular Professional Service without terminating the Agreement in its entirety by providing Renaissance with written notice prior to Renaissance rendering such Professional Service and no later than the first anniversary of the date identified in the Quote for such Professional Service. If Licensee exercises its right to cancel a Professional Service for which Renaissance has already booked travel, Licensee shall pay Renaissance a one-time cancellation fee of \$750. To the extent the Licensee does not schedule the Professional Services it purchases as identified in the Quote on or prior to the first anniversary of the date identified in the Quote for such Professional Service, Licensee shall have no right to cancel the Professional Service and will have no right to seek a refund from Renaissance.
- 3.6 Subcontractors. Renaissance may employ third parties to assist with the performance of Professional Services; however, Renaissance is solely responsible for ensuring that any third party performing Professional Services under the Agreement is bound by the obligations of confidentiality and assignment provided herein.

Renaissance shall pay all fees, wages, salaries, and other amounts due any third party in connection with Renaissance's performance of its obligations under the Agreement and shall be responsible for all reports and obligations respecting any such third party relating to any taxes, insurance, and similar matters.

4. **Fees**. Licensee shall pay Renaissance the fees in the amounts specified in the Quote (the "**Fees**"). Upon Licensee's acceptance of the Quote, Licensee shall submit to Renaissance the fully executed Quote and its purchase order and Renaissance shall issue Licensee an invoice for the Fees. Licensee shall pay the Fees within 30 days of Renaissance's invoice. Any amounts owed by the Licensee under this Agreement that are not paid when due (and not subject to a good faith dispute), shall bear interest, from the time the payment was due until the time paid, at a rate of 1% per month compounded monthly, or if lower, the highest rate allowed by law. Notwithstanding any language to the contrary contained therein, no terms or conditions stated in a Licensee purchase order or in any other Licensee order documentation shall be incorporated into or form any part of this Agreement and all such terms and conditions shall be null and void. Failure to pay the Fees in accordance with the Agreement shall constitute a material breach by Licensee.
5. **Term; Termination; Effect of Termination**
- 5.1 Term. The Agreement shall be effective as the date of set forth in the Quote and continue until the end of the Subscription Period (the "**Term**").
- 5.2 Termination.
- a. *(Intentionally Omitted)*
- b. Termination for Breach. Either party may terminate the Agreement by written notice if the other party fails to cure any material breach within 30 days of receipt of written notice.
- c. Termination for Bankruptcy. Either party may terminate the Agreement immediately if any of the following events occur affecting the other party: (a) voluntary bankruptcy or application for bankruptcy; (b) involuntary bankruptcy or application for bankruptcy not discharged within 60 days; (c) appointment of receiver or trustee in bankruptcy for all or a portion of the other party's assets; or (d) an assignment for the benefit of creditors.
- 5.3 Effect of Expiration or Termination; Survival.
- a. Access. Upon expiration or termination of the Agreement for any reason, Licensee access to the Applications, Hosting Services and Services will be discontinued upon the effective date of expiration or termination. Licensee agrees to, and direct its Authorized Users to, cease access of the Applications, Hosting Services and Services and will remove, and direct its Authorized Users to remove, any Applications components installed on any

computers. Licensee shall also return or destroy all materials provided by Renaissance under the Agreement, including any Content, within 30 days of termination or expiration of the Agreement

b. Refunds.

- i. If Licensee terminates the Agreement pursuant to Section 5.2(b) or (c), Licensee shall be entitled to a refund equal to a prorated amount of the Fees from the date of termination through the end of the Subscription Period.
- ii. If the Agreement terminates for any other reason, Licensee shall not be entitled to any refund.

c. Survival. Those provisions that naturally survive termination or expiration of the Agreement shall survive such termination or expiration, including, but not limited to, Sections 5.3, 6-10 and Section 12.

## 6. Intellectual Property Rights; Ownership

6.1 No Transfer of Ownership. Licensee acknowledges that all Intellectual Property Rights in Renaissance's Marks, the Applications, the Hosting Services, Services and Content as well as any corrections, bug fixes, enhancements, updates or other modifications, including custom modifications thereto whether made by Renaissance or any third party, are owned and retained by Renaissance and the relevant licensors of any embedded Third Party Services. By virtue of the Agreement, no ownership of any Intellectual Rights relating to the Applications, Content, Hosting Services, Services, Renaissance's Marks or other information or material provided by Renaissance to Licensee is assigned or transferred to Licensee and such Intellectual Property Rights are protected by U.S. and international copyright and other intellectual property laws.

6.2 No Implied Grants. Except as explicitly granted under the Agreement, no other right, license, release, covenant not to sue or other rights or immunities, express or implied, by estoppels or otherwise are granted to any part of the Applications, Content, Hosting Services, Services or Renaissance's Marks.

