

Terms of Service and License ExamTree

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

1. Definitions

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

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

"Applications" means the commercial software products being provided to Licensee under the Agreement and applicable Quote, including, in all cases, executable program modules thereof, as well as related documentation and computer readable media. The Applications are set forth in the Quote.

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

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

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

"Data Integration Services" means any commercial software products being provided to Licensee under the Agreement and applicable Quote that enables a Licensee to connect the Applications to Licensee's student information system and/or assessment systems to enable data collection automatically or through data imports and updating of Licensee Data in the Applications.

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

"Intellectual Property Rights" means all intangible assets including (a) patents (design, utility or otherwise), patent disclosures, applications and inventions (whether ultimately deemed patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) all original expressions in any fixed medium, including registered and unregistered copyrights and copyrightable works (including Applications), and rights in data and databases, (d) trade secrets, know-how and other confidential information, and (e) all other intangible assets related to any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

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

"Licensee" means the entity identified in the Quote.

"Licensee Data" means (a) any information or data that Licensee collects on individual Authorized Users, including, without limitation, personal information (e.g., an Authorized User's name, age, gender, race, place of residence, and other directory information), enrollment information (e.g., the school a student attends, a student's current grade level and years of attendance, the number of days a student was absent), academic information (e.g., the courses a student completed, the test scores and grades a students earned, the academic requirements a student has fulfilled, and education records), and various other forms of data collected and

used by such Licensee; (b) any data or outputs, including, but not limited to assignments, assessment and quiz scores, generated from using the Applications (including data or outputs contain with reports generated by the Applications); (c) Authorized User sign-on information.

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

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

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

“Privacy Policies” means the applicable Application Privacy Policy Exhibit A of this document which may be updated from time-to-time by ExamTree in its sole discretion.

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

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

“ExamTree” means ExamTree, Inc., a NY corporation.

“ExamTree Application” means those Applications identified as a ExamTree Application in the Quote.

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

“Services” mean the Onboarding Services and Professional Services.

“Student Capacity” with respect to any Licensed Site, means the maximum number of Licensee students that are authorized to use the ExamTree Applications during the Subscription Period. Student Capacity for any ExamTree Application is identified in the Quote. Student Capacity may only be increased as described in section 2.3.1.1 in these Terms of Service and License.

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

2. License to Applications and Hosting Services

2.1. *Grant of License:* Subject to Licensee’s compliance with the terms and conditions of the Agreement, ExamTree grants Licensee a non-exclusive, non-sublicensable, nontransferable, revocable, limited license, during the Subscription Period, to access and to use the Applications and Content provided therein in accordance with Section 2.3 below (the “License”).

2.2. *Hosting Services:* ExamTree shall provide Licensee with remote access to the Applications via the Internet (the “Hosting Services”) for the Licensed Sites. The Applications will be housed at ExamTree chosen facility or a cloud facility, and will operate on servers determined by ExamTree, which may include servers owned by or leased by ExamTree.

2.3. Authorized Use:

2.3.1. ExamTree Application. The following requirements apply to ExamTree Applications only:

2.3.1.1. Student Capacity: The number of unique students permitted to use the ExamTree Applications at and Licensed Site is limited to the Student Capacity set forth in the Quote. Circumventing the Student Capacity by any means is a material breach of the Agreement and may result in immediate termination of the Agreement by ExamTree. Student Capacity is allocated when a unique currently enrolled student data first loaded to the system. Student Capacity may not be used interchangeably across students and any unused Student Capacity is nonrefundable and expires at the end of the applicable Subscription Period. If a unique student no longer attends school at the License Site, Licensee may dis-enroll that unique student and use that seat for a new unique student at the Licensed Site. Additional Student Capacity may be purchased at any time by contacting ExamTree and placing an order for the

desired incremental, additional capacity amount, increasing the Student Capacity for that unique Quote. Any incremental, additional Student Capacity purchased shall be subject to these Terms of Services and License.

2.3.1.2. Location. ExamTree reserve the rights for limiting access to ExamTree applications for the Licensee only from the Licensed Site.

2.3.2. Access. ExamTree shall provide Licensee access to the Applications by the date identified in the Quote. Access rights granted to Licensee shall be limited to those access rights necessary to use of the intended functionality of the Applications. ExamTree reserves the right to restrict or prevent access to activities or suspected activities that involve security breaches, hacking, distributed denial of service attacks, or uploading a virus, Trojan horse, time bomb, unauthorized application, or any other harmful form of programming or vandalism.

2.4. Account Set Up:

2.4.1. ExamTree shall create an administrator account to enable Licensee's administrator access the Applications and provide Licensee with the identification number, password, encryption key, or other access codes to access the administrator account (the "Admin Login Information").

