

WATERFORD INSTITUTE'S END USER LICENSE AGREEMENT

Waterford Research Institute, LLC (“Waterford”) has developed certain programs, products and technology, as further described and defined below, to provide educational and learning services to educational institutions, programs and individuals. The company or individual identified during registration (“Customer” or “you”) desires to subscribe to the Products (as defined below) and Waterford desires to provide access to the Products on the terms and conditions set forth below.

Waterford is willing to provide access to the Products and Documentation (defined below) to Customer only on the condition that Customer accepts all of the terms in this Subscription Agreement (“Agreement”). You hereby agree that, by clicking “I agree” that you enter into this Agreement on behalf of Customer and that you have the requisite authority to bind Customer to the terms and conditions of this Agreement.

THE PARTIES HAVE READ AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

1. DEFINITIONS.

“Confidential Information” means all information regarding a party’s business, including, without limitation, technical, marketing, financial, employee, planning, and other confidential or proprietary information, disclosed under this Agreement, that is clearly identified as confidential or proprietary at the time of disclosure or that the receiving party knew or should have known, under the circumstances, was considered confidential or proprietary. Confidential Information includes the Customer Data, information derived from or concerning the Products or the Documentation and the terms of this Agreement.

“Customer Data” means any data, information or information contained in any database, template or other similar document submitted by Customer or its Users through the Products or provided by Customer to Waterford in connection with Customer’s or its Users’ use of and access to the Products.

“Documentation” means the designated final user manuals, handbooks, online materials, specifications or forms furnished by Waterford that describe the features, functionality or operation of the Products.

“Effective Date” means the date that Customer has (i) initially placed an order for Products by registering and submitting Order Documents and (ii) clicking “I agree” to accept the terms of this Agreement.

“Fees” means the subscription fees Customer is required to pay for use of the Products as set forth on the applicable Order Documents.

“Order Documents” means, collectively and as applicable: (i) an account registration and subscription order form for the Products duly submitted on-line or in any other manner required by Waterford, in the form provided by Waterford, which shall in all event set forth the Fees, and (ii) such other documents as shall be required by Waterford from time to time in connection with the subscription for the Products. When submitted and accepted by Waterford, all applicable Order Documents of Customer are incorporated into this Agreement by this reference and are part of this Agreement as if fully set forth in this Agreement.

“Products” means the educational products and services of Waterford specified on the Order Form as having been subscribed to by Customer, and which may include any or all of the following separate programs, products and services: (i) Waterford Early Learning a comprehensive, computer-based curriculum composed of Waterford Early Reading Program and Waterford Early Math and Science Program (ii) Classroom Advantage Reading and Classroom Advantage Math & Science computer-based reading, language arts, mathematics and science instructional tools for whole classroom or small group instruction; and (iii) Pre-K Reading a computer-based reading instructional tool designed primarily for pre-kindergarten students.

“Term” means the term of this Agreement as determined in accordance with Section 13(a).

“Users” means Customer’s clients, customers and others who are authorized to use the Products through Customer’s subscription to the Products and have been supplied UserIDs (as defined below) and passwords for this purpose.

2. ORDERS

The Order Documents will specify the Products that Customer is subscribing for and the related number of Users and any consulting, configuration, customization or other professional services (“Professional Services”), if any, being purchased. Following Waterford’s acceptance of each Order Document and Customer’s payment of any initial Fees due under such Order Documents, Waterford will make the Products available to Customer and its Users for access using a password protected account on Waterford’s designated website.

3. ACCESS AND SERVICE

Subject to the terms of this Agreement, including without limitation the payment of Fees as set forth in Section 10, Waterford hereby grants to Customer a non-sublicensable, non-transferable, non-exclusive subscription to access and use the Waterford Products by Customer and/or the number of Users specified in the Order Documents solely for Customer’s provision of education and learning services and the instruction of its Users. Customer agrees that its purchase of the subscription is neither contingent upon the delivery of any future functionality or features nor dependent upon any statement or representation made by Waterford with respect to future functionality or features of the Products.