6.3 Licensee Data. Licensee shall exclusively own all right, title and interest in and to all Licensee Data. Licensee hereby grants to Renaissance a non-exclusive, royalty-free, worldwide license to use, reproduce, adapt, combine with other data, edit and re-format, generate, and store Licensee Data for use in connection with the Applications, Hosting Services and Professional Services for the duration of the Agreement for Renaissance to carry out its rights and obligations hereunder. Licensee hereby further grants to Renaissance an irrevocable, perpetual, non-exclusive, royalty-free, worldwide license to use, reproduce, adapt, combine with other data, edit and re-format, generate, and store any Licensee Data that does

not constitute Personally Identifiable Information for Authorized Users in the United States or Personal Data for Authorized Users in all other countries for any lawful purpose consistent with this Agreement and the Privacy Policy. Licensee covenants that it is responsible for any data, including Licensee Data, submitted via the Applications and to the Hosting Services, including the accuracy, quality, integrity, legality, reliability, and appropriateness of such Licensee Data. Other than as set forth in this Section, Renaissance shall acquire no rights in any Licensee Data. Licensee represents and warrants that it has the right to provide Renaissance with the Licensee Data for the purposes described in the Agreement.

6.4 Renaissance Data. Renaissance aggregates or anonymizes certain data and information (including Personally Identifiable Information for Authorized Users in the United States or Personal Data for Authorized Users in all other countries) that it collects regarding use of the Applications, Content and Hosting Services related to the operation of the Applications and Hosting Services ("**Renaissance Data**") that is not subject to this policy. Renaissance Data is not reidentified or sold to any third parties, but to the extent permitted by law, Renaissance shall be allowed to utilize, reproduce, adapt, combine with other data, edit, re-format, generate, store, and/or disclose any and all Renaissance Data for any lawful purpose consistent with this Agreement and the Privacy Policy.

6.5 Feedback. Licensee (a) shall provide Renaissance with information concerning errors, problems, complaints and other matters related to the Applications, Content and the Services and (b) may provide Licensee's feedback and/or suggestions for improvements to the Applications, Content and Services (collectively, "**Feedback**"). Licensee acknowledges and agrees that (a) Licensee shall not retain, acquire or assert any Intellectual Property Right or other right, title or interest in or to the Feedback; (b) Renaissance may have development ideas similar to the Feedback; (c) Feedback does not contain Confidential Information or proprietary information of Licensee or any third party; and (d) Renaissance is not under any obligation of confidentiality with respect to the Feedback. In view of the foregoing, Licensee grants Renaissance and its Affiliates an exclusive, transferable, irrevocable, free-of-charge, sublicensable and perpetual right to use Feedback in any manner and for any purpose.

7. Confidential Information. Except as expressly and unambiguously allowed herein, each party agrees that it will hold in confidence and not use or disclose any Confidential Information received from the other party except to the receiving party's employees, affiliates, consultants and advisors who need access to the Confidential Information for the receiving party to exercise its rights or carry out its obligations under the Agreement and who are legally bound to maintain the confidentiality of the Confidential Information. Each party further agrees to use the same means it uses to protect

its own confidential and proprietary information, but in any event not less than reasonable means, to prevent disclosure and to protect the confidentiality of Confidential Information received from the other party. Upon discovery of any unauthorized disclosure of Confidential Information the receiving party shall use its good faith efforts to prevent any further disclosure or unauthorized use thereof. In case of discovery of unauthorized disclosure, the receiving party shall notify the disclosing party without any delay. Upon termination of this Agreement or upon request of the disclosing party, the receiving party will return to the disclosing party all Confidential Information of such disclosing party, all documents and media containing such Confidential Information and any and all copies or extracts thereof, or certify in writing that all such copies and documents have been destroyed. The foregoing shall not prevent either party from disclosing Confidential Information which belongs to such party or which (i) is in or becomes part of the public domain through no act or omission of the receiving party, (ii) can be demonstrated by the receiving party as being known to the receiving party previously, (iii) is rightfully obtained by the receiving party from a third party, (iv) is independently developed by the receiving party without use of the other party's Confidential Information, or (v) is required to be disclosed pursuant to a requirement of a governmental agency or law so long as the disclosing party provides the other party with prompt notice of such required disclosure and complies with any protective order imposed on such disclosure.

## 8. Data Protection.

8.1 Prohibited Data. Licensee hereby acknowledges that the Applications are intended for academic practice and assessment only and that the Applications are not intended for the storage or use of any data not related to such purpose including, without limitation, social security numbers, financial account numbers, health information, behavioral records, disciplinary records, driver's license, passport or visa number, credit card data or any Special Categories of Data ("**Prohibited Data**"). Licensee agrees to not input any Prohibited Data into the Applications.

