

# IO Education General Terms

Effective June 1, 2016



These General Terms are part of and incorporated into that Master Services Agreement (the "MSA") executed by and between IO Education, LLC ("IO") and the client identified in such MSA (the "Client"). Capitalized terms used and not otherwise defined herein shall have the same meanings given for those terms in the MSA execution page.

## 1. Provision of Services.

1.1. Orders. Subject to the terms and conditions of this Agreement, IO will make the Service(s) identified in Client's Orders available to Client for the Service Term (described below), solely for use with respect to schools within Client's district or similar organization (or with respect to Client, if Client is itself a school). In the case of any module of the Service for which the Order indicates that the total price has been determined on per-unit basis (such as per-student, per-teacher or per school), Client's access to the Service will be limited to the number of units (e.g., students, teachers or schools) indicated on the Order. If Client desires to extend access to the Service during any Service Term to any additional units beyond those provided on the original Order, IO will amend the Order to reflect such addition upon Client's payment of an appropriate incremental fee determined at the same per-unit price. Except as otherwise provided on the Order or this Agreement, each Order is non-cancellable and will be subject to the terms and conditions of this Agreement. If required as part of Client's internal procedures, an Order may be supplemented by a purchase order issued by Client, but in no event will a Client purchase order modify any of the pricing, deliverables or terms set forth in the Order or this Agreement.

1.2. End Users. The Terms of Service applicable to a hosted software Service may permit Client to enable its faculty, administrators, students and guardians to access and use one or more modules or features of that Service, in which case those faculty, administrators, and (if applicable) students and guardians are referred to as "End Users." End Users may be required to agree to or accept (including electronically) IO's end user terms applicable to the relevant Service before accessing or using the Services (the "End User Terms"). Client is solely responsible for determining and assigning access levels and authority to the Services to its faculty and administrative End Users and for all use of the Services by those End Users. IO will not have any liability to Client or any third party for any student or guardian End User's use or misuse of the Services.

1.3. Service Suspension. IO may suspend the Services in whole or in part and without notice: (i) if IO believes Client's or its End Users' use of the Services represents a direct or indirect threat to the function or integrity of the Services, IO's or its service providers' system or networks, or any third party's use of the Services; (ii) if reasonably necessary to prevent unauthorized access to client data

(including, without limitation, the Client Data); or (iii) to the extent necessary to comply with legal requirements. If IO suspends the Services without notice, IO will provide the reason for such suspension, upon Client's request. Any suspension of services for the foregoing reasons will apply to the minimum necessary portion of the online portion of the Services and only be in effect for as long as reasonably necessary to address the issues giving rise to the suspension. IO may also, upon such notice as is reasonably practicable under the circumstances, perform scheduled or emergency maintenance (including temporary suspension of the Services as necessary) to maintain or modify the Services or IO Technology.

## 2. Term.

2.1. Initial Service Term. The term of this MSA begins on the Effective Date and will continue until all Orders have expired or have been termination. The initial term of each Order, and the initial term of the Client's subscription for the Services described in the Order (the "Initial Service Term"), begins upon the effective date of that Order and will continue for the period set forth in the Order. If no period is specified in the Order, the Initial Service Term will be a period of one (1) year commencing on the effective date of the Order.

2.2. Renewal Service Terms. The term of an Order may be renewed by for additional successive periods equal to the term specified in the Order (or, if none is specified, for successive one (1) year periods) (each, a "Renewal Service Term"), as follows: (i) at least thirty (30) days prior to the end of the expiring term, IO may provide Client with an invoice setting forth the proposed subsequent Renewal Service Term; and (ii) Client's payment of such invoice by the specified renewal date or continued material use of the Services (including by any End Users) after such date will constitute Client's acceptance of the Renewal Service Term. If Client does not pay such invoice by the renewal date, then IO may, in addition to any other remedy and in its sole discretion at any time after that renewal date, terminate the applicable Order effective as of the end of the expiring term. The Initial Service Term and all Renewal Service Terms are individually and collectively referred to the "Service Term."

## 3. Fee, Payment & Taxes,

3.1. Fees and Payment. Client agrees to pay all fees due for the services according to the prices and terms listed in the Order(s). All invoices issued under this Agreement are due within thirty (30) days following the date of invoice, unless a different period is expressly provided on the Order. In the event any amount due from Client becomes thirty (30) days or more past due, IO reserves the right to suspend or

terminate Client's access to the Service (and the applicable Order) on not less than ten (10) days' notice. Any invoices more than thirty (30) days past due will be subject to a service charge equal to 1.5% of the invoice amount per month, or the maximum amount allowed by law, whichever is less. All fees are non-refundable, except as otherwise explicitly stated in the applicable Order or this Agreement. If the fees for a feature or functionality of the Service are based on usage of the Service, then IO may access and use Client Data as reasonably necessary to determine the fees for the applicable feature or functionality.