4. ADDITIONAL USERS AND SERVICES

Access to the Products cannot be shared with anyone other than Users as authorized in the Order Documents. If Customer desires to add Users to the same subscription in excess of the number originally purchased (“Additional Users”) or if Customer desires to order additional or upgraded services or modules from Waterford (“Additional Services”), Customer must submit an updated Order Document. Upon Waterford’s acceptance of such an updated Order Document, Waterford shall make the Products available to the Additional Users or make the Additional Services available to Customer on the terms and conditions set forth in this Agreement and the updated Order Document. With respect to Additional Users: (i) the term will be coterminous with the preexisting subscription Term;

and (ii) Customer will be responsible for any additional Fees for the Additional Users in full for the month in which the updated Order Document is accepted by Waterford.

5. SERVICE LEVELS

Subject to the terms of this Agreement, including, without limitation, the payment of the Fees as set forth in Section 10, Waterford shall use commercially reasonable efforts to make the Products available in accordance with the terms and conditions of this Agreement, including the applicable Order Documents.

6. ACCESS AND SECURITY GUIDELINES

Each User must maintain a unique user identification name and password ("UserID") for access to and use of the Products. Customer shall be responsible for ensuring the security and confidentiality of UserIDs of its Users. UserIDs may not be provided to any individual who is not a User. Customer will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Products, and notify Waterford promptly of any such unauthorized use. Customer will not use its access to the Products to: (a) harvest, collect, gather or assemble information or data regarding other Waterford customers without their consent; (b) access or copy any data or information of other Waterford customers without their consent; (c) knowingly interfere with or disrupt the integrity or performance of the Products or the data contained therein; or (d) harass or interfere with another Waterford customer's use and enjoyment of the Products. Customer will, at all times, comply with all applicable local, state, federal, and foreign laws in using the Products.

7. CUSTOMER MAINTENANCE OBLIGATION

Except to the extent specified in an Order Document, Customer shall be solely responsible to provide or maintain any hardware or other software required for Customer to use the Products. Waterford shall have no liability, obligation or responsibility for the maintenance of Customer's hardware or other software required for Customer to use the Products, and disclaims any such responsibility.

8. CUSTOMER DATA

Customer is solely responsible for the Customer Data and will not provide, post or transmit any Customer Data or any other information, data or material that: (a) infringes or violates any intellectual property rights, publicity/privacy rights, law or regulation; or (b) contains any viruses or programming routines intended to damage, surreptitiously intercept or expropriate any system, data or personal information. Waterford may take remedial action if Customer or the Customer Data violates this Section 8, however, Waterford is under no obligation to review Customer Data for accuracy or potential liability. Waterford reserves the right to collect and retain Customer Data from which all personally identifiable information included in such data has been removed ("De-Identified Data"). Waterford may use and disclose De-Identified Data for any lawful purpose, including without limitation benchmarking, development or best practices, product and service development, and research and statistical purposes without reimbursement or notification to, or consent or authorization from, Customer. If Customer is an educational entity or institution, Customer agrees, to the fullest extent permissible under applicable law, that Waterford may, to the

fullest extent permissible under applicable law, use and retain personally identifiable information included in such Customer's Customer Data for research projects conducted in conjunction with such Customer, provided that at the conclusion of such research project, such Customer Data will be de-identified or removed at Waterford's discretion, and in no event will personally identifiable information be disclosed to third parties. Waterford will use commercially reasonable efforts to safeguard the security, confidentiality and integrity of Customer Data.

9. USE RESTRICTIONS

Customer is responsible for all use of the Products by Customer or its Users. Customer will not, and will not attempt to: (a) reverse engineer, disassemble or decompile any component of the Products; (b) interfere in any manner with the operation of the Products, or the hardware and network used to operate the Products; (c) distribute, transfer, grant sublicenses to, or otherwise make available the Products (or any portion thereof) to third parties (other than authorized Users), including, but not limited to, making Products (or any portion thereof) available (i) through resellers or other distributors, (ii) as an application service provider, service bureau, or rental source, (iii) by broadcast or transmission by telephone, cable, satellite, the Internet or interactive television; (d) embed or incorporate in any manner the Products (or any element thereof) into other applications of Customer or third parties; (e) create modifications to or derivative works of the Products; (f) reproduce the Products; (g) attempt or permit any third party to attempt to modify, alter, or circumvent the license or access control and protection mechanisms within the Products; (h) use or transmit the Products in violation of any applicable law, rule or regulation, including any export/import laws, (i) in any way access, use, or copy any portion of the Products or Waterford's code included therein (including the logic and/or architecture thereof and any trade secrets included therein) to directly or indirectly develop, promote, distribute, sell or support any product or service that is competitive with the Products or (j) remove, obscure or alter any copyright notices or any name, trademark, service mark, tagline, hyperlink or other designation of Waterford displayed on any display screen within the Products ("Waterford Marks"). Customer shall not permit any third party to perform any of the foregoing actions and shall be responsible for all damages and liabilities incurred as a result of such actions.

