

ELLIPSIS EDUCATION
MASTER SUBSCRIPTION AGREEMENT

This Master Subscription Agreement is between Coder Kids INC doing business as Ellipsis Education (“Ellipsis Education”) and the educational institution named in a corresponding Ellipsis Education Statement of Work (the “Educational Institution”). This Master Subscription Agreement and any Statement of Work executed by a representative of Educational Institution together form the “Agreement” between the parties. The Agreement is effective from the Educational Institution’s representative’s execution of the Statement of Work (the “Effective Date”). In consideration of the mutual promises and covenants, and on the terms and conditions contained herein, the parties agree as follows:

1. SERVICES.

1.1. Services. During the Term, and subject to Educational Institution’s compliance with the terms and conditions of this Agreement, Ellipsis Education shall use commercially reasonable efforts to provide Educational Institution and its authorized individual end users (“Authorized Users”) with the services described in each executed Statement of Work(the “Services”) in accordance with the terms hereof, including to host, manage, operate and maintain Ellipsis Education’s software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Ellipsis Education agrees to provide remote access to and use of as part of the Services hereunder (the “Subscription Software”) by Educational Institution and its Authorized Users, 24 hours per day, seven days per week every day of the year, except for:

A. Scheduled Downtime is anticipated to be minimized to the extent possible and will be completed during non-peak hours with consideration of impact to our Customers;

B. Service downtime or degradation due to a Force Majeure Event;

C. any other circumstances beyond Ellipsis Education’s reasonable control, including Educational Institution’s or any Authorized User’s use of material or information, in any form or medium, including any software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Ellipsis Education (“Third Party Materials”), misuse of the Subscription Software, or use of the Services other than in compliance with the express terms of this Agreement and the Specifications; and

D. any suspension or termination of Educational Institution’s or any Authorized Users’ access to or use of the Subscription Software as permitted by this Agreement.

1.2. Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties:

A. Ellipsis Education has and will retain sole control over the operation, provision, maintenance and management of the (a) Services, (b) Documentation (defined below), (c) the information technology infrastructure used by or on behalf of Ellipsis Education in performing the Services, including all computers, software, hardware, databases, electronic systems and networks, whether operated directly by Ellipsis Education or through the use of third-party services (“Ellipsis Education Systems”), and (d) any and all other Ellipsis Education information, data, documents, materials, works and other content, devices, methods, processes, software and other technologies and inventions provided or used by Ellipsis Education in connection with the Services or which otherwise comprise or relate to the Services or Ellipsis Education Systems (collectively the “Ellipsis Education Materials”). This includes Ellipsis Education’s sole control over: (i) information, data and other content that is derived by or through the Services from processing Educational Institution Data (defined below) and is sufficiently different such that such Educational Institution Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further processing of such information, data or content (“Aggregated Statistics”); (ii) selection, deployment, modification and replacement of the Subscription Software; and (iii) performance of Service support, maintenance, upgrades, corrections and repairs. “Educational Institution Data” means, other than Aggregated Statistics, personally identifiable information, data and other content, in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly from Educational Institution or an Authorized User by or through the Services. The Educational Institution controls Educational Institution Data.

B. Educational Institution has and will retain sole control over the operation, maintenance and management of, and all access to and use of, Educational Institution’s information technology infrastructure, including computers, software, hardware, databases, electronic systems and networks, whether operated directly by Educational Institution or through the use of third-party services (the “Educational Institution Systems”), and sole responsibility for all access to and use of the Services and Ellipsis Education Materials by any other individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity (“Person”) by or through the Educational Institution Systems or any other means controlled by Educational Institution or any Authorized User. Educational Institution will maintain all Educational Institution Systems in compliance with any federal, state, or local law or regulation, and industry best practices.