2.4.2. ExamTree shall assist Licensee with loading the Licensee Data and creating user names and passwords for each Authorized User to use the Applications (the "Onboarding Services"). To the extent Licensee request to allow their users to be authorized through Google Apps for Educational Services, ExamTree requires a single authorized domain name to be provided during "Onboarding Services". Any use of the Applications through the Admin Login Information or any other accounts created by Licensee (collectively, the "Login Information") will be considered use by the Licensee. Licensee agrees not to sell, transfer, or assign its Login Information or allow others to use it except Authorized Users. Licensee agrees to immediately notify ExamTree of any unauthorized use of its Login Information or any other breach of security or confidentiality thereof, and in such event ExamTree shall have the right, without limitation of any other rights under the Agreement, at law or in equity, to terminate the Agreement and/or take any steps necessary to prevent the unauthorized use.

2.4.3. Onboarding Services. Licensee shall provide all data items in a timely manner to be migrated in ExamTree applications in the formats decided and provided by ExamTree. Licensee is solely responsible for preparing data items for the provided format. ExamTree is not responsible for any delays due to issues resulted from Licensee's third party services.

2.4.4. Service Level. ExamTree shall use reasonable commercial efforts to ensure that the Hosting Services are Operational during at least 99% of each calendar month of the Subscription Period. "Operational" means functioning so as to allow normal operation for the intended purpose of the Applications for Authorized Users to access the Applications hosted on the Hosting Services. The inability of the Licensee to access the Hosting Services due to its own hardware or software issues or internet connectivity issues is not sufficient to constitute the services non-operational. Notwithstanding the foregoing, the service level does not apply to (i) maintenance as described in Section 2.7 and (ii) any application or service provided by a third party, including, without limitation, Third Party Services, does not include availability impacted by scheduled maintenance or planned updates and is subject to Licensee complying with the system requirements set forth at Exhibit B.

2.5. *Third Party Services*. The Applications and Hosting Services may operate using third party applications and services obtained separately by Licensee ("Third Party Services") or ExamTree. Services includes but not limited to integrated assessment systems, question banks, and developer libraries. ExamTree is not responsible for the operation or functionality of such Third Party Services. While ExamTree may configure its Applications and Hosting Services to operate with Third Party Services, ExamTree cannot and does not guarantee that such Third Party Services will operate correctly or that the Third Party Services will be available during the entire Subscription Period and ExamTree does not endorse the Third Party Services. Third Party.

2.6. *Maintenance*. ExamTree reserves the right to update the Applications and Hosting Services and provide maintenance releases related to the Applications and Hosting Services. All updates and maintenance releases that are deployed shall be deemed subject to all applicable terms and conditions in the Agreement. Licensee

does not have any right hereunder to receive any new versions of the Applications that ExamTree may, in its sole discretion, release from time to time.

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

3. Professional Services

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

4. Fees.

Licensee shall pay ExamTree the fees in the amounts specified in the Quote (the "Fees"). Upon Licensee's acceptance of the Quote, Licensee shall submit to ExamTree the fully executed Quote and its purchase order and ExamTree shall issue Licensee an invoice for the Fees. Licensee shall pay the Fees within 30 days of ExamTree's invoice. Any amounts owed by the Licensee under this Agreement that are not paid when due (and not subject to a good faith dispute), shall bear interest, from the time the payment was due until the time paid, at a rate of 1% per month compounded monthly, or if lower, the highest rate allowed by law. Notwithstanding any language to the contrary contained therein, no terms or conditions stated in a Licensee purchase order or in any other Licensee order documentation shall be incorporated into or form any part of this Agreement and all such terms and conditions shall be null and void. Failure to pay the Fees in accordance with the Agreement shall constitute a material breach by Licensee.

5. Term; Termination; Effect of Termination

5.1. *Term.* The Agreement shall be effective as the date of set forth in the Quote and continue until the end of the Subscription Period (the “Term”).

5.2. Termination.

5.2.1. Termination for Breach. Either party may terminate the Agreement by written notice if the other party fails to cure any material breach within 30 days of receipt of written notice.

5.2.2. Termination for Bankruptcy. Either party may terminate the Agreement immediately if any of the following events occur affecting the other party: (a) voluntary bankruptcy or application for bankruptcy; (b) involuntary bankruptcy or application for bankruptcy not discharged within 60 days; (c) appointment of receiver or trustee in bankruptcy for all or a portion of the other party’s assets; or (d) an assignment for the benefit of creditors.

5.3. Effect of Expiration or Termination; Survival.

5.3.1. Access. Upon expiration or termination of the Agreement for any reason, Licensee access to the Applications, Hosting Services and Services will be discontinued upon the effective date of expiration or termination. Licensee agrees to, and direct its Authorized Users to, cease access of the Applications, Hosting Services and Services and will remove, and direct its Authorized Users to remove, any Applications components installed on any computers. Licensee shall also return or destroy all materials provided by ExamTree under the Agreement, including any Content, within 30 days of termination or expiration of the Agreement.