10. FEES, PAYMENT AND SUSPENSION OF SERVICES

As consideration for the subscription to the Products and the support services provided by Waterford under this Agreement, Customer will pay Waterford Fees for the number of Users and the Products ordered by Customer, which Fees shall be as set forth on the applicable Order Document. Customer understands and agrees that it is ordering the Products for the term of this Agreement; provided, however, that Fees will be charged on a monthly basis for each month of the term. Unless otherwise agreed to in writing by the parties, Customer will pay to Waterford all undisputed Fees owed within 30 days after Waterford's issuance of an invoice for such amounts. Payments will be sent to the address included on the invoice. All amounts payable shall be in the currency of the United States. Customer shall reimburse Waterford for all expenses (including reasonable attorneys' fees) incurred by Waterford to collect any amount that is not paid when due. All Fees owed by Customer in connection with this Agreement are exclusive of, and Customer shall pay,

all sales, use, excise and other taxes that may be levied upon Customer in connection with this Agreement, except for employment taxes and taxes based on Waterford's net income.

If any amount owing by Customer under this Agreement is 15 or more days overdue, Waterford may, without limiting its other rights and remedies, accelerate Customer's unpaid fee obligations so that all such obligations throughout the remainder of the term become immediately due and payable, and suspend Customer's access to the Products and suspend all UserIDs until such amounts are paid in full, provided that Waterford will give Customer at least 5 days' prior notice that Customer's account is overdue before suspending access to the Products. All past due amounts shall accrue interest at the rate of 1.5% per month until paid in full.

11. CONFIDENTIAL INFORMATION.

- a) **Obligation.** Each party agrees (i) to hold the other party's Confidential Information in strict confidence, (ii) to limit access to the other party's Confidential Information to those of its employees or agents having a need to know and who are bound by confidentiality obligations at least as restrictive as those contained herein, and (iii) not to use such Confidential Information for any purpose except as expressly permitted hereunder. Notwithstanding the foregoing, the receiving party will not be in violation of this Section 11(a) with regard to a disclosure that was in response to a valid order or requirement by a court or other governmental body, provided that the receiving party gives the other party with prior written notice of such disclosure in order to permit the other party to seek confidential treatment of such information.
- b) **Exceptions.** The restrictions on use and disclosure of Confidential Information set forth above will not apply to any Confidential Information, or portion thereof, which (i) is or becomes a part of the public domain through no act or omission of the receiving party, (ii) was in the receiving party's lawful possession prior to the disclosure, as shown by the receiving party's competent written records, (iii) is independently developed by the receiving party without reference to the disclosing party's Confidential Information, as shown by the receiving party's competent written records, or (iv) is lawfully disclosed to the receiving party by a third party without restriction on disclosure.

12. OWNERSHIP.

- a) **Products and Technology.** Customer acknowledges that Waterford retains all right, title and interest in and to the Products and all software, materials, formats, interfaces, information, data, content and Waterford proprietary information and technology used by Waterford or provided to Customer in connection with the Products (the "Waterford Technology"), and that the Waterford Technology is protected by intellectual property rights owned by or licensed to Waterford. Other than as expressly set forth in this Agreement, no license or other rights in the Waterford Technology are granted to Customer, and all such rights are hereby expressly reserved by Waterford. Waterford shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Products any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Users, relating to the Products.

- b) Customer Data. Customer retains ownership of the Customer Data, provided that Customer grants to Waterford all necessary licenses in and to such Customer Data solely as necessary for Waterford to use Customer Data as set forth in this Agreement. Waterford shall own all De-Identified Data.