1.3. Changes.

A. Ellipsis Education reserves the right, in its sole discretion, to make any changes to the Services and Ellipsis Education Materials that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of Ellipsis Education's services to its Educational Institutions, including in connection with changes in or additional to applicable educational standards, (ii) the competitive strength of or market for Ellipsis Education's services, including any technological or product updates available in the market, or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable Law.

B. Educational Institution may request additional Services, including additional Subscription Software or features, extension of the provision of any Subscription Software, and increases in the number of Authorized Users for any Services pursuant to an executed Statement of Work.

1.4. Suspension or Termination of Services. Without affecting its other rights or remedies which may be available to it, Ellipsis Education may, directly or indirectly, suspend, terminate or otherwise deny Educational Institution's, any Authorized User's or any other Person's access to or use of all or any part of the Services or Ellipsis Education Materials, without incurring any resulting obligation or liability, if: (a) Ellipsis Education receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Ellipsis Education to do so; or (b) Ellipsis Education believes, in its reasonable discretion, that: (i) Educational Institution or any Authorized User has failed to comply with, any term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of the Specifications; (ii) Educational Institution or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities; or (iii) this Agreement expires or is terminated.

2. AUTHORIZATION; USE RESTRICTIONS.

Authorization. During the Term, and subject to Educational Institution's payment of the Fees and compliance with all other terms and conditions of this Agreement, Ellipsis Education hereby authorizes Educational Institution to access and use the Services and such Ellipsis Education Materials solely for the purpose of teaching and learning computer programming and coding (the "Permitted Use") and will make available to Educational Institution's designated end users (each an "Authorized User") a unique login to the Subscription Software for the Term, subject to (i) the provision by such Authorized User of certain reasonable identifying information (which may include his or her own user name, electronic mail address, identification number, and/or password) for purposes of verifying an identity and authorization to access and use the Services

("Access Credentials") and (ii) each Authorized User's agreement to and continued compliance with [Ellipsis Education's Terms of Use Agreement](#). This authorization is non-exclusive and non transferable.

2.1. Reservation of Rights. Nothing in this Agreement grants any right, title or interest in or to any registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world ("Intellectual Property Rights") in or relating to, the Services, Subscription Software, Ellipsis Education Materials or Third Party Materials, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services, Subscription Software, Ellipsis Education Materials and the Third Party Materials are and will remain with Ellipsis Education and the respective rights holders in the Third Party Materials.

2.2. Authorization Limitations and Restrictions. Educational Institution shall be responsible for any unauthorized use of the Subscription Software that Educational Institution or any of its employees or agents have knowingly caused or knowingly tolerated. Ellipsis Education and/or its third party licensors reserve title, ownership, and all rights to the Subscription Software (and any manuals, instructions or other documents or materials Ellipsis Education provides or makes available to Educational Institution in any form or medium and which describe the functionality, components, features or requirements of the Services or Ellipsis Education Materials (the "Documentation")), except for the limited user rights expressly granted herein.

2.3. Use Restrictions. Educational Institution shall not, and shall not permit any Authorized User or other Person to, access or use the Services or Ellipsis Education Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. Without limiting the generality of the foregoing, Educational Institution shall not, except as this Agreement expressly permits:

A. copy, modify, or create derivative works of the Subscription Software or Ellipsis Education Materials, in whole or in part;

B. rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available all or any part of the Services, including the Subscription Software or Ellipsis Education Materials;

C. "mirror" any material contained in or provided in connection with the Services, including the Subscription Software or Ellipsis Education Materials;

D. reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, including the Subscription Software or Ellipsis Education Materials;

E. remove any proprietary notices from the Services, Subscription Software or Ellipsis Education Materials;

F. use the Services, Subscription Software, or Ellipsis Education Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law or regulation (“Law”); or

G. otherwise access or use the Services, Subscription Software, or Ellipsis Education Materials beyond the scope of the authorization granted hereunder.