5.3.2. Refunds.

5.3.2.1. If Licensee terminates the Agreement pursuant to Section 5.2(1) or (2), Licensee shall be entitled to a refund equal to a prorated amount of the Fees from the date of termination through the end of the Subscription Period.

5.3.2.2. If the Agreement terminates for any other reason, Licensee shall not be entitled to any refund.

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

6. Intellectual Property Rights; Ownership

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

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

6.3. *Licensee Data.* Licensee shall exclusively own all right, title and interest in and to all Licensee Data. Licensee hereby grants to ExamTree a non-exclusive, royalty-free, worldwide license to use, reproduce, adapt, combine with other data, edit and re-format, generate, and store Licensee Data for use in connection with the Applications, Hosting Services and Professional Services for the duration of the Agreement for ExamTree to carry out its rights and obligations hereunder. Licensee hereby further grants to ExamTree an irrevocable, perpetual, non-exclusive, royalty-free, worldwide license to use, reproduce, adapt, combine with other data, edit and reformat, generate, and store any Licensee Data that does not constitute Personally Identifiable Information for Authorized Users in the United States or Personal Data for Authorized Users in all other countries for any lawful purpose consistent with this Agreement and the Privacy Policy. Licensee covenants that it is responsible for any data, including Licensee Data, submitted via the Applications and to the Hosting Services, including the accuracy, quality, integrity, legality, reliability, and appropriateness of such Licensee Data. Other than as set forth in this Section, ExamTree shall acquire no rights in any Licensee Data. Licensee

represents and warrants that it has the right to provide ExamTree with the Licensee Data for the purposes described in the Agreement.

- 6.4. *ExamTree Data.* ExamTree aggregates or anonymizes certain data and information (including Personally Identifiable Information for Authorized Users in the United States or Personal Data for Authorized Users in all other countries) that it collects regarding use of the Applications, Content and Hosting Services related to the operation of the Applications and Hosting Services (“ExamTree Data”) that is not subject to this policy. ExamTree Data is not reidentified or sold to any third parties, but to the extent permitted by law, ExamTree shall be allowed to utilize, reproduce, adapt, combine with other data, edit, re-format, generate, store, and/or disclose any and all ExamTree Data for any lawful purpose consistent with this Agreement and the Privacy Policy.
- 6.5. *Feedback.* Licensee (a) shall provide ExamTree with information concerning errors, problems, complaints and other matters related to the Applications, Content and the Services and (b) may provide Licensee’s feedback and/or suggestions for improvements to the Applications, Content and Services (collectively, “Feedback”). Licensee acknowledges and agrees that (a) Licensee shall not retain, acquire or assert any Intellectual Property Right or other right, title or interest in or to the Feedback; (b) ExamTree may have development ideas similar to the Feedback; (c) Feedback does not contain Confidential Information or proprietary information of Licensee or any third party; and (d) ExamTree is not under any obligation of confidentiality with respect to the Feedback. In view of the foregoing, Licensee grants ExamTree and its Affiliates an exclusive, transferable, irrevocable, free-of-charge, sublicensable and perpetual right to use Feedback in any manner and for any purpose.

7. Confidential Information.

Except as expressly and unambiguously allowed herein, each party agrees that it will hold in confidence and not use or disclose any Confidential Information received from the other party except to the receiving party’s employees, affiliates, consultants and advisors who need access to the Confidential Information for the receiving party to exercise its rights or carry out its obligations under the Agreement and who are legally bound to maintain the confidentiality of the Confidential Information. Each party further agrees to use the same means it uses to protect its own confidential and proprietary information, but in any event not less than reasonable means, to prevent disclosure and to protect the confidentiality of Confidential Information received from the other party. Upon discovery of any unauthorized disclosure of Confidential Information the receiving party shall use its good faith efforts to prevent any further disclosure or unauthorized use thereof. In case of discovery of unauthorized disclosure, the receiving party shall notify the disclosing party without any delay. Upon termination of this Agreement or upon request of the disclosing party, the receiving party will return to the disclosing party all Confidential Information of such disclosing party, all documents and media containing such Confidential Information and any and all copies or extracts thereof, or certify in writing that all such copies and documents have been destroyed. The foregoing shall not prevent either party from disclosing Confidential Information which belongs to such party or which (i) is in or becomes part of the public domain through no act or omission of the receiving party, (ii) can be demonstrated by the receiving party as being known to the receiving party previously, (iii) is rightfully obtained by the receiving party from a third party, (iv) is independently developed by the receiving party without use of the other party’s Confidential Information, or (v) is required to be disclosed pursuant to a requirement of a governmental agency or law so long as the disclosing party provides the other party with prompt notice of such required disclosure and complies with any protective order imposed on such disclosure.