**3.2. Future Price Adjustments.** The fees for any Renewal Service Term will be set at then-current IO pricing, unless the Order indicates a price commitment for a specified duration, or unless otherwise agreed by the parties at the commencement of the proposed Renewal Service Term through the execution of a new Order.

**3.3. Taxes.** Where required by law, IO will invoice Client for any state or local sales tax, gross receipts tax or similar amounts that IO is obligated to collect from Client ("Taxes"). Client is responsible for paying, and agrees to pay, all Taxes, excluding only taxes based on IO's net income. If Client is exempt from any such Tax, Client will provide IO with a valid tax exemption certificate authorized by the appropriate taxing authority to the extent such an exemption certificate is required or reasonably requested to establish such exemption.

#### **4. Client Data.**

**4.1. License; Rights.** The term "Client Data" means information Client creates or otherwise owns, licensed by Client from third parties or otherwise provided to IO on Client's behalf and, in each case, that is uploaded to or processed or accessed by the Services. With respect to any Client Data provided to IO, Client: (i) grants IO the right to use, copy, modify, manipulate and create derivative works of the Client Data as necessary in order for IO to provide and perform the Services; (ii) agrees to secure rights in the Client Data necessary for IO to provide the Services without violating the rights of any third party, or otherwise obligating IO to Client or any third party (except as otherwise set out in this Agreement). Except as otherwise required by applicable law, IO does not and will not accept any obligations in any separate license or other agreement that may apply to the Client Data or use of the Services. IO may transmit or disclose Client Data to third parties in accordance with Client's or its End User's directions (whether via the Services or otherwise).

**4.2. Treatment of Client Data upon Termination.** Upon expiration or termination of any Order, Client must notify IO (which may be via email) within five (5) days of expiration or termination whether to (i) disable all Client accounts relating to the terminated Services and delete the Client Data in such accounts; or (ii) provide Client with limited access to its account for a period of ninety (90) days after the date of such expiration or termination (the "Retention Period") for the sole purpose of permitting Client to retrieve its Client Data, in which case Client will reimburse IO if there are any applicable costs; provided, however,

that the provisions of subsection (ii) will not apply unless Client has paid all amounts due to IO through the effective date of termination no later than five (5) days after such date. If Client does not indicate (i) or (ii), IO will retain the Client Data in accordance with subsection (ii). Following the expiration of the Retention Period, IO will disable all Client accounts relating to the terminated Services and delete the Client Data contained in those accounts. Client agrees that, other than as described in this Section 4.2 and notwithstanding any other term in this Agreement, IO has no obligation to continue to hold or return any Client Data. Client also agrees that IO has no liability for deletion of any Client Data pursuant to these terms.

**4.3. Privacy and Security.** IO acknowledges that Client Data may include student-related information from Client that contains personally identifiable information about a student, and that such information is protected under the Family Educational Rights and Privacy Act ("FERPA"), and if applicable under corresponding state laws in Client's state. IO's access to any personally identifiable information in the Client Data is authorized solely in connection with IO's provision of the Services pursuant to this Agreement and is governed by the Privacy Policy.

**4.4. Certain Reimbursements.** In the event (i) IO is required to respond to any search warrant, court order, subpoena or other valid legal order relating to Client or the Client Data, or (ii) Client requests material assistance from IO in connection with Client's efforts to conduct any investigation, to cooperate with or respond to any investigation being conducted by a third party, or to pursue or respond to any matter or respond to any legal or administrative proceeding or similar matter, Client will reimburse IO for any cost that it incurs in so responding or assisting.

**4.5. System Metrics.** IO may automatically collect usage and volume statistical information regarding Client's and its End User's usage of the Services (collectively, the "System Metrics"). IO uses the System Metrics internally to diagnose technical problems, administer the Services, and improve its offerings and marketing. The System Metrics do not include any personal information or data related to the user of the Services. Notwithstanding any term to the contrary set forth herein, Client agrees and consents to IO's collection and use of the System Metrics as set forth herein, and Client further agrees that the System Metrics are IO's sole and exclusive property.

