

BASE Education, LLC

**LICENSE AND TERMS OF PURCHASE
AGREEMENT**



1. AGREEMENT.

This License and Terms of Purchase Agreement (“**Agreement**”) is a legal agreement between you (“**you**” or “**Licensee**” as further defined below) and BASE Education, LLC, a Delaware limited liability company (“**BASE**” or “**BASE Education**”), that describes the terms and conditions of your purchase of the BASE software-as-a-service offerings, including the BASE social emotional learning software program, BASE Materials (as defined below) and other content provided by BASE as may be further specified in an Order Form (as defined below) or BASE invoice form.

BASE EDUCATION PROVIDES THE SERVICES (AS DEFINED HEREIN) SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT, AND THE TERMS REFERENCED HEREIN, AND ON THE CONDITION THAT LICENSEE ACCEPTS AND COMPLIES WITH THEM. BY EXECUTING AN ORDER FORM, PAYING AN INVOICE, CREATING AN ACCOUNT, OR OTHERWISE REQUESTING OR USING THE SERVICES, YOU (A) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS; AND (B) YOU REPRESENT AND WARRANT THAT: (I) YOU HAVE THE FULL RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT FOR YOURSELF, OR IF LICENSEE IS A CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF SUCH ENTITY AND TO BIND SUCH ENTITY TO THE TERMS HEREIN; AND (II) YOU (AND YOUR ORGANIZATION) HAVE THE FULL RIGHT, POWER, AND AUTHORITY TO PERFORM THE OBLIGATIONS AND GRANT THE RIGHTS, LICENSES, CONSENTS, AND AUTHORIZATIONS HEREIN. IF LICENSEE DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MUST NOT CREATE AN ACCOUNT, DOWNLOAD, INSTALL, OR OTHERWISE USE THE SERVICES, DOCUMENTATION, OR BASE MATERIALS, AND BASE EDUCATION WILL NOT AND DOES NOT GRANT THE LICENSES AND PERMISSIONS HEREIN.

By reviewing, installing and/or using the Services, you indicate that you have read, understood and agree to be bound by all of the terms and conditions set forth herein.

2. DEFINITIONS.

- (a) “**Access Credentials**” means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Services.
- (b) “**Aggregated Data**” means data and information related to Licensee’s use of the Services that is used by BASE in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services. Aggregated Data does not include personally identifiable information and/or education records as defined pursuant to 24 CFR § 99.3 and 20 U.S.C. § 1232g(a)(4)(B).

- (c) “**Authorized Users**” means any person, including Licensee’s students, parents, employees, consultants, contractors, agents, representatives, or other individuals (i) who use or access the Services; (ii) who are authorized by BASE or by Licensee to access and use the Services under the rights granted pursuant to this Agreement; or (iii) for whom access to the Services has been purchased hereunder.
- (d) “**BASE Systems**” means the information technology infrastructure used by or on behalf of BASE in performing the Services, including all computers, Services, hardware, databases, electronic systems (including database management systems), websites, and networks, whether operated directly by BASE or through the use of third-party services.
- (e) “**BASE Materials**” means the Services, Documentation, and BASE Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, Services, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by BASE or any subcontractor in connection with the Services or that otherwise comprise or relate to the Services or BASE Systems. For the avoidance of doubt, BASE Materials includes all content or other material made available through the Services including surveys, assessments, question and answer sessions, modules, lectures, speeches, video lessons, quizzes, presentation materials, homework assignments, programs, code, and other images, text, layouts, arrangements, displays, illustrations, documents, materials, audio and video clips, HTML and files. BASE Materials also includes Aggregated Data and any information, data, or other content derived from BASE’s monitoring of Licensee’s access to or use of the Services.
- (f) “**Documentation**” means BASE instructions, user manuals, handbooks, and guides relating to the Services provided by BASE to Licensee either electronically or in hard copy form and includes end user documentation relating to the Services available on BASE’s website.
- (g) “**Licensee**” means you, your corporation, governmental organization, or other legal entity, if you are entering into this Agreement for another entity, or for yourself and another entity.
- (h) “**Licensee Data**” means, other than Aggregated Data, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Licensee or an Authorized User through the Services.
- (i) “**Order Form**” means an order form executed by Licensee or an invoice sent to Licensee by BASE in response to Licensee’s creation of an account or request to use the Services.
- (j) “**Services**” means the software-as-a-service offerings, the associated computer program and all modules, updates, modifications, enhancements, or new versions thereto, and the BASE Materials, including the BASE program, surveys, assessments, tools, course, and other content provided by BASE as may be further specified in an Order Form.