8. Data Protection.

- 8.1. *Prohibited Data.* Licensee hereby acknowledges that the Applications are intended for academic purposes only and that the Applications are not intended for the storage or use of any data not related to such purpose including, without limitation, social security numbers, financial account numbers, health information, driver’s license, passport or visa number, credit card data or any Special Categories of Data (“Prohibited Data”). Licensee agrees to not input any Prohibited Data into the Applications.
- 8.2. *Data Protection Addendum.* The additional provisions of the Data Protection Addendum located at Exhibit C are incorporated herein based on the location of the Authorized Users of Licensee.

9. Indemnification

- 9.1. *ExamTree Indemnification.* Subject to the limitations set forth in Section 9.2, ExamTree agrees to indemnify Licensee against any Actions by a third party alleging that the Applications or Hosting Services, as provided by ExamTree under this Agreement, infringe a United States copyright, trademark, or patent issued on or before the Effective Date, by paying the amounts Licensee is obligated to pay to the third party in accordance with a final judgement or settlement of the claims Notwithstanding the foregoing in this Section 9.1, ExamTree shall have no liability and ExamTree's obligations under this Section 9.1 shall not apply if the claim, judgment or settlement is either partially or in whole based on (i) any software, service or other material provided by or on behalf of Licensee, (ii) any modification of the Applications or Hosting Services if such modification is not done by ExamTree or if such modification is done by ExamTree pursuant to Licensee's written instruction, (iii) Licensee continuing any allegedly infringing activity after being notified of any such allegedly infringing activity or after being informed of or provided with modifications that would have avoided the alleged infringement; (iv) any Third Party Services or (v) Licensee's use of the Applications or Hosting Services that is not strictly in accordance with the terms and condition of the Agreement. If the Applications or Hosting Services as provided by ExamTree are found, in a final non-appealable order or decision from a court of competent jurisdiction, to infringe the rights of a third party and as a result a final injunction is obtained against the Licensee's use of the Applications or Hosting Services, or if in ExamTree's opinion, actions are needed to avoid potential infringement, ExamTree may, at its expense and option: (i) procure for Licensee the continued right to the Applications or Hosting Services, (ii) replace or modify the Applications or Hosting Services in whole or in part, with substantially similar, functionally equivalent, non-infringing Applications or Hosting Services, or (iii) if ExamTree is unable to effect the foregoing despite its reasonable efforts, ExamTree may terminate the Agreement or request Licensee to discontinue use of the Applications or Hosting Services in whole or in part, subject to Licensee having a right to terminate the Agreement.
- 9.2. *Licensee Indemnification.* Licensee agrees to defend, indemnify, and hold harmless ExamTree, its Affiliates and their respective directors, officers, employees, contractors and agents, from all Losses that result from any third party Action and amounts paid in settlement thereof alleging or relating to claims of Licensee's breach of the Agreement or any violation of the terms of use or any other agreement governing the use of the Applications, Hosting Services, Services or Content.
- 9.3. *Indemnification Procedure.* The indemnification obligations of the parties specified above are subject to the following conditions: the indemnified Party (a) promptly notifies the indemnifying party in writing of the claim, (b) provides exclusive control to indemnifying party to defend (including choosing its counsel) and settle the Action at the indemnifying Party's exclusive discretion, (c) agrees to cooperate (at indemnifying party's expense) in good faith with the indemnifying Party in the defense as the indemnifying party may reasonably request, and (d) shall not agree and/or acknowledge (i) any liability regarding the Applications or Hosting Services and (ii) the validity, enforceability or infringement of any intellectual property right asserted against the Applications or Hosting Services.
- 9.4. *Sole Remedy.* Notwithstanding anything to the contrary in the Agreement, the indemnity provided in this Section shall be the sole and exclusive remedy for Licensee regarding third party Intellectual Property Rights infringement claims.

10. Limitation of Liability and Disclaimer of Warranties

- 10.1. *Disclaimer of Limited Warranty.* EXCEPT AS OTHERWISE PROVIDED IN THE AGREEMENT, THE APPLICATIONS, HOSTING SERVICES, SERVICES AND CONTENT ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS; ExamTree AND ITS AFFILIATES AND THEIR RESPECTIVE LICENSORS MAKE NO WARRANTY THAT THE APPLICATIONS, HOSTING SERVICES, SERVICES OR CONTENT WILL BE UNINTERRUPTED, SECURE, OR ERROR FREE OR THAT DEFECTS IN APPLICATIONS, HOSTING SERVICES, SERVICES OR CONTENT WILL BE CORRECTED; AND; ExamTree AND ITS AFFILIATES AND THEIR RESPECTIVE LICENSORS SPECIFICALLY DISCLAIM, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY,

REGARDING THE APPLICATIONS, HOSTING SERVICES, SERVICES AND CONTENT, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE OR ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR PERFORMANCE.