3. EDUCATIONAL INSTITUTION OBLIGATIONS.

3.1. Educational Institution Systems and Cooperation. Educational Institution shall at all times during the Term: (a) set up, maintain and operate in good repair all Educational Institution Systems on or through which the Services are accessed or used; (b) provide Ellipsis Education and its personnel with such access to Educational Institution’s premises and Educational Institution Systems as is necessary for Ellipsis Education to perform the Services; and (c) provide all cooperation and assistance as Ellipsis Education may reasonably request to enable Ellipsis Education to exercise its rights and perform its obligations pursuant to this Agreement.

3.2. Effect of Educational Institution Failure or Delay. Ellipsis Education is not responsible or liable for any delay or failure of performance caused in whole or in part by Educational Institution’s delay in performing, or failure to perform, any of its obligations under this Agreement (each, a “Educational Institution Failure”).

3.3. Corrective Action and Notice. If Educational Institution becomes aware of any actual or threatened activity prohibited by this Agreement, Educational Institution shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Ellipsis Education Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Ellipsis Education of any such actual or threatened activity.

4. SUPPORT.

The Services include Ellipsis Education’s standard Educational Institution support services (“Support Services”), including new Authorized User login creation, basic troubleshooting and technical support, but specifically excluding issues arising from (i) Educational Institution’s or its Authorized User’s violation of this Agreement or (ii) Third Party Materials.

5. SECURITY.

5.1. Ellipsis Education Systems and Security Obligations. Ellipsis Education will employ commercially reasonable physical, administrative and technical controls, screening and security procedures and/or other security measures to protect Educational Institution Data. Ellipsis Education may change its security practices and procedures in its sole discretion and without notice to Educational Institution.

5.2. Educational Institution Control and Responsibility. Educational Institution has and will retain sole responsibility for: (a) all Educational Institution Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of Educational Institution or any Authorized User in connection with the Services; (c) Educational Institution's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by Educational Institution or through the use of third-party services ("Educational Institution Systems"); (d) the security and use of Educational Institution's and its Authorized Users' Access Credentials; and (e) all access to and use of the Services and Ellipsis Education Materials directly or indirectly by or through the Educational Institution Systems or its or its Authorized Users' Access Credentials, with or without Educational Institution's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

5.3. Access and Security. Authorized Users may be required to establish a login to the Subscription Software and provide certain personal information to Ellipsis Education to establish Access Credentials. Educational Institution will employ commercially reasonable physical, administrative and technical controls, screening and security procedures and/or other safeguards reasonably necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Subscription Software; and (b) control the content and use of Educational Institution Data, including the uploading or other provision of Educational Institution Data for processing by the Subscription Software. Processing of Educational Institution Data may include collecting, receiving, inputting, uploading, downloading, recording, reproducing, storing, organizing, compiling, combining, logging, cataloging, cross referencing, managing, maintaining, copying, adapting, altering, translating or making other derivative works or improvements from, processing, retrieving, using, displaying, disseminating, or otherwise providing or making available, or erasing.

6. FEES.

6.1. Fees. Educational Institution shall pay Ellipsis Education the fees as set forth in its Ellipsis Education Statement of Work and any resulting invoices ("Fees"), or otherwise as consistent with laws applicable to Educational Institution with respect to payment of vendors.

6.2. Taxes. Educational Institution is responsible for payment of all applicable value added, sales, use, and other taxes and all applicable export and import fees, custom duties, and similar charges (other than taxes based on Ellipsis Education 's net income) arising from the payment of fees hereunder.

6.3. Payment. Educational Institution shall pay all Fees within 30 days of receipt of an applicable invoice, unless otherwise stated in the Statement of Work or a resulting invoice.

6.4. Late Fees. If Educational Institution does not pay any fee or expense when due, such late payments shall bear interest at the rate of 1.5% per month, or, if lower, the maximum rate allowed by law. Educational Institution shall reimburse Ellipsis Education for any costs incurred (including reasonable attorney fees) in the collection of Educational Institution's past-due Fees. If such payment failure continues for 5 days following written notice thereof, Ellipsis Education may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Educational Institution or any other Person by reason of such suspension.