3. ACCESS AND USE OF SERVICES.

- (a) Provision of Access. Subject to and conditioned upon Licensee’s compliance with the terms and conditions of this Agreement, BASE hereby grants to Licensee a non-exclusive, non-transferable right to access and use the Services during the Term, solely for use by

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- (e) Suspension. Notwithstanding anything to the contrary in this Agreement, BASE may temporarily suspend Licensee's and any Authorized User's access to any portion or all of the Services: (i) if BASE reasonably determines (A) that there is a threat or attack on any of the Services; (B) that Licensee's or any Authorized User's use of the Services disrupts or poses a security risk to the Services or to any other Licensee or vendor of BASE; (C) that Licensee, or any Authorized User, is using the Services in breach of this Agreement or for fraudulent or illegal activities; (D) that, subject to applicable law, Licensee has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy,

reorganization, liquidation, dissolution, or similar proceeding; or (E) that BASE's provision of the Services to Licensee or any Authorized User is prohibited by applicable law; (ii) if any vendor of BASE has suspended or terminated BASE's access to or use of any third-party services or products required to enable Licensee to access the Services; or (iii) if Licensee fails to cure late payment(s) as further provided herein (any such suspension described in subclause (i), (ii), or (iii), a "**Service Suspension**"). BASE shall use commercially reasonable efforts to provide written notice of any Service Suspension to Licensee. BASE may, in its sole discretion, resume providing access to the Services after the event giving rise to the Service Suspension is cured. BASE will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Licensee or any Authorized User may incur as a result of a Service Suspension.

- (f) Aggregated Data. Subject to the terms and conditions provided herein, BASE may monitor Licensee's use of the Services and collect and compile Aggregated Data based on Licensee Data input into the Services. As between BASE and Licensee, all right, title, and interest in Aggregated Data, and all intellectual property rights therein, belongs to and is retained solely by BASE. Licensee agrees that BASE may use and make Aggregated Data available to third parties solely in compliance with applicable law, provided that such Aggregated Data does not contain any Confidential Information, personal data, or other information that could identify Licensee or any particular individual.

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- (a) Users. Licensee is responsible and liable for all use of the Services and Documentation resulting from access by or through Licensee Access Credentials directly or indirectly provided by Licensee. Without limiting the generality of the foregoing, Licensee is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Licensee will be deemed a breach of this Agreement by Licensee. Licensee shall use reasonable efforts to ensure that Authorized Users comply with the use permissions and restrictions herein.
- (b) Permits, Licenses, and Consent. Licensee shall obtain and maintain in effect all permits, licenses, consents, and authorizations necessary for the purchase and use of the Services.

5. TERM AND TERMINATION.

- (a) Term. Unless otherwise agreed to by the parties in a separate written agreement, access to or use of the Services shall constitute acceptance by Licensee of all terms and conditions of this Agreement, and this Agreement shall be effective as of the earlier of (i) the date of Licensee's first access to or use of the Services or (ii) the date of Licensee's execution of an Order Form ("**Effective Date**"). Unless otherwise expressly set forth in an Order Form, the duration of this Agreement ("**Term**") will continue in full force and effect until either party terminates this Agreement as provided herein, and Licensee ceases to use the Services and returns or destroys all BASE Materials and Documentation.
- (b) Termination by BASE. In addition to any other express termination right set forth in this Agreement, BASE may terminate this Agreement effective immediately upon notice to Licensee, (i) upon a material breach of this Agreement by Licensee, including but not limited to Licensee's or any of Licensee's Authorized Users' failure to comply with any term or condition of this Agreement; (ii) if Licensee becomes insolvent and immediately

upon the filing of a bankruptcy petition or similar document by Licensee, or (iii) if Licensee fails to pay any amount when due hereunder, and such failure continues more than 14 days after BASE's delivery of written notice thereof.