10.2. Limitation of Liabilities.

- 10.2.1. Direct Damages Only. To the maximum extent permitted by law, the liability of ExamTree shall be limited to direct damages only, thus excluding liability for any other damages such as indirect, special, incidental, consequential or punitive damages (including, but not limited to, lost profits, lost data, lost revenue, lost savings and loss of goodwill).
- 10.2.2. Aggregate Liability. To the maximum extent permitted by law, in no event shall ExamTree's aggregate liability with respect to any matters whatsoever arising under or in connection with the Agreement exceed the lesser of (i) total fees paid by Licensee to ExamTree under the Agreement within the twelve-month period prior to the date the cause of action giving rise to liability arose or (ii) \$100,000. The foregoing liability is cumulative with all payments for claims or damages in connection with the Agreement being aggregated to determine satisfaction of the limit.
- 10.2.3. Third Party Products and Services. Licensee understands that ExamTree is not responsible for and will have no liability for hardware, software or other items or any services provided by any persons other than ExamTree, including, without limitation, Third Party Services.
- 10.2.4. Professional Services. Any liability of ExamTree with respect to the Professional Services or Deliverables will be limited exclusively to correction of such Professional Services or such Deliverables or, if such correction is not possible or impractical, to refund of the pertinent Fees.
- 10.2.5. Economic Basis of Agreement. The parties acknowledge that the fees, the rights granted to each party and the allocation of the risk (as expressed in the indemnities and the limits of warranties, liabilities, damages and remedies) contained in the Agreement reflect the economic basis of the Agreement, in absence of which the Agreement would not have been made.

11. Force Majeure.

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

12. Miscellaneous

- 12.1. *Entire Agreement.* The Agreement and any and all Quotes and all exhibits and attachments attached hereto, constitutes the entire agreement between the parties and supersedes all previous and/or inconsistent agreements, negotiations, representations and promises, written and oral, regarding the subject matter. No modification, course of conduct, amendment, supplement to or waiver of the Agreement or any provisions hereof shall be binding upon the parties unless made in writing and duly signed by both parties.
- 12.2. *Severability.* If any provision of the Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable as if such provision had not been set forth herein. The parties agree to substitute for such provision a valid provision that most closely approximates the intent of the severed provision.
- 12.3. *Waiver.* A failure of any party to exercise any right given to it hereunder, or to insist upon strict compliance by the other party of any obligation hereunder, shall not constitute a waiver of the first party's right to exercise such a right, or to exact compliance with the terms hereof. Moreover, waiver by any party of a particular default by another party shall not be deemed a continuing waiver so as to impair the aggrieved party's rights in respect to any subsequent default of the same or a different nature.
- 12.4. *Governing Law.* If Licensee is a publicly funded, non-profit educational institution in the United States, the Agreement will be governed by the internal laws of the State in which License is situated, without giving

effect to the state's choice of law rules and the exclusive venue for disputes arising out of the Agreement shall be an appropriate state or federal court located in such State. In all other cases, the Agreement shall be governed by the laws of state of New York without giving effect to the state's choice of law rules and the exclusive venue for disputes arising out of the Agreement shall be an appropriate state or federal court located in New York.

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

EXHIBIT A – Privacy Policy

ExamTree, Inc. and its subsidiaries (collectively, “ExamTree”) consider the privacy and security of visitors to our websites to be of paramount importance. We have developed this privacy notice to inform you about our collection, use, and disclosure of personally identifiable information and non-personal information we receive from users of tedsolutions.com or related ExamTree websites where this Privacy Notice appears, including users accessing such website through content provided via emails from ExamTree (collectively, the “Website”). This Website is intended for users from the United States.

1. Information Collected on this Website

When you access or use the Website, we may collect two types of information: (1) personally identifiable information; and (2) information that is not personally identifiable. Personally identifiable information includes information that identifies you personally, alone or in combination with other information available to us. Examples of personally identifiable information may include an individual’s name, address, telephone number, email address, and school or district information. As part of the standard operation of the Website, you may submit personally identifiable information. For example, when you create an account, you may provide personally identifiable information. In addition, should you attempt to communicate with ExamTree via the Website, email, phone, or response cards, you may provide us with personally identifiable information and we may keep your message, email address, contact information, and other personally identifiable information. At your option, you may provide additional personally identifiable information about yourself. When you visit the Website, however, you are not required to create an account with the Website or provide any personally identifiable information. As part of the standard operation of the Website, we also collect non-personal information from you, including your browser type, operating system, IP address and the domain name from which you accessed the Website. In addition, we may collect information about your browsing behavior, such as the date and time you visit the Website, the areas or pages of the Website that you visit, the amount of time you spend viewing the Website, the number of times you return to the Website, the referring web page, pages visited, location, your mobile carrier, device and application ID’s and other click-stream data. We use a variety of third-party service providers to help provide the Website and to help us understand the use of the Website. These third-party service providers may use cookies, web beacons or similar technologies to collect information sent by your browser as part of a web page request, such as your IP address.