7. INTELLECTUAL PROPERTY RIGHTS.

7.1. Services and Ellipsis Education Materials. All right, title and interest in and to the Services, Subscription Software, and Ellipsis Education Materials, including all Intellectual Property Rights therein, are and will remain with Ellipsis Education and the respective rights holders in the Third-Party Materials. Educational Institution has no right, license or authorization with respect to any of the Services or Ellipsis Education Materials (including Third Party Materials) except as expressly set forth herein or the applicable third-party license, in each case subject to the terms of this Agreement. All other rights in and to the Services and Ellipsis Education Materials (including Third-Party Materials) are expressly reserved by Ellipsis Education and the respective third-party licensors. In furtherance of the foregoing, Educational Institution hereby unconditionally and irrevocably grants to Ellipsis Education an assignment of all right, title and interest in and to the Aggregated Statistics, including all Intellectual Property Rights relating thereto.

7.2. Consent to Use Educational Institution Data. Educational Institution hereby irrevocably grants all such rights and permissions in or relating to Educational Institution Data to Ellipsis Education as are necessary or useful: (a) to create Aggregated Statistics; (b) to perform, enhance or improve the Services; and (c) to enforce this Agreement and exercise its rights and perform its obligations hereunder; provided, however all Educational Institution Data and information collected from Authorized Users in connection with access to or use of the Services will be governed by [Ellipsis Education 's Privacy Policy](#).

8. TERM AND TERMINATION.

8.1. Term. The term of the Agreement commences as of the Effective Date and will continue in effect consistent with the License Dates set forth in the Statement of Work, unless terminated earlier pursuant any of the Agreement's express provisions, (the "Term").

8.2. Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

A. Ellipsis Education may terminate this Agreement, effective on written notice to Educational Institution, if Educational Institution fails to pay any amount when due hereunder, and such failure continues more than 15 days after Ellipsis Education's delivery of written notice thereof;

B. Either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach; and

C. Either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

8.3. Effect of Expiration or Termination. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

A. If terminated by Educational Institution when any Statement of Work is then in effect and not pursuant to Section 8.3B below, Ellipsis Education may, in its sole discretion, elect to continue to provide those Services pursuant to the terms of this Agreement, and Educational Institution will continue to be bound by the same, until the expiration of such Statement of Work;

B. All rights, licenses, consents and authorizations granted by either party to the other hereunder will immediately terminate;

C. Educational Institution shall immediately cease all use of any Services or Ellipsis Education Materials; and

D. Ellipsis Education may disable all Educational Institution and Authorized User access to the Services, including the Subscription Software and Ellipsis Education Materials.

8.4. Surviving Terms. The provisions, rights and obligations of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement.

9. REPRESENTATIONS.

9.1. Mutual Representations. Each party represents and warrants to the other party that:

A. it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;

B. it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement;

C. the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and

D. when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

9.2. Additional Ellipsis Education Representations. Ellipsis Education represents and warrants to Educational Institution that Ellipsis Education will perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

9.3. Additional Educational Institution Representations. Educational Institution represents and warrants to Ellipsis Education that Educational Institution owns or otherwise has and will have the necessary rights and consents in and relating to the Educational Institution Data so that, as received by Ellipsis Education and processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.

10. WARRANTY DISCLAIMER. While Ellipsis Education uses commercially reasonable efforts to assure the inclusion of accurate and up-to-date information is provided in connection with the Services, it makes no warranties or representations as to such information's accuracy. Ellipsis Education assumes no liability or responsibility for any typographical, data input errors, calculation errors or other errors, defects, or omissions associated with the Services. ALL SERVICES AND Ellipsis Education MATERIALS ARE PROVIDED "AS IS" AND ELLIPSIS EDUCATION HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND ELLIPSIS EDUCATION SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, Ellipsis Education MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR Ellipsis Education MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET

EDUCATIONAL INSTITUTION'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES (EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE SPECIFICATIONS), OR BE SECURE, ACCURATE, COMPLETE, OR ERROR FREE.