- (c) Termination by Licensee. Licensee may terminate this agreement at any time, for any or no reason with ninety (90) days' prior written notice to BASE.
- (d) Effect of Termination. Upon termination of this Agreement, Licensee shall immediately discontinue use of the Services and Documentation and shall delete, destroy, or return all copies of the BASE Materials and Documentation. Upon BASE's written request, Licensee shall certify in writing to the BASE that the BASE Materials and Documentation have been deleted or destroyed. No termination will entitle Licensee to any refund or affect Licensee's obligation to pay all fees that may have become due before termination.
- (e) Survival. The following rights and obligations shall survive termination of this Agreement:
 - (i) Licensee's representations and warranties, indemnification obligations, and use restrictions;
 - (ii) BASE's limitation of liability, disclaimer of warranties, indemnification obligations, and intellectual property rights; and
 - (iii) any other right or obligation of the parties in this Agreement that, by its nature, should survive termination of this Agreement.

6. LICENSE FEES AND PAYMENT.

- (a) Fees. In consideration of the license granted to Licensee, Licensee agrees to pay BASE the License fees set forth in an Order Form or otherwise mutually agreed to by the parties in writing.
- (b) Additional Fees for Unauthorized Users. In addition to any other available remedy, in the event that BASE determines that Access Credentials are being shared among multiple users in violation of this Agreement, BASE may charge Licensee additional fees for the unauthorized use.
- (c) Taxes. All fees and other amounts payable by Licensee under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Licensee is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Licensee hereunder, other than any taxes imposed on BASE's income.
- (d) Payment Terms.
 - (i) Payment of Fees. Fees are due in advance annually and shall be paid upon the Effective Date of the Order Form and on each one-year anniversary thereof, unless the parties expressly agree otherwise in an applicable Order Form. Licensee shall make all payments hereunder in US dollars. If Licensee fails to make any undisputed payment when due, without limiting BASE's other rights and remedies: (i) BASE may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Licensee shall reimburse BASE for all reasonable costs incurred by BASE in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for thirty (30) days or more, BASE may suspend Licensee's and

its Authorized Users' access to any portion or all of the Services until such amounts are paid in full.

- (ii) Invoices. Invoices will be issued by electronic mail to the address provided by Licensee, provided, however, that the issuance of an invoice shall be a courtesy only, and shall not be considered a condition precedent to Licensee's obligation to pay the monthly payment by the first day of the month.

7. SERVICE LEVEL AGREEMENT AND SUPPORT.

- (a) Internet Access. Licensee is responsible, at Licensee's own expense, to access the Internet, either directly or through devices that access Web-based content and pay any service fees associated with such access. In addition, Licensee must provide all equipment necessary to make such connection to the Internet, including a computer and modem or other access device. Licensee shall not attempt to access any other BASE Systems, programs or data that are not made available for Licensee use. Licensee understands and agrees that the operation and availability of the Services is dependent on Licensee's Internet and network availability, which is inherently unpredictable and may, from time to time, interfere with or prevent Licensee's access to and/or use of the Services. BASE does not guarantee the security of any information transmitted to or from Licensee or any user over the Internet, including through the use of email. Access to the Internet is Licensee's and each user's sole responsibility and the responsibility of Internet provider(s) Licensee selects. BASE does not accept any responsibility for failure of Service due to Internet facilities, including related telecommunications or equipment.
- (b) Services Availability. BASE does not warrant any particular level of availability for the Services. BASE will use commercially reasonable efforts to minimize downtime and interruptions to Licensee's access to the Services. Licensee acknowledges and agrees that BASE has no control over downtime or interruptions arising out of or resulting from: (i) act or omission by Licensee or any Authorized User, or any other access to or use of Licensee's or an Authorized User's Access Credentials, that does not strictly comply with this Agreement; (ii) Licensee's Internet connectivity; (iii) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by BASE pursuant to this or another written agreement with Licensee; (iv) scheduled downtime or maintenance; or (v) disabling, suspension, or termination of the Services pursuant to the terms of this Agreement.
- (c) Features and Modifications. The inclusion, exclusion, and continued support for, any feature, functionality, module in, or release of, the Services is within the sole and absolute discretion of BASE. BASE retains the absolute right to modify, discontinue, delete, or restrict any aspect or feature of the Services without any liability or obligation to the Licensee, provided that BASE agrees to make commercially reasonable efforts to provide Licensee with prior notice of any material changes to the Services, and further provided that if a feature or functionality is materially decreased the parties shall negotiate in good faith as to an appropriate decrease in fees and/or refund of any funds pre-paid by Licensee to BASE.
- (d) Maintenance. From time to time, the Services may be unavailable while maintenance is performed and upgrades are installed, which generally will occur during the time period from Wednesday, 7 PM, through Thursday, 4 AM, Mountain Standard Time or Mountain Daylight Time, whichever is in effect in Denver, Colorado, U.S.A. BASE Education