2. Information Use

ExamTree does not rent or sell personally identifiable information and non-personally identifiable information to other companies. Instead, we use information collected via the Website in the following ways:

- Contact you when necessary;
- Respond to you regarding information you have requested;
- Communicate with you regarding ExamTree or the Website;
- Provide you with customized content and advertising for various products or services;
- Administer the Website, monitor its usage, and diagnose problems with it;
- Remember you when you return to the Website, so that you don’t have to re-submit information and preferences;
- Contact you with information and promotional materials and offers from us as well as from our affiliates, partners and other third parties, if you have agreed to receive such communications;
- Conduct research to improve our content and services; and
- To protect the security or integrity of the Website and our business.

In addition to the examples above, ExamTree may use third-party storage, analytics, credit card processing companies, hosting companies, email service providers, marketing service providers, or Internet service-provider companies to perform some functions including the processing of data. ExamTree may also disclose information to protect our rights or property, to enforce our terms of use and legal notices, as required or permitted by law, or at the request of government regulators or other law enforcement officials and the courts

(including the issuance of a valid subpoena). We shall have no duty to notify you of such compliance with the law.

ExamTree may sell, transfer, or otherwise share some or all of its assets, including your personally identifiable information, in connection with a merger, acquisition, reorganization or sale of assets or in the event of bankruptcy.

We have the right, but not the obligation, to: (1) retain your personally identifiable information for as long as your account is active or as needed to provide you services or access to or use of the Website; and (2) retain and use your personally identifiable information as necessary to comply with our legal obligations, resolve disputes and enforce our agreements. We have the right, but not the obligation, to retain your non-personal information whether your account is active, inactive, or deactivated.

3. Do Not Track

Certain browsers have settings that allow you to turn on a “Do Not Track” (“DNT”) feature. The Website supports DNT by stopping the collection of information that allows us to tailor content based on your recent visits to the Website and third parties (e.g., Partner) websites. When you enable DNT on your browser, we stop the collection of unique browser cookies that links your browser to visits to this Website and across other websites. If you enable DNT on your browser, however, certain features of the Website may not function properly.

We may from time to time use third-party service providers to track and analyze usage of the Website. The third-party service providers access and use cookie and log information in combination with personally identifiable information, such as name, IP address and email addresses, to assist in tracking the Website. These third-party service providers are granted access to the information via the Website.

Subject to the usage of the third-party service providers discussed above, we do not intentionally or knowingly allow other parties to collect personally identifiable information about your online activities over time and across different websites, when you visit the Website, or use any of the services offered on the Website. We do not, however, have control over third parties’ activities, including if a third party accesses information based on your visit to the Website.

4. Children’s Personally Identifiable Information

We do not direct the Website to nor do we knowingly collect any personally identifiable information from children under 13 (“children’s personally identifiable information”). Children under the age of 13 are specifically requested to NOT provide any personally identifiable information through this Website. If you become aware that a child has provided us with personally identifiable information without parental consent, please contact us at privacy@tedsolutions.com. If we become aware that a child under 13 has provided us with personally identifiable information, we take commercially reasonable steps to remove such information and terminate the child’s account.

5. Cookies

Like many websites, we may use “cookies” to collect information. A cookie is a small data file that we transfer to your computer’s storage device for record-keeping purposes. We use cookies for two purposes: First, we utilize persistent cookies to save your login information for future logins to the Website. Second, we utilize session ID cookies to enable certain features of the Website, to better understand how you interact with the Website and to monitor aggregate usage by users and web traffic routing on the Website. Unlike persistent cookies, session cookies are deleted from your computer when you log off from the Website and then close your browser. Third-party advertisers on the Website may also place or read cookies on your browser. You can instruct your browser, by changing its options, to stop accepting cookies or to prompt you before accepting a cookie from the websites you visit. If you do not accept cookies, however, you may not be able to use all portions of the Website.

6. Web Beacons

We also use “web beacons,” “pixel tags,” “clear GIFs” or similar means (individually or collectively “Web Beacons”) on our Website. A Web Beacon is an electronic image, often a single pixel, embedded on web pages. Web Beacons are ordinarily not visible to users. Web Beacons allow us to count the number of users who have visited certain pages of the Website, to deliver branded services, and to generate statistics about how our Website is used.