#### **5. Client Responsibilities.**

In addition to any Client obligations set out in any Terms of Service, Client will provide IO, in a timely manner, with all data and information reasonably necessary for IO to perform the Services (including Client Data). If necessary to enable IO to provide or perform the Services under this Agreement, Client will provide and coordinate, in a timely manner, IO's onsite access to any Client facilities or Client network or system (the "Client System"). Client will inform IO in writing and in advance of Services, of any security and access standards or requirements with respect to the Client System.

## 6. Termination.

6.1. By IO. In addition to any other termination rights described in this Agreement (including any applicable Terms of Service), IO may terminate any Order or this Agreement immediately (or, in its sole discretion, suspend the provision of the Services) upon notice to Client if Client (i) breaches this Agreement and fail to cure such breach within thirty (30) days of written notice describing such breach, except in the case of failure to pay fees or other amounts due under this Agreement, which such breach must be cured within ten (10) days after IO's notice of such delinquency; or (ii) breaches, or an End User, breaches any license, restriction on use or confidentiality terms of this Agreement.

6.2. By Client. Client may terminate this Agreement or any Order immediately upon written notice to IO if IO: (i) breaches this Agreement and fail to cure such breach within thirty (30) days of written notice describing such breach; or (ii) becomes the subject of any involuntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors and such proceeding is not dismissed within sixty (60) days of its filing.

6.3. Termination of Service Agreement. IO's ability to provide the Services may be subject to various licenses or other agreements (each a "Service Agreement") between IO and its third party suppliers. In the event of the expiration or termination of any applicable Service Agreement, IO will use commercially reasonable efforts to obtain alternative suppliers in order to avoid suspension or disruption in the Services. If IO is unable, for any reason, to obtain such an alternative or replacement Service Agreement, or if IO reasonably determines that the provision of any Services would be a violation of any applicable law or regulation or any IO license in any jurisdiction or is no longer permitted under any of the same, IO may terminate all affected Orders upon written notice to Client without any liability to Client. IO will give Client at least sixty (60) days prior written notice to Client (or, if it is not possible to give 60 days notice, as much notice as possible under the circumstances) of the termination or expiration of a Service Agreement governing IO's ability to deliver the Services, or any other condition arising under such Service Agreement that is likely to adversely affect Client's use of the Services or IO's ability to provide the Services. If IO terminates any Order pursuant to this Section 6.3, and Client has prepaid for any Services under that Order, then IO will, after applying such prepayment to all fees and charges due under the Agreement, return the unused portion of such prepayment to Client within forty-five (45) days after the date of

6.4. Procedure upon Termination. Upon the effective date of termination of any Order, and in addition to any other post-termination obligations in this Agreement, IO will cease providing the terminated Services to Client and its End Users, Client and its End Users will cease using the Services, and all Client's payment obligations through the effective date of termination will immediately become due. In addition to the foregoing, promptly upon termination of this Agreement as a whole, each party will return

all Confidential Information of the other party in its possession and will not make or retain any copies of such Confidential Information, except as otherwise expressly set forth in this Agreement or as required (and only to the extent necessary) to comply with any applicable legal, archival or accounting record keeping requirement; provided, however, that all such retained Confidential Information will remain subject to the provisions of Section 9 of this MSA.

6.5. Survival. Except as otherwise set forth in a notice of termination, termination of any Order will not serve to terminate any other Order or the parties' respective obligations under this Agreement with respect to non-terminated Orders or Services. This MSA will terminate automatically upon the termination or expiration of all Orders. The terms and conditions set forth the signature page of this MSA, the definitions in this Agreement and the respective rights and obligations of the parties under Sections 1.4 (Order of Precedence), 4.2 (Treatment of Client Data upon Termination), 6.4 (Procedure Upon Termination), 6.5 (Survival), 7 (Warranties; Disclaimer), 8 (Limitations of Liability), 9 (Confidential Information; Proprietary Rights), 7 (Limitations of Liability) and 10 (General Provisions) will survive any termination or expiration of this Agreement.

## 7. Warranties; Disclaimer.

Specific warranties applicable to each Service, to the extent given, are set forth in the Terms of Service applicable thereto and will apply only during the applicable Service Term.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THE APPLICABLE TERMS OF SERVICE, THE SERVICES ARE PROVIDED EXCLUSIVELY ON AN "AS IS" BASIS, AND IO DISCLAIMS ANY AND ALL OTHER EXPRESS, IMPLIED AND STATUTORY WARRANTIES WITH RESPECT TO THE SERVICES OR, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE. IO DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. IO DOES NOT WARRANT OR GUARANTEE ANY SPECIFIC RESULTS FROM CLIENT'S OR ITS END USERS' USE OF THE SERVICES. AS BETWEEN THE PARTIES, CLIENT SHALL BE SOLELY RESPONSIBLE FOR ENSURING THE ACCURACY OF ALL CLIENT DATA PROVIDED BY CLIENT IN CONNECTION WITH THE SERVICES.