13. TERM AND TERMINATION.

- a) Term. This Agreement is effective on the Effective Date. The initial term of this Agreement will commence on the Effective Date and continue for the term set forth in the applicable Order Document. Thereafter, this Agreement will renew for additional terms in length equal to such initial term unless either party gives the other party prior written notice of non-renewal within 30 days prior to the expiration of the then-current term. Waterford reserves the right to increase the Fees applicable to any renewal term upon written notice to Customer.
- b) Early Termination. Either party may terminate this Agreement upon written notice if the other party materially breaches the Agreement and does not cure such breach (if curable) within thirty (30) days after written notice of such breach.
- c) Effect of Termination. Upon the termination of this Agreement for any reason, (i) any amounts owed to Waterford under this Agreement before such termination will become immediately due and payable; and (ii) and all Customer access to or use of the Products will be immediately suspended. The rights and duties of the parties under Sections 1, 8, 10, 11, 12, 14, 15, 16 and 17 will survive the termination or expiration of this Agreement.

14. WARRANTY DISCLAIMER

Waterford makes no warranty concerning the Products. ACCORDINGLY, THE PRODUCTS AND ALL OTHER DATA, MATERIALS, AND DOCUMENTATION PROVIDED IN CONNECTION WITH THIS AGREEMENT BY WATERFORD ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. WATERFORD MAKES NO AND DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ACCURACY, EFFICACY AND ANY WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USE OF TRADE. ANY STATEMENTS OR REPRESENTATIONS MADE BY ANY OTHER PERSON OR ENTITY ARE VOID. YOU ASSUME ALL RISK AS TO THE QUALITY, FUNCTION, PERFORMANCE, AND ACCURACY OF THE PRODUCTS. WATERFORD DOES NOT WARRANT THAT THE PRODUCTS WILL BE PROVIDED ERROR-FREE, UNINTERRUPTED, COMPLETELY SECURE, OR VIRUS-FREE.

15. INDEMNITY.

- a) By Waterford. If any action is instituted by a third party against Customer based upon a claim that the Products, as delivered, infringe a United States patent, copyright or trademark, Waterford shall defend such action at its own expense on behalf of

Customer and shall pay all damages attributable to such claim which are finally awarded against Customer or paid in settlement of such claim. Waterford may, at its option and expense, and as Customer's exclusive remedy hereunder, (a) procure for Customer the right to continue using the Products, (b) replace or modify the Products so that they are no longer infringing but continue to provide comparable functionality, or (c) terminate this Agreement and Customer's access to the Products and refund any amounts previously paid for the Products attributable to the remainder of the then-current term of this Agreement. Waterford shall have no liability to Customer for any infringement action which arises out of a breach of the terms and conditions of this Agreement by Customer or of the use of the Products (i) after they have been modified by Customer or a third party without Waterford's prior written consent, or (ii) in combination with any other service, equipment, software or process not provided by Waterford. This Section 15(a) sets forth the entire obligation of Waterford and the exclusive remedy of Customer against Waterford for any alleged infringement or adjudicated infringement of any patent, copyright or other intellectual property right by the Products.

- b) By Customer. If any action is instituted by a third party against Waterford (i) arising out of or relating to Customer's use of the Products or Products (including claims by any customer or business partner of Customer); or (ii) alleging that the Customer Data, or the use of Customer Data pursuant to this Agreement, infringes the intellectual property or other right of a third party or otherwise causes harm to a third party, Customer will defend such action at its own expense on behalf of Waterford and shall pay all damages attributable to such claim which are finally awarded against Waterford or paid in settlement of such claim. Customer shall have no obligation under this Section for any claim or action that is described in Section 15(a) above or arises out of a breach of this Agreement by Waterford.
- c) Conditions. Any party that is seeking to be indemnified under this Section 15 (an "Indemnified Party") must (i) promptly notify the other party (the "Indemnifying Party") of any third-party claim, suit, or action for which it is seeking an indemnity hereunder (a "Claim"), and (ii) give the Indemnifying Party the sole control over the defense of such Claim. However, if an Indemnified Party fails to notify the Indemnifying Party promptly, the Indemnifying Party will be relieved of its obligations under this Section 15 only if and to the extent that its ability to defend the Claim is materially prejudiced by such failure. The Indemnifying Party may settle or compromise a Claim without the Indemnified Party's prior approval of any such settlement or compromise only if (x) such settlement involves no finding or admission of any breach by an Indemnified Party of any obligation to any third party, (y) such settlement has no effect on any other claim that may be made against an Indemnified Party or any defense that an Indemnified Party may assert in any such claim, and (z) the sole relief provided in connection with such settlement is monetary damages that are paid in full by the Indemnifying Party. Upon the Indemnifying Party's assumption of the defense of such Claim, the Indemnified Party will cooperate with the Indemnifying Party in such defense, at the Indemnifying Party's expense.

