

## END-USER LICENSE AGREEMENT

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2. **Term and Termination.** The term of this License, upon payment in full of all fees and charges itemized on the purchase order, is subscription or perpetual as determined by your type of purchase if you honor all terms and conditions hereof. However, the Company may terminate the License at any time if the End-User breaches any term or condition hereof and, upon receiving written notice of such breach from the Company, fails to cure the same to the Company's reasonable satisfaction within thirty (30) days after your receipt of said notice. The End-User agrees that the Company will invoice the End-User for any licenses activated above the number of licenses issued

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5. **Indemnification; Injunction.** The End-User shall fully indemnify and hold the Company harmless from and against any and all claims, losses, damages, legal fees and costs suffered or incurred by the Company as a result of any material breach by the End-User, its employees or agents of any provision of this Agreement; and the End-User further agrees that any such actual or threatened breach will cause the Company to incur incalculable and irreparable damage for which there is no adequate remedy at law, entitling the Company to temporary and permanent injunctive relief in addition to all other available remedies.

6. **Limited Warranty and Remedy.** The Software is provided by the Company and accepted by the End-User "as is." The Company warrants only that the Software and any provided Hardware

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9. **FERPA Compliance.** In providing the Software for use by any educational agency or institution, EdTech Games, LLC is acting as a contractor as described under the Family Educational Rights and Privacy Act 34 CFR 99.31 (a)(1)(i)(B). As required for FERPA compliance, EdTech Games, LLC is under the direct control of the agency or institution with respect to the use and maintenance of education records pertaining to that agency or institution. Such control includes the ability of the educational agency or institution to dictate the level of data collection performed by the Software. The Company does not redisclose data to any other parties per limitations imposed by 34 CFR 99.33.

10. **General Provisions.** This Agreement is the final expression of the parties' agreement and is intended to be a complete and exclusive statement of the terms and conditions thereof, including any exhibits attached hereto. Any waiver of any performance required hereunder of either party shall be valid only in the instance for which it is given, not for any future instances or other provisions hereof, and only if waived in writing by the party otherwise benefiting from such performance. Access to usage, performance, and efficacy data of all types from all Company software shall be granted at all times to the Company and may be used for reports, evaluations, and publications without restriction as long as the public reports, evaluations, and publications contain no individual student identification information. The End-User will not engage in, allow, assist, or permit any report, evaluation or publication of usage, performance, or efficacy data related to or derived from the Company's software without prior express written permission. Other than the Company's income taxes, the End-User shall be solely responsible for all taxes, assessments, fees, duties, etc. that may be charged by any governmental authority by virtue of this Agreement and/or your use of the Software. The Company's licensors who have contributed software or code to the Software (e.g., Microsoft) are direct and intended third party beneficiaries of this Agreement and may enforce it directly against you, but without any liability to you for damages of any kind that may arise out of this Agreement. Any action for breach of this Agreement must be commenced by the non-breaching party within one (1) year from the later of the date the cause of action arises or the date the cause of action is discovered or in the exercise of reasonable diligence by you should have been discovered. This Agreement and all matters relating hereto shall be governed by the laws of the State of Utah and the United States of America. This Agreement will not be governed by the

United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Both parties agree to resolve any controversy or dispute relating to this Agreement (other than equitable relief permitted under paragraph 6) by binding arbitration conducted in accordance with the commercial arbitration rules and procedures of the International Chamber of Commerce in Salt Lake City, Utah. In any suit, arbitration or appeal regarding this Agreement, the prevailing party's attorneys' fees and costs shall be reimbursed in full by the non-prevailing party. In the event that any provision of this Agreement is found by arbitration or a court of competent jurisdiction to be contrary to any applicable law, such law shall be deemed controlling and this

Agreement shall be regarded as modified accordingly, giving maximum permissible effect to the parties' intentions expressed herein, and the remainder of this Agreement shall continue in full force and affect. The individuals executing this Agreement are fully authorized to do so by their respective companies' bylaws and/or board resolutions. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors-in-interest and permitted assigns.

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Should you have any questions concerning these Agreements, please contact the Company at [www.edtechgames.com](http://www.edtechgames.com)

EdTech Games, LLC