8.2 Data Protection Addendum. The additional provisions of the Data Protection Addendum located at <https://doc.renlearn.com/KMNet/R62068.pdf> are incorporated herein based on the location of the Authorized Users of Licensee.

## 9. Indemnification

9.1 Renaissance Indemnification. Subject to the limitations set forth in Section 9.2, Renaissance agrees to indemnify Licensee against any Actions by a third party alleging that the Applications or Hosting Services, as provided by Renaissance under this Agreement, infringe a United States copyright, trademark, or patent issued on or before the Effective Date, by paying the amounts Licensee is obligated to pay to the third party in accordance with a final judgement or settlement of the claims.

Notwithstanding the foregoing in this Section 9.1, Renaissance shall have no liability and Renaissance's obligations under this Section 9.1 shall not apply if the claim, judgment or settlement is either partially or in whole based on (i) any software, service or other material provided by or on behalf of Licensee, (ii) any modification of the Applications or Hosting Services if such modification is not done by Renaissance or if such modification is done by Renaissance pursuant to Licensee's written instruction, (iii) Licensee continuing any allegedly infringing activity after being notified of any such allegedly infringing activity or after being informed of or provided with modifications that would have avoided the alleged infringement; (iv) any Third Party Services or (v) Licensee's use of the Applications or Hosting Services that is not strictly in accordance with the terms and condition of the Agreement. If the Applications or Hosting Services as provided by Renaissance are found, in a final non-appealable order or decision from a court of competent jurisdiction, to infringe the rights of a third party and as a result a final injunction is obtained against the Licensee's use of the Applications or Hosting Services, or if in Renaissance's opinion, actions are needed to avoid potential infringement, Renaissance may, at its expense and option: (i) procure for Licensee the continued right to the Applications or Hosting Services, (ii) replace or modify the Applications or Hosting Services in whole or in part, with substantially similar, functionally equivalent, non-infringing Applications or Hosting Services, or (iii) if Renaissance is unable to effect the foregoing despite its reasonable efforts, Renaissance may terminate the Agreement or request Licensee to discontinue use of the Applications or Hosting Services in whole or in part, subject to Licensee having a right to terminate the Agreement.

9.2 Licensee Indemnification. Licensee agrees to defend, indemnify, and hold harmless Renaissance, its Affiliates and their respective directors, officers, employees, contractors and agents, from all Losses that result from any third party Action and amounts paid in settlement thereof alleging or relating to claims of Licensee's breach of the Agreement or any violation of the terms of use or any other agreement governing the use of the Applications, Hosting Services, Services or Content.

9.3 Indemnification Procedure. The indemnification obligations of the parties specified above are subject to the following conditions: the indemnified Party (a) promptly notifies the indemnifying party in writing of the claim, (b) provides exclusive control to indemnifying party to defend (including choosing its counsel) and settle the Action at the indemnifying Party's exclusive discretion, (c) agrees to cooperate (at indemnifying party's expense) in good faith with the indemnifying Party in the defense as the indemnifying party may reasonably request, and (d) shall not agree and/or acknowledge (i) any liability regarding the Applications or Hosting Services and (ii) the validity, enforceability or infringement of any intellectual

property right asserted against the Applications or Hosting Services.

- 9.4 Sole Remedy. Notwithstanding anything to the contrary in the Agreement, the indemnity provided in this Section shall be the sole and exclusive remedy for Licensee regarding third party Intellectual Property Rights infringement claims.

## 10. Limitation of Liability and Disclaimer of Warranties

- 10.1 Disclaimer of Limited Warranty. EXCEPT AS OTHERWISE PROVIDED IN THE AGREEMENT, THE APPLICATIONS, HOSTING SERVICES, SERVICES AND CONTENT ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS; RENAISSANCE AND ITS AFFILIATES AND THEIR RESPECTIVE LICENSORS MAKE NO WARRANTY THAT THE APPLICATIONS, HOSTING SERVICES, SERVICES OR CONTENT WILL BE UNINTERRUPTED, SECURE, OR ERROR FREE OR THAT DEFECTS IN APPLICATIONS, HOSTING SERVICES, SERVICES OR CONTENT WILL BE CORRECTED; AND; RENAISSANCE AND ITS AFFILIATES AND THEIR RESPECTIVE LICENSORS SPECIFICALLY DISCLAIM, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE APPLICATIONS, HOSTING SERVICES, SERVICES AND CONTENT, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE OR ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR PERFORMANCE.