## 8. Limitations of Liability.

### 8.1. Exclusion of Consequential Damages.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANYONE FOR LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND, INCLUDING COST OF REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF INFORMATION OR DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING UNDER ANY THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

### 8.2. Limitations on Liability.

IN NO EVENT WILL THE MAXIMUM LIABILITY OF EITHER PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY LICENSE, USE OR OTHER EMPLOYMENT OF ANY SERVICE, ARISING UNDER ANY THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EXCEED AN AMOUNT EQUAL TO TWELVE (12) MONTHS OF FEES APPLICABLE

TO THE AFFECTED SERVICE(S) AT THE TIME OF THE EVENT. NOTWITHSTANDING THE PREVIOUS SENTENCE, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY TO THE EXTENT SUCH LIABILITY WOULD NOT HAVE OCCURRED BUT FOR THE OTHER PARTY'S OWN FAILURE TO COMPLY WITH THE TERMS OF THIS AGREEMENT.

The limitations set forth in this Section 8.2 will not apply to any fees or reimbursable expenses due to IO under this Agreement.

8.3. Force Majeure. Neither party will be liable for any loss or delay (including failure to maintain any given service level) resulting from any event beyond the affected party's reasonable control, including, fire, natural disaster, labor stoppage, internet service provider failures or delays, terrorism, civil unrest, war or military hostilities, criminal acts of third parties, and any payment date or delivery of service date will be extended to the extent of any delay resulting from any force majeure event.

8.4. Acknowledgement; Exceptions. Both parties acknowledge that the fees payable under the Order(s) reflect the allocation of risk set forth in this Agreement and that the parties would not enter into this Agreement without the limitations in this Section 8.

## **9. Confidential Information; Intellectual Property Rights.**

9.1. Nondisclosure. Each party acknowledges that it will have access to certain non-public and confidential information (collectively, "Confidential Information"). IO's Confidential Information expressly includes information IO creates or otherwise owns or licenses from third party and related to the Services, including, without limitation, all of IO's proprietary software and other technology with respect to the Services, all documentation relating to the Services (both printed and electronic), and any derivatives, improvements, enhancements, upgrades and updates of the foregoing conceived, reduced to practice or otherwise developed during the term of this Agreement by either party (collectively, the "IO Technology"), together with any processing, storage and transmission information that may be necessary for IO to perform its obligations under this Agreement, but excluding Client Data. Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or to the limited extent required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by law or to such party's employees, attorneys, accountants and other advisors as reasonably necessary), any Confidential Information of the other party. Each party will protect the confidentiality of the Confidential Information of the other party by employing the same measures (but in no event less than reasonable measures) as it takes to protect its own Confidential Information. The obligations of this Section 9 will last during and after the term of this Agreement.

9.2. Legal Disclosure. The receiving party may disclose Confidential Information pursuant to the requirements of a validly issued subpoena, governmental agency or by operation of law, provided that it gives the disclosing party, when practical and permitted, reasonable prior written notice sufficient to permit the disclosing party to contest

such disclosure. If Client is a governmental entity, the terms of this Section 9 are subject to the requirements of applicable trade secret, public records and similar laws. IO regards the IO Technology as its trade secret and requires that Client treat it such with respect to any public records requests with respect to the IO Technology, in accordance with applicable law.

9.3. Agreement. The parties expressly agree that the terms of this Agreement will be maintained in confidence and that neither party will disclose the terms of this Agreement to any Third Party without the prior written approval of the other party. Notwithstanding anything to the contrary contained in this Agreement, each party will have the right to disclose that Client is IO's customer.

9.4. Proprietary Rights. Exclusive of Client Data, IO and its licensors will retain all right, title, and interest (including copyright and other intellectual property rights or informational rights) in and to the Services and all legally protectable elements or derivative works of the foregoing, including, without limitation, the IO Technology. IO may place copyright and/or other proprietary notices, including hypertext links, within the Services, and neither Client nor any of its End Users will remove such notices without IO's written permission. Notwithstanding anything to the contrary in this Agreement, IO will not be prohibited or enjoined at any time by Client from utilizing any skills, knowledge or information of a general nature acquired during the course of providing the Services, including, without limitation, knowledge or information publicly known or available or that could reasonably be acquired in similar work performed for another customer of IO.