ALL THIRD-PARTY MATERIALS PROVIDED BY ELLIPSIS EDUCATION ARE PROVIDED "AS IS." ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS PROVIDED BY EDUCATIONAL INSTITUTION IS STRICTLY BETWEEN EDUCATIONAL INSTITUTION AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

11. DISCLAIMER OF LIABILITY. UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, WILL ELLIPSIS EDUCATION BE LIABLE FOR (1) ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF DATA OR PROFIT, ARISING OUT OF THE USE, OR THE INABILITY TO USE, THE SERVICES OR Ellipsis Education MATERIALS, OR ANY ERROR IN OR DEFICIENCY OF THE SAME, EVEN IF Ellipsis Education OR ITS AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR (2) ANY COSTS ARISING FROM THE USER'S OR OTHER THIRD PARTY USER'S USE OF THE SERVICES OR Ellipsis Education MATERIALS WHICH RESULTS IN THE NEED FOR SERVICING, REPAIR, OR CORRECTION OF ANY EQUIPMENT OR DATA OWNED BY THE USER OR ANY THIRD-PARTY. Ellipsis Education and its employees, officers, directors, members, managers, agents, affiliates, subsidiaries, and independent contractors shall not be liable for any claims, causes of action, costs, expenses, damages, or other liabilities of any nature which may arise from or be asserted against the Company as a result of any dispute between it and any Authorized Users, arising directly or indirectly from the Services or any other dealings between the Educational Institution or an Authorized User and any Third Party Materials provider.

ELLIPSIS EDUCATION HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF EDUCATIONAL INSTITUTION DATA, AND EDUCATIONAL INSTITUTION IS URGED TO CREATE AND REGULARLY MAINTAIN ITS OWN BACKUPS OF THE SAME.

12. INDEMNIFICATION; MITIGATION.

12.1. Indemnification. Educational Institution shall indemnify, defend and hold harmless Ellipsis Education and its officers, directors, employees, agents, successors and assigns (each, a “Ellipsis Education Indemnitee”) from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder, incurred by such Ellipsis Education Indemnitee in connection with any Action by a third party that arises out of or relates to any:

A. Educational Institution Data, including any processing of Educational Institution Data by or on behalf of Ellipsis Education in accordance with this Agreement;

B. any other materials or information (including any documents, data, specifications, software, content, technology, and third party materials) provided by or on behalf of Educational Institution or any Authorized User, including Ellipsis Education ’s compliance with any specifications or directions provided by or on behalf of Educational Institution or any Authorized User to the extent prepared without any contribution by Ellipsis Education ;

C. allegation of facts that, if true, would constitute Educational Institution’s breach of any of its representations, warranties, covenants or obligations under this Agreement; or

D. gross negligence or more culpable act or omission (including recklessness or willful misconduct) by Educational Institution, any Authorized User, or any third party on behalf of Educational Institution or any Authorized User, in connection with this Agreement.

12.2. Mitigation. If any of the Services or Ellipsis Education Materials are, or in Ellipsis Education ’s opinion are likely to be, claimed to infringe, misappropriate or otherwise violate any third party Intellectual Property Right, or if Educational Institution’s or any Authorized User’s use of the Services or Ellipsis Education Materials is enjoined or threatened to be enjoined, Ellipsis Education may, at its option either (1) procure for Educational Institution the right to continue use of the Services and Ellipsis Education Material materially as contemplated by this Agreement; (2) provide a modification to the Services and/or Ellipsis Education Material so that its use becomes non-infringing, while

providing materially equivalent functionality and performance; (3) replace the Services and/or Ellipsis Education Material with a non-infringing version which is materially equivalent in functionality and performance; or, if none of remedies (1)-(3) are possible, then (4) terminate this Agreement with respect to all or part of the Services and Ellipsis Education Materials, and require Educational Institution to immediately cease any use of the Services and Ellipsis Education Materials or any specified part or feature thereof, and, subject to Educational Institution's compliance with its post termination obligations set forth herein, refund Educational Institution a pro rata portion of Fees paid for the terminated Services.