### 10.2 Limitation of Liabilities.

- a. Direct Damages Only. To the maximum extent permitted by law, the liability of Renaissance shall be limited to direct damages only, thus excluding liability for any other damages such as indirect, special, incidental, consequential or punitive damages (including, but not limited to, lost profits, lost data, lost revenue, lost savings and loss of goodwill).
- b. Aggregate Liability. To the maximum extent permitted by law, in no event shall Renaissance's aggregate liability with respect to any matters whatsoever arising under or in connection with the Agreement exceed the lesser of (i) total fees paid by Licensee to Renaissance under the Agreement within the twelve-month period prior to the date the cause of action giving rise to liability arose or (ii) \$100,000. The foregoing liability is cumulative with all payments for claims or damages in connection with the Agreement being aggregated to determine satisfaction of the limit.
- c. Third Party Products and Services. Licensee understands that Renaissance is not responsible for and will have no liability for hardware, software or other items or any services provided by any

persons other than Renaissance, including, without limitation, Third Party Services.

- d. Professional Services. Any liability of Renaissance with respect to the Professional Services or Deliverables will be limited exclusively to correction of such Professional Services or such Deliverables or, if such correction is not possible or impractical, to refund of the pertinent Fees.

- e. Economic Basis of Agreement. The parties acknowledge that the fees, the rights granted to each party and the allocation of the risk (as expressed in the indemnities and the limits of warranties, liabilities, damages and remedies) contained in the Agreement reflect the economic basis of the Agreement, in absence of which the Agreement would not have been made.

11. **Force Majeure**. In the event of an issue that causes either Party's delay or failure to perform its obligations under the Agreement due to acts of God and natural disasters (each, a "**Force Majeure**"), the affected Party will: (a) promptly give the other Party notice in writing of the Force Majeure; (b) use all reasonable efforts to mitigate the effects of the Force Majeure upon that Party's performance of its obligations under the Agreement; and (c) promptly resume performance of its obligations after the Force Majeure has passed. Provided a Party affected by a Force Majeure complies with the foregoing, delay or failure to perform its obligations under the Agreement shall not constitute a breach of the Agreement.

## 12. Miscellaneous

- 12.1 Entire Agreement. The Agreement and any and all Quotes and all exhibits and attachments attached hereto, constitutes the entire agreement between the parties and supersedes all previous and/or inconsistent agreements, negotiations, representations and promises, written and oral, regarding the subject matter. No modification, course of conduct, amendment, supplement to or waiver of the Agreement or any provisions hereof shall be binding upon the parties unless made in writing and duly signed by both parties.

- 12.2 Severability. If any provision of the Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable as if such provision had not been set forth herein. The parties agree to substitute for such provision a valid provision that most closely approximates the intent of the severed provision.

- 12.3 Waiver. A failure of any party to exercise any right given to it hereunder, or to insist upon strict compliance by the other party of any obligation hereunder, shall not constitute a waiver of the first party's right to exercise such a right, or to exact compliance with the terms hereof. Moreover, waiver by any party of a particular default by another party shall not be deemed a continuing waiver so

as to impair the aggrieved party's rights in respect to any subsequent default of the same or a different nature.

Party in any respect whatsoever. There are no third-party beneficiaries to the Agreement.

- 12.4 Governing Law. If Licensee is a publicly funded, non-profit educational institution in the United States, the Agreement will be governed by the internal laws of the State in which Licensee is situated, without giving effect to the state's choice of law rules and the exclusive venue for disputes arising out of the Agreement shall be an appropriate state or federal court located in such State. In all other cases, the Agreement shall be governed by the laws of state of Wisconsin without giving effect to the state's choice of law rules and the exclusive venue for disputes arising out of the Agreement shall be an appropriate state or federal court located in Wisconsin.
- 12.5 Dispute Resolution. If a dispute arises between the parties relating to the interpretation or performance of the Agreement, the parties agree to hold a meeting, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith, to negotiate a resolution of the dispute prior to pursuing other available remedies.
- 12.6 Notices. All notices required or permitted under the Agreement shall be in writing and shall be deemed delivered when (a) delivered in person, (b) deposited in the United States mail, postage prepaid, (c) via a recognized national delivery service, such as UPS, FedEx or DHL, or (d) via e-mail, with receipt of confirmation of delivery, addressed to the addresses set forth in the Quote.
- 12.7 Captions. The captions that head certain Sections and paragraphs in the Agreement are inserted only as a matter of convenience, and in no way define, limit, or extend or interpret the scope of the Agreement or of any particular Section.
- 12.8 Assignment. The rights and obligations of either party under the Agreement may not be transferred or assigned directly or indirectly without the prior written consent of the other party, except that Renaissance may assign the Agreement without restriction to an entity that acquires substantially all of its stock, assets, or business. Except as otherwise expressly provided herein, the provisions hereof will inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties.
- 12.9 Relationship of the Parties. The parties are independent contractors and not joint venture partners or otherwise Affiliated. Neither party has any right or authority to assume or create any obligations of any kind or to make any representation or warranty on behalf of the other Party, whether express or implied, or to bind the other
- 12.10 Limitation of Action. Any action by Licensee in connection with the Agreement must be brought within two years after the cause of action arose or such longer period of time as required by applicable law.
- 12.11 Duplicates, Originals, Counterparts. The Agreement and any Quote may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.
- 12.12 Scanned Documents & Electronic Signatures. Electronic signatures by duly authorized signatories of the parties are valid. Each party may scan and electronically preserve the Agreement and all other documents related to the Agreement. All documents that have been scanned and stored by a party are treated as original documents for all purposes.
- 12.13 Export Law Assurances. Licensee may not use or otherwise export the Applications except as authorized by U.S. law. In particular, but without limitation, the Applications may not be exported (i) into (or to a national or resident of) any U.S. embargoed country (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders. By using the Applications, Licensee represents and warrants that Licensee is not located in, under control of, or a national or resident of any such country or on any such list.
- 12.14 Representations. Each party represents and warrants that it has been duly authorized to enter into the Agreement for and on behalf of any person, company, or other entity identified herein.
- 12.15 Equitable Rights. Each party acknowledges that a breach by a party of Section 6 (Intellectual Property Rights; Ownership) or Section 7 (Confidentiality) may cause the non-breaching party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the non-breaching party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching party may be entitled at law or in equity, without the necessity of posting bond. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in the Agreement to the contrary.