9.5. Remedies. In the event of a violation or threat of violation by a party, directly or indirectly, of the terms of this Section 9 the party who would be harmed by such violation, will have the right, and in addition to all other remedies available to it at law, in equity or under this Agreement, to affirmative or negative injunctive relief from a court of competent jurisdiction. Each party acknowledges that a violation of this section would cause irreparable harm and that all other remedies are inadequate.

## **10. General Provisions.**

10.1. Independent Contractors. The parties and their respective employees are and will be independent contractors and neither party by virtue of this Agreement will have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.

10.2. Notices. Client's address for communication and notice purposes relating to this Agreement is set forth on the signature page of this MSA (or such replacement address as Client may designate in accordance with this section from time to time). Client agrees to accept emails from IO at the e-mail address specified under this Section. IO may provide any and all notices, statements and other communications to Client through either e-mail or by mail or express delivery service, and all notices directed to Client as described in this section will be deemed upon transmission or within one (1) business day after deposit with the U.S. Postal Service or express delivery

service, as applicable. General information regarding the Service (such as scheduled maintenance information) may also be provided by posting on the Service only. Upon account setup of any hosted Services provided under this Agreement, Client may further designate additional contacts for various types of notices, as defined in the Help Documentation. IO recommends that the main contact and billing contact email addresses be group addresses (such as billing@customer.com) so that notices are reviewed promptly and not delayed due to the absence of one individual. In addition, IO may rely and act on all information, authorizations and instructions provided to IO from the above-specified email address and Client administrators. Any notices to IO must be in writing and addressed to Client at the address set forth on the signature page (or such replacement address as IO may designate in accordance with this section from time to time).

10.3. Governing Law. This Agreement will be interpreted in accordance with the laws of the State of Georgia and any controlling U.S. federal law (but excluding the Uniform Computer Information Transactions Act (UCITA), whether or not adopted in a given state). Any action or proceeding arising from or relating to this Agreement must be brought in a state or federal court having jurisdiction in Gwinnett County, Georgia, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding and agrees to waive any defenses to venue and jurisdiction including forum non conveniens. Each party will bear its own costs in connection with any legal proceeding arising under this Agreement, except that IO will be entitled to recover its reasonable attorneys' fees in the event of any action brought to collect any fees due under this Agreement.

10.4. Waiver; Amendment. No waiver of any provision of this Agreement or of any right or remedy under this Agreement will be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. Neither any delay in exercising, nor any course of dealing with respect to, nor any partial exercise of any right or remedy under this Agreement will constitute a waiver of any other right or remedy, or of any future exercise of that right or remedy. This Agreement may not be modified, altered or amended except by a written instrument duly executed by both parties. The Agreement may not be modified or amended, except as expressly set forth in this Agreement, or in writing and signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted, or by a properly executed Order.

10.5. Severability; Interpretation. If any provision is held by a court to be contrary to law, such provision will be eliminated or modified to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect. The headings in this Agreement are provided for convenience only and will not affect its construction or interpretation. As used in this Agreement, the term "Including" means "including, without limitation."

10.6. Beneficiaries; Successors and Assigns. There are no

third party beneficiaries to this Agreement. This Agreement will inure to benefit and bind the parties listed on the signature page of this MSA and their successors and assigns. Client may not assign this Agreement without prior written consent of IO. IO reserves the right to name Client as a user of the Service.

10.7. Limitation on Actions. No action arising out of this Agreement, regardless of the form, may be brought by either party more than two (2) years after the cause of action has arisen, or the date of last payment made by Client, whichever is later.

10.8. Governmental Users. This Section 10.8 applies to all use of the IO Technology by or for the U.S. government or by any prime contractor or subcontractor under any contract, grant or other activity with the U.S. government. The IO Technology provided to Client under this Agreement are "commercial items" as that term is defined at 48 CFR 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 CFR 12.212 and other applicable acquisition regulations and are provided to Client only as a commercial item. Consistent with 48 CFR 12.212, 48 CFR 227.7102, and 48 CFR 227.7202, all U.S. Government End Users, if any, acquire the IO Technology with only those rights and subject to the restrictions set forth in this Agreement. Notwithstanding the foregoing, the IO Technology may not be acquired by the U.S. Government pursuant to a contract incorporating clauses prescribed by 48 CFR 27.4, 48 CFR 227.71 or 48 CFR 227.72. Contractor/ manufacturer is IO Education, LLC, 1380 Peachtree Industrial Blvd., Suite 200, Suwanee, GA 30024.