reserves the right to make changes that result in the Services being unavailable outside of these specified periods. BASE will make commercially reasonable efforts to notify Licensee if such events will take place.

- (e) Support. Licensor will provide support services, provided Licensee is current in the payment of all fees. Support services may be provided at an additional expense when the parties enter into a separate written support agreement. If included under this Agreement, support services are limited to: (i) clarification of functions and features of the Services; (ii) clarification of the Services Documentation; (iii) guidance in the operation of the Services; and (iv) error verification, analysis and correction to the extent possible through remote support.
- (f) Support Limitations. BASE will have no obligation to provide support for any failure of the Services to operate substantially in accordance with the then-current specifications that: (i) cannot be reasonably remedied; (ii) is due to use of the Services in combination with third-party products, equipment, Services, or data without prior authorization from BASE (except as expressly permitted herein); (iii) is due to any unauthorized modifications to the Services not provided by BASE; (iv) is due to breach of this Agreement; or (v) is otherwise caused by Licensee's negligence, abuse, misapplication, unauthorized use, or misuse of the Services.

8. INTELLECTUAL PROPERTY OWNERSHIP; FEEDBACK.

- (a) Services. Licensee acknowledges that, as between Licensee and BASE, BASE owns all right, title, and interest, including all intellectual property rights, in and to the Services, Documentation, and Aggregated Data. Licensee has no right, license, or authorization with respect to any of the Services, Documentation, or Aggregated Data except as expressly set forth in this Agreement. All other rights are expressly reserved by BASE. In furtherance of the foregoing, Licensee hereby unconditionally and irrevocably grants to BASE an assignment of any right, title, and interest (that Licensee may have or later obtain, by operation of law or otherwise) in or to the Aggregated Data, and any derivative works created under or in connection with this Agreement, including all intellectual property rights relating thereto. To the extent that such Licensee right, title, or interest cannot be assigned to BASE pursuant to this Section, Licensee grants to BASE a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display the Aggregated Data or derivative works. Licensee shall cooperate and take such actions or provide such assurances, at no cost to BASE, as may be necessary to give full effect to this Agreement.
- (b) Licensee Data. BASE acknowledges that, as between BASE and Licensee, Licensee owns all right, title, and interest, including all intellectual property rights, in and to the Licensee Data. Licensee hereby grants to BASE all such rights and permissions in or relating to Licensee Data as are necessary or useful to BASE for its internal purposes and performance of this Agreement. Further, Licensee hereby grants to BASE a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Licensee Data and perform all acts with respect to the Licensee Data as may be necessary for BASE to provide the Services to Licensee.
- (c) Feedback. If Licensee or any of its employees or contractors sends or transmits any communications or materials to BASE by mail, email, telephone, or otherwise, suggesting or recommending changes to the BASE Materials, including without limitation, new

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9. DATA.