- 7. Emails.** ExamTree maintains email lists to keep interested parties informed about our company, events, products, support, and more. We do not sell the addresses on our list, but we may make information available to specific business partners, sponsors, or service providers. Users may voluntarily request to join our mailing lists by signing up or opting in through a form on our Website. To be removed from a ExamTree email and/or mailing list, email privacy@tedsolutions.com with REMOVE ME in the subject line.

8. Accessing, Changing or Deleting Your Information

If your personally identifiable information changes or you desire to correct, amend, or delete information that is demonstrated to be inaccurate or incomplete, ExamTree will take reasonable steps to permit the correction, amendment, or deletion of your information. To do so, please send an email message to privacy@tedsolutions.com and putting the word “UPDATE” in the subject line of the message. If you desire to delete your account, please go to your account and follow the instructions to delete that account. EU Individuals have the right to access their personal information. Upon request, ExamTree will grant individuals access to personal information that it holds about them provided there is no information about third parties. In such cases, ExamTree will redact such third party information.

9. Security

Your personally identifiable information will generally be stored in databases maintained by ExamTree or our service providers. Most of these databases are stored on servers located in the United States. ExamTree may use third-party storage or service-provider companies to store your personally identifiable information, some of which may be outside of the United States. We have taken certain physical, electronic, contractual and administrative steps to protect the confidentiality, security, and integrity of your personally identifiable information. However, no method of transmission over the Internet or method of electronic storage is completely secure, and we cannot guarantee its absolute security. It is your responsibility to maintain the confidentiality of your Website account information.

EXHIBIT B – System Requirements

A successful ExamTree software implementation requires compliance with the recommendations in this document.

1. Supported Web Browsers

Chrome, Safari, Microsoft Edge. ExamTree requires all browsers to be in three most recent versions.

2. Screen Resolution

1024x768 or higher

We recommend enabling “full screen” mode in the browser and setting the zoom to 100% for the best performance. ExamTree do not support all features for the screens with lower resolution.

3. Broadband Internet connection (DSL, satellite, or cable).

Verify you have adequate bandwidth to support task usage estimates (5 Mbps or higher)

4. Devices

Tablets – Tablets are supported when using a web browser on tablets 7 inches or larger or using ExamTree mobile application. For web browser use, supported browsers are listed above. For mobile applications the requirements are listed in the specifications of mobile applications in ios and Android market. Tablets with resolutions below 2,048 x 1,536 may require students to scroll to see the entire interface. Performance may be degraded on single-core processor devices.

Chromebooks – ExamTree applications are compatible with Chromebooks or any Chrome OS devices.

5. Firewall and Other Requirements

If using a firewall, proxy, and/or content filter, some changes may need to be made for ExamTree applications to function properly. Allow access to ExamTree resources to be sure the software functions as designed. Add an exception within your firewall, proxy, or content filtering software to allow inbound and outbound HTTP and HTTPS communication with the *.tedsolutions.com domain.

Browser cookies must be enabled in order to log in to ExamTree as a student or personnel user. Refer to our Application and Hosting Privacy Policy at Exhibit A for complete details.

As technology advances it becomes necessary for software companies to drop support for older operating systems and browsers. Although ExamTree will not discontinue support for older products immediately, we will continue to evaluate system requirements and do our best to provide advance notice when it becomes necessary to raise our requirements. It is the responsibility of customers to keep their computers, networks, operating systems, and third-party software up-to-date and functional. We will do our best to support new technologies as they become available but cannot recommend them until they are properly vetted and proven compatible.

EXHIBIT C – Data Protection Addendum

With respect to Authorized Users in the United States, the following provisions shall apply:

1. Definitions

“Data Protection Legislation” means applicable federal, state, local, municipal, and foreign laws and regulations applicable to privacy, Personally Identifiable Information or Licensee Data, including, but not limited to, the Children's Online Privacy Protection Act and the Family Educational Rights and Privacy Act. “Personally Identifiable Information” or “PII” means information about an Authorized User that can be used on its own or with other information to identify, contact, or locate a single individual, including, but not limited to, the following:

- Any information that can be used to distinguish or trace an individual's identify such as full name and date of birth;
- Any other information that is linked or linkable to an individual such as educational information;
- Two or more pieces of information that separately or when linked together can be used to reasonably ascertain the identity of the person, including persistent identifiers.

“Process” shall have the same meaning as set out in the applicable Data Protection Legislation or if no such meaning or concept exists, it shall be the means by which ExamTree collects, uses, stores, discloses, or transfers PII.