## EXHIBIT A

### Definitions

**"Action"** shall mean any third-party claim, suit, arbitration, action, or proceeding.

**"Agreement"** means the Quote, these Terms of Service and License, including any amendments and/or restatements expressly agreed upon by the parties.

**"Applications"** means the commercial software products being provided to Licensee under the Agreement and applicable Quote, including, in all cases, executable program modules thereof, as well as related documentation and computer readable media. The Applications are set forth in the Quote and shall include Application component of Renaissance-U to the extent identified in such Quote.

**"Authorized User"** means an employee of the Licensed Site (including administrators and teachers), a student enrolled at the Licensed Site or a parent of such student, provided that such student is one that is counted in Licensee's Student Capacity.

**"Confidential Information"** means all business, technical, and financial information that one party ("**receiving party**") obtains from the other party ("**disclosing party**"). Confidential Information of Renaissance includes, but is not limited to, trade secrets, technology, information pertaining to business operations and strategies, information pertaining to pricing and marketing, and any technical information relative to the setup and security of the Application or Hosting Service including, but not limited to, Hosting Service Internet addresses, Login Information, Internet URL's, Virtual Private Network setup and encryption key information.

**"Content"** means all types of information including, without limitation, books, articles, recordings, documentation, photographs, graphics, video, databases or any other compilations rendered available by Renaissance or accessible through the Applications or Deliverables. For the avoidance of doubt, Content includes any and all original expression in any media, as well as any derivations of such original expressions.

**"Data Integration Services"** means any commercial software products being provided to Licensee under the Agreement and applicable Quote that enables a Licensee to connect the Applications to Licensee's student information system to enable automatic loading and updating of Licensee Data in the Applications.

**"Deliverables"** means any work product or materials to be developed or delivered by Renaissance in connection with providing the Services to Licensee.

**"Homebound Student"** means a student that is an Authorized User of a Licensed Site that cannot attend school due to medical or emotional conditions substantiated to the extent required by a health care provider in the jurisdiction of the Licensed Site.

**"Intellectual Property Rights"** means all intangible assets including (a) patents (design, utility or otherwise), patent disclosures, applications and inventions (whether ultimately deemed patentable or not), (b) trademarks, service marks, trade

dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) all original expressions in any fixed medium, including registered and unregistered copyrights and copyrightable works (including Applications), and rights in data and databases, (d) trade secrets, know-how and other confidential information, and (e) all other intangible assets related to any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**"International School"** means a school that promotes international education, in an international environment, by following a national or international curriculum different from that of the school's country of residence.

**"Licensed Site"** means the physical location of a single school which has purchased Student Capacity for the Applications and identified in the Quote. Multiple schools in one building are each a separate Licensed Site and each must purchase a separate license.

**"Licensee"** means the entity identified in the Quote.

**"Licensee Data"** means (a) any information or data that Licensee collects on individual Authorized Users, including, without limitation, personal information (e.g., an Authorized User's name, age, gender, race, place of residence, and other directory information), enrollment information (e.g., the school a student attends, a student's current grade level and years of attendance, the number of days a student was absent), academic information (e.g., the courses a student completed, the test scores and grades a students earned, the academic requirements a student has fulfilled, and education records), and various other forms of data collected and used by such Licensee; (b) any data or outputs, including, but not limited to assignments, assessment and quiz scores, generated from using the Applications (including data or outputs contain with reports generated by the Applications); (c) Authorized User sign-on information; and (d) any data inputs by individual Authorized Users of myON Applications, including but not limited to essays, reading journals, book reviews, book notes, etc.