12.3. THIS SECTION 12 SETS FORTH EDUCATIONAL INSTITUTION'S SOLE REMEDIES AND ELLIPSIS EDUCATION'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND ELLIPSIS EDUCATION MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

13. LIMITATION OF REMEDIES AND DAMAGES.

13.1. EXCEPT FOR LOSSES ARISING OUT OF OR RELATING TO A PARTY'S GROSS NEGLIGENCE OR MORE CULPABLE CONDUCT, IN NO EVENT (A) WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, OR (B) WILL ELLIPSIS EDUCATION'S LIABILITY, (INCLUDING CONTRACTUAL INDEMNIFICATION OBLIGATIONS) EXCEED THE AMOUNT ACTUALLY PAID BY EDUCATIONAL INSTITUTION TO ELLIPSIS EDUCATION AS A FEE UNDER THIS AGREEMENT IN THE ONE YEAR PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH THE CLAIM FIRST ARISES.

14. MISCELLANEOUS.

14.1. Publicity. Neither party shall issue a press release or other form of publicity concerning the existence of the Agreement or the Services without obtaining the prior written approval of the other party. In addition, Ellipsis Education shall not use Educational Institution's name, logo, trademarks, service marks or brand in any sales effort, publication, press release, marketing campaign, website, whitepaper, etc. or any other form without the prior written approval of Educational Institution's chief information officer or equivalent.

14.2. Force Majeure. Except for Educational Institution's payment obligations, neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the reasonable control and without the negligence of the parties.

14.3. Notices. All notices delivered under the Agreement shall be in writing and deemed given upon receipt when delivered personally or upon confirmation of receipt following delivery of (i) overnight courier service, or (ii) registered or certified mail, return receipt requested, postage prepaid, sent to the address indicated below the signature block on this Agreement, or at such other address of which one party is notified by the other in writing.

14.4. No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

14.5. No Partnership. The parties will at all times be independent contractors and will so represent themselves to all third parties. Neither party has granted to the other, the right to bind it in any manner whatsoever and neither party shall hold itself out as entitled to do the same. Nothing herein will be deemed to empower either party to be the agent or legal representative of the other or to constitute the parties as partners, co-owners, or joint venturers.

14.6. Assignment. Educational Institution may not transfer, assign, or delegate its rights or duties under this Agreement unless Ellipsis Education grants its prior written consent, which shall not unreasonably be withheld. Any assignment by a party in violation of the foregoing shall be void. Subject to this section, the provisions of the Agreement shall be binding upon and inure to the benefit of the parties, their successors, and permitted assigns.

14.7. Headings. The headings used in this Agreement are for reference purposes only and shall not affect the construction or interpretation of this Agreement.

14.8. Waiver; Amendments. No waiver or modification of this Agreement or of any covenant, condition, or provision herein obtained shall be valid unless in writing and duly executed by the party to be charged therewith. The failure of a party to enforce or exercise any term of this Agreement does not constitute a waiver of such term and shall in no way affect that party's right to later enforce or exercise it.

14.9. Severability. In the event any of the provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the same shall be deemed severable, and as never having been contained herein, and this agreement shall then be construed and enforced in accordance with the remaining provisions hereof.

14.10. Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

14.11. Entire Agreement; Counterparts. This Agreement, and any Statement of Work issued hereunder represents the entire agreement between the parties relating to the subject matter hereof. Users of the Services are further subject to Ellipsis Education's Privacy Policy and Terms of Use. This Agreement may be signed by counterparts.