2. Compliance with Laws.

Each Party shall comply with all Data Protection Legislation applicable to it in its respective Processing of Personal Data under the Agreement.

3. Notices and Consents.

Licensee shall provide all notices and obtain all such consents required under applicable Data Protection Legislation from (a) the Authorized Users (or such Authorized User's parent or guardian) to allow ExamTree to Process the Licensee PII via the Application and Hosting Services and for ExamTree to collect and use to as described herein and the Privacy Policy (collectively, the “Notices and Consents”). Licensee represents and warrants that it has obtained and will maintain the Notices and Consents for all Authorized Users through the entire term of the Agreement.

4. ExamTree Obligations.

- 4.1. ExamTree shall implement, maintain and use appropriate technical and organizational measures to preserve the confidentiality, integrity and availability of all Licensee PII Processed by ExamTree via the Applications. ExamTree agrees to perform regular reviews of its protection methods and perform system auditing to maintain protection of its systems.
- 4.2. The Privacy Policy provides a list of third party entities that Process the Licensee PII on ExamTree's behalf ("Sub-processors") and ExamTree imposes data protection terms on such Sub-processors that require it to protect the Licensee PII to the standard required by Data Protection Legislation. ExamTree shall remain liable for any breach of this Section 1.4.2 caused by an act, error or omission of its Sub-processor. Licensee consents to ExamTree engaging the Sub-processors for the purposes set forth in the Agreement and the Privacy Policy.
- 4.3. If it becomes aware of confirmed breach of security leading to the accidental or unlawful destruction, loss, alternation, unauthorized disclosure of, or access to the Licensee PII (a “Security Incident”), ExamTree shall inform Licensee within a reasonable amount of time with respect to the Security Incident and provide reasonable information and cooperation to enable Licensee to fulfil any data breach reporting obligations it may have under (and in accordance with the timescales required by) Data Protection Legislation. ExamTree shall further take any reasonably necessary measures and actions to remedy or mitigate the effects of the Security Incident and shall keep Licensee notified of all material developments in connection with the Security Incident.

5. Data Subject Inquiries.

Authorized Users may review and amend PII by contacting the Licensee and following the Licensee's procedures for amending PII. Licensee shall handle all Authorized User's inquiries in accordance with applicable Data Protection Legislation. To the extent the Licensee cannot amend the Licensee Personal Data, the Licensee may contact ExamTree and ExamTree, with Licensee's express written permission, will make such amendment according to applicable Data Protection Legislation.

6. Authorized Disclosure of Licensee Data and PI

- 6.1. At the request of Licensee, Licensee hereby acknowledges and agrees that ExamTree may provide Licensee Data or a sub-set of Licensee Data, including PII ("Disclosed Data"), to a third party who is a provider of a third-party service to the Licensee or to whom Licensee is required to provide Disclosed Data (e.g., State Board of Education). Licensee shall make such a request to provide the Disclosed Data to the third party either (a) in writing and / or (b) via the Authorized User of the Administrator Account by enabling the data sharing feature from within the Applications (each an "Authorization"). Licensee acknowledges and agrees that each Authorization will result in Licensee electing, in its sole discretion, to transfer (the "Transfer") the Disclosed Data to the recipients that Licensee selects (the Recipients").
- 6.2. Licensee warrants that the Authorized User of the Administrator Account shall be an individual or individuals elected by Licensee to have sufficient authority to authorize the Transfer of Licensee Data to the Recipients on behalf of the Licensee.
- 6.3. Licensee acknowledges that the Disclosed Data may contain PII and may be subject to Data Protection Legislation. Licensee will hold ExamTree harmless, and not liable in any way for disclosure of Personal Data to the Recipients under the terms of the Agreement. In the event that this Section 2.6 applies, Licensee shall be fully responsible for notifying and obtaining any necessary consents or authorization from the Data Subjects (or where necessary their parents or guardians) regarding the disclosure and subsequent Processing of their PII by the Recipients.
- 6.4. ExamTree makes no warranty (a) that the use of the Disclosed Data by the Recipient is valid and in compliance with all applicable Data Protection Legislation and Licensee's organization's policies or (b) that the Disclosed Data will remain secure upon transfer to the Recipient and disclaims any responsibility for the Transfer. Licensee acknowledges that the Disclosed Data will be provided on an "as is", "as available" basis.
- 6.5. Data Retention. Licensee PII is removed from the Applications upon the termination or expiration of the Subscription Period and, if requested in writing by the Licensee, is returned to the Licensee in a standard file format. Licensee Data that does not include PII may remain on ExamTree's systems and ExamTree may continue to use that information in accordance with the Agreement. Licensee PII removed from the Applications will be removed from ExamTree's primary data center after 30 days and will be removed from all backups within 90 days of the removal from the Applications.