16. LIMITATION OF LIABILITY

WATERFORD'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER FOR ANY AND ALL CLAIMS ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT (UNDER ANY LEGAL THEORY INCLUDING CLAIMS IN CONTRACT OR TORT) OR THE PRODUCTS, WILL NOT EXCEED THE AMOUNTS ACTUALLY PAID TO WATERFORD BY CUSTOMER IN THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE CUSTOMER'S FORMAL WRITTEN NOTICE OF THE CLAIM FOR LIABILITY HEREUNDER. ALL CLAIMS THAT CUSTOMER MAY HAVE AGAINST WATERFORD WILL BE AGGREGATED TO SATISFY THIS LIMIT AND MULTIPLE CLAIMS WILL NOT ENLARGE THIS LIMIT. IN NO EVENT WILL WATERFORD BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (UNDER ANY LEGAL THEORY INCLUDING CLAIMS IN CONTRACT OR TORT), INCLUDING, BUT NOT LIMITED TO, INTERRUPTED COMMUNICATIONS, LOST DATA OR LOST PROFITS, AND DAMAGES THAT RESULT FROM INCONVENIENCE, DELAY OR LOSS OF USE OF ANY INFORMATION OR DATA OR OF THE PRODUCTS, EVEN IF WATERFORD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

17. GENERAL PROVISIONS

- a) **Publicity.** Waterford may make public announcements, including but not limited to, press releases and media announcements, of the existence of this Agreement and the relationship between the parties. Customer agrees to allow Waterford to use Customer's name in customer lists and other promotional materials describing Customer as a customer of Waterford and a user of the Products.
- b) **Assignment.** Neither party may assign any rights or obligations arising under this Agreement, whether by operation or law or otherwise, without the prior written consent of the other; except that either party may assign this Agreement without consent of the other party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing limitation, this Agreement shall inure to the benefit of and shall be binding on the successors and assignees of the parties.
- c) **Governing Law and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of Utah without giving effect to principles of conflict of laws. *The United Nations Convention on Contracts for the International Sale of Goods* will not apply to this Agreement. Any action or proceeding arising from or relating to this Agreement must be brought in a federal or state court sitting in Salt Lake County, Utah, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding. If a dispute arising under this Agreement results in litigation, the non-prevailing party shall pay the court costs and reasonable attorneys' fees of the prevailing party.
- d) **Force Majeure.** Waterford will not be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder for any cause which is beyond Waterford's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor

problems, telecommunications failures or delays, computer failures involving hardware or software not within Waterford's possession or reasonable control and acts of vandalism (including network intrusions and denial of service attacks).

- e) Notices. Any notice or other communication required or permitted under this Agreement and intended to have legal effect must be given in writing to the other party at the address set forth on the Order Documents (each party may change its address from time to time upon written notice to the other party of the new address). Notices will be deemed to have been given upon receipt (or when delivery is refused) and may be (i) delivered personally, (ii) sent via certified mail (return receipt requested) (iii) sent via e-mail or fax (all with confirmation of receipt), or (iv) sent by recognized air courier service.
- f) Entire Agreement. This Agreement, together with the documents incorporated herein by reference, including the Order Documents, is the entire understanding and agreement of the parties, and supersedes any and all previous and contemporaneous understandings, agreements, proposals or representations, written or oral, between the parties, as to the subject matter hereof. Only a writing signed by both parties may modify it.
- g) Severability and Waiver. If any provision of this Agreement is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining provisions of this Agreement will remain in full force and effect. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. All waivers must be in writing. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- h) Relationship of the Parties. The parties to this Agreement are independent contractors, and no agency, partnership, franchise, joint venture or employee-employer relationship is intended or created by this Agreement.

Contacting Us. If you have any questions about our End User License Agreement, you can contact us at

Waterford Institute
Attn: Customer Support
1590 E 9400 S
Sandy, Utah 84093, USA

877-499-7997
Monday–Friday 6 a.m.–7 p.m. Mountain Time
(Summer hours 8 a.m.–5 p.m. Mountain Time)

welsupport@waterford.org