**"Losses"** mean all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

**"Marks"** mean any word(s) and/or symbol(s) used alone or in combination as trade names, trademarks, logos and service marks, in all cases, registered or unregistered.

**"Mobile Applications"** mean applications by which Licensee may have the ability to access some or all of the Applications on mobile devices.

**"myON Application"** means those Applications identified as a myON Application in the Quote.

**"Privacy Policies"** means the applicable Application Privacy Policy located at <https://www.renaissance.com/privacy-policy/> which may be updated from time-to-time by Renaissance in its sole discretion.

**"Professional Services"** means those professional services identified in the Quote and further described in **Exhibit B** and any other professional, technical or support services that Renaissance provides to Licensee.

**"Quote"** means (a) a quote issued by Renaissance to Licensee to provide access to the Applications, Hosting Services and Services identified therein for the Subscription Period that is accepted by Licensee by executing the quote and submitting Licensee's purchase order (the **"Initial Quote"**) and (b) a quote issued by Renaissance to Licensee to provide access to additional Applications, Hosting Services or Services within the Subscription Period of the Initial Quote that is accepted by Licensee by submitting Licensee's purchase order.

**"Renaissance"** means Renaissance Learning, Inc., a Wisconsin corporation.

**"Renaissance Application"** means those Applications identified as a Renaissance Application in the Quote.

**"Terms of Service and License"** means these Terms of Service and License and the Privacy Policies, as amended by the parties.

**"Services"** mean the Onboarding Services and Professional Services.

**"Student Capacity"** with respect to any Licensed Site, means the maximum number of Licensee students that are authorized to use the Renaissance Applications during the Subscription Period. Student Capacity for any Renaissance Application is identified in the Quote either under the Quantity column or separately as student subscriptions. Student Capacity may only be increased as described in section 2.3(a)(i) in these Terms of Service and License.

**"Subscription Period"** means the time period set forth in the Quote during which Licensee has access to the Applications unless the Agreement is terminated earlier in accordance with the Agreement, then the time period shall end as of the date of termination.

## EXHIBIT B

### International School Conditions to Use Renaissance Applications Outside of Licensed Site

- Licensee acknowledges and agrees that Renaissance will not provide any Licensee support to students or parents in connection with their use of the Renaissance Application outside the Licensed Site.
- Licensee must turn off its IP whitelist, which currently limits access to the Renaissance Application only to devices in Licensee's designated networks at Licensee's buildings. Licensee acknowledges and agrees that turning off its IP whitelist shall not change the relationship between Licensee and Renaissance and Renaissance will still be providing access to the Renaissance Application as a provider of Licensee.
- Renaissance does system maintenance and other updates to the Renaissance Application after hours to avoid impact on its licensees. Licensee acknowledges that if Licensee's students are attempting to use the Renaissance Application during this period, the system performance may slow down or may be temporarily unavailable and Renaissance disclaims any liability for the availability or lack thereof of the Renaissance Application.
- Any use of the Renaissance Applications not in accordance with the Agreement will immediately void Licensee's license to use the Renaissance Application.
- Licensee understand that one of the primary purposes for the restrictions in the Agreement is to minimize student cheating and to protect the Renaissance's Application's content from unauthorized access or distribution which would compromise the Renaissance Application and its contents. Licensee hereby releases Renaissance from any liability that may arise from or in connection with the security of the Renaissance Application, the inability to access or use the Renaissance Application and the results of use of the Renaissance Application, in all cases, where the Renaissance Application is used by Licensee's students outside of the Licensed Site. Licensee also agrees to promptly notify Renaissance upon becoming aware that any of the Renaissance Application's content has been compromised in any fashion, including, without limitation, posting or sharing answers by Licensee's students.

## EXHIBIT C

### Professional Services and Other Terms and Conditions

#### 1. Included Professional Services

The following Professional Services are provided without additional charge:

- a. **Renaissance Smart Start:** A free on-demand, in-product training program utilizing Content, including instructional videos, resources, and activities for mastering critical early steps for use of certain Renaissance Applications. Licensee's administrators and teachers of the Licensed Sites can access and revisit Smart Start Content unlimited times through their Renaissance Home portal, however, Content, including copies of PDFs or other written materials is for the Licensee's internal use only.
- b. **myON PD Portal:** A free on-demand, in-product training program utilizing Content, including instructional videos, resources, and activities for mastering critical early steps for use of certain myON Applications. Licensee's administrators and teachers of the Licensed Sites can access and revisit the myON PD Portal unlimited times through their myON Applications, however, Content, including copies of PDFs or other written materials is for the Licensee's internal use only.

#### 2. Additional Professional Services

The following Professional Services are available for an additional charge and if purchased by Licensee will be identified in the Quote:

- a. **Custom On-Site Seminars and Leadership Seminars:** Six-hours of professional development in the form of either one six-hour on-site seminar or two three-hour on-site seminars on the same day, each for up to 30 participants per seminar for hands on training.
- b. **Implementation Site Visits:** Six-hours of implementation support in the form of data reviews, classroom coaching, Q&A sessions, meeting with PLCs, and debrief with building leadership for small groups but no more than 30 participants.
- c. **Star Champions' Academy:** Three six-hour on-site seminars for up to 20 participants per seminar for hands on training. The 20 participants must be the same participants at each seminar. Licensee is required to purchase Renaissance-U for the Subscription Period.
- d. **Virtual Onsite Seminars:** 90-minute professional development virtual on-site seminar targeted at one specific topic, for up to 30 participants provided by Renaissance remotely. Licensee is responsible for providing an onsite facilitator who will work with Renaissance to plan the seminar in advance, test the technology, and co-facilitate during the seminar. Seminars are anticipated to be a two-way live video

feed via webcam and/or 3-D Webcam technology; however, should these video technologies not be available or working effectively at the time of the seminar, it will not inhibit the delivery the seminar.

- e. **Webinars:** Webinar related to a specific topic, for up to 30 participants in 1 hour increments up to 3 hours. Webinars can be used for Q&A session as well if arranged in advance.
- f. **Implementation and Data Coaching Services:** Renaissance will provide Licensee a dedicated Renaissance coach to facilitate a tailored action plan, provide email and phone support to building leadership and seven 30-60 minute structured sessions for up to 30 participants for learning experiences, data conferences or questions-and-answers. Licensee is responsible for scheduling the coaching sessions and it is recommended that Licensee schedule such sessions evenly distributed throughout the Subscription Period. The content of the coaching session will focus on data, but the content can be tailored to the specific needs of the participants, to the extent that Licensee participates in a pre-planning meeting with Renaissance in advance of the coaching session. Renaissance shall provide these services remotely.
- g. **Renaissance-U:** An Application that provides professional development courses via on-demand, online tutorials and Implementation and Data Coaching Services. Licensee's administrators have a portal to monitor participant progress through the courses offered. If a Licensee has multiple Licensed Sites, it must purchase a license to access Renaissance-U for each Licensed Site. Licensee understands that as of August 2018, Renaissance-U will hosted on Teaching Channel's platform and agrees that use of Renaissance-U on the Teaching Channel Platform by Licensee and its Authorized Users is subject to Teaching Channel's Terms of Use and Privacy Policy located at <https://www.teachingchannel.org> (the "Teaching Channel Terms"). Licensee agrees that it and its Authorized Users will comply with the Teaching Channel Terms.
- h. **Smart Start Coaching:** Three initial training sessions with a Renaissance coach based on the Smart Start product training course content, and phone and email support for school leadership, to be used over the first three months of the Subscription Period.
- i. **Strategic Planning, Monitoring, and Reporting:** District-level service that begins with a planning session with the key Licensee stakeholders to establish the goals for the implementation of the Applications and key performance indicators that will indicate progress toward those goals. A strategic plan will be

delivered to Licensee, followed by three progress reports related to the goals and key performance indicators. Upon delivery of each of the progress reports Licensee may also participate in a 30-minute conversation with Renaissance to review progress and recommendations. A "plus" version of this service is also available that offers the Strategic Planning, Monitoring and Reporting Services and district-level Implementation and Data Coaching Services throughout the Subscription Term.

- j. **Project Management:** Project Management services are available for districts that need extra support managing the technical and logistical tasks associated with implementation of the Applications. Services are tailored to Licensee's needs, but typically include an in-person kick off meeting to develop the scope of the project and communication plan. The assigned project manager will serve as the Licensee's single point of contact, provide periodic updates, and oversee Renaissance delivery of the Professional Services purchased by the Licensee in accordance with the project plan.
- k. **Dedicated District Consultant ("DDC"):** A DDC is an individual embedded by Renaissance to assist in the implementation and provide Professional Services. The specific scope of the DDC's role will be defined in a subsequent statement of work between the Parties, but generally includes the DDC meeting with key district representatives to identify implementation expectations with specific goals and performance indicators. The DDC would then develop a tactic plan with a specific timeline indicating how Professional Services and implementation support services will be delivered throughout the Subscription Period.
- l. **Renaissance Results Package #1 (Remote):** Renaissance guides grade-level or department teaching teams to use data to inform instruction, measure growth, and replicate best practices through two webinars for one-hour for up to 30 people and 6 remote facilitated data team meetings per Results Team, delivered via WebEx for 40-60 minutes per meeting for up to 6 people. In addition, Renaissance will provide access to Renaissance-U for the Subscription Period.
- m. **Renaissance Results Package #2 (Onsite and Remote):** Renaissance guides grade-level or department teaching teams to use data to inform instruction, measure growth, and replicate best practices through 1 on-site training seminar for six hours for up to 30 people and 6 remote facilitated data team meetings per participating Results Team, delivered via WebEx for 40-60 minutes per meeting for up to 6 people. In addition, Renaissance will provide access to Renaissance-U for the Subscription Period.
- n. **Renaissance Results Package #3 (Onsite and Remote):** Renaissance guides grade-level or

department teaching teams to use data to inform instruction, measure growth, and replicate best practices through 1 on-site training seminar for six hours for up to 30 people, 4 on-site days for facilitated data team meetings for 40-60 minutes per Results Team for up to 6 people and 2 remote facilitated data team meetings delivered via WebEx for 40-60 minutes per meeting for up to 6 people. In addition, Renaissance will provide access to Renaissance-U for the Subscription Period.

- o. **Renaissance Advanced Certification:** Renaissance will certify Licensee's district personnel to provide ongoing professional development support to educators within the Licensee's district. Licensee's district personnel chosen to be certified (a "**Certification Candidate**") will be given individual access to Renaissance-U and must complete the course applicable to the certification topic (reading, assessment, or math) prior to attending the required two-day in person certification training (the "**Certification Training Event**"). The Certification Candidate must attend the Certification Training Event which will be held at various locations nationally (travel and expenses to attend are the responsibility of the Licensee and Certification Candidate), or alternately Renaissance can send a Renaissance consultant to Licensee to provide the Certification Training Event to the extent there are a minimum of 4 Certification Candidates on the same topic. Upon successful completion of the Certification Training Event, the Certification Candidates are deemed certified (a "**Certified Licensee Personnel**") that attended shall have rights to use all training materials found within Renaissance-U (to include projection of eLearning content in group professional development sessions and reproduction of PDFs) to conduct training session for educators within the Licensee's district and no other third parties. Certified Licensee Personnel shall not charge any fees for providing training. Certification is good for one year and includes registration for the Certified Licensee Personnel into the national certification Renaissance-U professional learning community and invitation to a quarterly webinar for all Renaissance Certified Licensee Personnel across the county. Certified Licensee Personnel that are active within the online community and attend all four quarterly webinars are eligible to renew their certification for up to two years. After the third year recertification is required. Certification is personal to the individual chosen by Licensee to be certified and does not transfer to any other person.

### 3. Other Terms and Conditions

- a. **On-Site Professional Services.** For any Professional Services that Renaissance will provide on-site, the following shall apply:

- i. Licensee shall provide facilities for its participants.
  - ii. The facilities provided by Licensee must be conducive to adult learning with computer, broadband Internet connection and two-way sound for each participant.
  - iii. Renaissance will tailor the content to the specific needs of the participants, to the extent that the Licensee participates in a pre-planning meeting with Renaissance 4-6 weeks prior to the event.
  - iv. Because travel is booked 4-6 weeks in advance, additional fees may apply for late booking, and last-minute rescheduling or cancellation.
- b. **Remote Professional Services:** For any Professional Services that Renaissance will provide remotely, the following shall apply:
- i. Licensee shall provide facilities for its participants.
  - ii. The facilities provided by Licensee must be conducive to adult learning with computer, broadband Internet connection and two-way sound for each participant and a hard-wired broadband internet connection for the computer that is projecting the online presentation.
  - iii. Renaissance will tailor the content to the specific needs of the participants, to the extent that the Licensee participates in a pre-planning meeting with Renaissance 3-5 business days prior to the event.
  - iv. Any materials sent electronically to support the session must be printed by Licensee for each participant.
- c. **Learning Environment:** Professional development sessions are designed to engage learners with hands-on experiences in the Applications, customization to group needs, and individualized support. Licensee assumes the responsibility for any diminished quality and/or satisfaction concerns if an appropriate learning setting is not provided by Licensee, including, without limitation, keeping to group size limits provided by Renaissance and providing facilities that meet technology and learning environment requirements.
- d. **Ownership:** All print and digital content provided as a part of the service is the sole property of Renaissance and is deemed Content under the Agreement. Recording or reproduction in any form is not permitted. Renaissance does not provide copies of any of the PowerPoint presentations presented during any seminar, webinar or any other presentation.
- e. **Learning Outcomes:** It is the responsibility of the Licensee to participate in a planning call with Renaissance a minimum of 3-5 business days for remote Professional Services and 4-6 weeks for onsite Professional Services, prior to the delivery of the Professional Services to determine the agreed upon learning outcomes. Renaissance will plan the delivery of the Professional Service to meet those pre-determined learning outcomes. At times the needs expressed by the participants of the Professional Services event do not exactly match the learning outcomes identified in the pre-planning meeting. Renaissance will use commercially reasonable efforts to address those needs as time allows, but Renaissance will first focus on fulfilling the learning outcomes agreed to during the pre-planning meeting.