- (a) Privacy Policy. All data entered into the Services or collected by BASE shall be subject to BASE Education’s privacy policy available at <http://www.base.education/privacy-policy>.
- (b) Personal Data. Licensee has full control over the personal data that will be uploaded to the BASE Systems by Authorized Users, and Licensee is responsible for determining what personal data is necessary for its use of the Services. Licensee shall: (i) limit Authorized Users’ collection, processing, and storage of personal data on the BASE Systems to what is strictly necessary for use of the Services; and (ii) only submit personal data to BASE to the minimum extent necessary in order for BASE to perform the Services for Licensee’s legitimate educational interests. Licensee shall implement methods to eliminate the need for student or other individuals’ personal data in the Licensee Data. Such methods may include assigning numerical identifiers or a similar coding mechanism for individuals in lieu of utilizing personal data.
- (c) Technical Safeguards. Each of BASE and Licensee will make reasonable efforts to implement administrative, physical, and technical safeguards to protect personal information in its possession from unauthorized access, acquisition, or disclosure, that are consistent with generally accepted industry practices for the type and sensitivity of information provided.
- (d) Right to Provide Data. Licensee represents and warrants to BASE that it has the right to provide and use all information and data entered into the Services, including but not limited to any user or parental consents necessary to permit the collection, storage, processing, handling, or transmittal of information from individuals using the Services. Licensee is responsible for any unauthorized creation, collection, receipt, transmission, access, storage, disposal, use, or disclosure of personal information under its control or in its possession.
- (e) Compliance with Law. Each of BASE and Licensee shall comply with all laws, rules, and other requirements relating to data collection or privacy in connection with the Services, any data or information entered into the Services, or any information or data obtained from the Services. Licensee represents, warrants, and covenants that it shall comply with all statutes, laws, ordinances, regulations, rules, codes, orders, common law, judgments,

decrees, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction, including but not limited to the Family Educational Rights and Privacy Act (“**FERPA**”) and the Protection of Pupil Rights Amendment (“**PPRA**”), and corresponding state and local laws.

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- (g) Data Loss or Damage. In the event of any loss or damage to Licensee’s data, Licensee’s sole remedy shall be for BASE Education to use commercially reasonable efforts to replace or restore the lost or damaged data from the latest backup that BASE has maintained in accordance with its standard archival procedures. Licensee hereby waives and releases BASE from any further claim, loss, or damages arising out of or resulting from data loss or damage.
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- (b) Indemnification by Licensee. Licensee shall indemnify, hold harmless, and, at BASE's option, defend BASE, from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by BASE from any claim, suit, action, or proceeding ("**Claim(s)**") arising out of or resulting from: (i) the Licensee Data, or any use thereof, in accordance with this Agreement, including any alleged or actual infringement, misappropriation, or other violation a third party's right, including intellectual property rights; (ii) Licensee's acts or omissions in breach of this Agreement; (iii) Licensee's or its Authorized Users' negligence, fraud, or willful misconduct; (iv) Licensee's and its Authorized Users use of the Services alone or in combination with data, software, hardware, equipment or technology not provided by BASE or authorized by BASE in writing; (v) Licensee's or its Authorized Users violation of any applicable law, including but not limited to FERPA, PPR, and privacy or data protection laws, rules, and regulations; (vi) Licensee's or its Authorized Users' modifications to the Services not made or authorized by BASE; and (vii) Licensee's failure to report or pay taxes in connection with this Agreement. Licensee may not settle any Claim against BASE unless BASE consents to such settlement, and BASE shall have the right, at its option, to defend itself against any such Claims or to participate in the defense thereof by counsel of its own choice.
- (c) Indemnification by BASE. BASE shall indemnify, hold harmless, and, at Licensee's option, defend Licensee, from and against any and all Losses incurred by Licensee from any third-party Claim arising out of a breach of this Agreement by BASE that results in the alleged infringement, misappropriation, or other violation of a third party's intellectual property rights. BASE may not settle any Claim against Licensee unless Licensee consents to such settlement, and Licensee shall have the right, at its option, to defend itself against any such Claims or to participate in the defense thereof by counsel of its own choice.
- (d) EXCLUSION AND LIMITATION OF DAMAGES. IN NO EVENT WILL BASE BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (I) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (II) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (III) LOSS OF GOODWILL OR REPUTATION; (IV) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA

OR SYSTEM SECURITY; OR (V) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER BASE WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. THE PARTIES HEREBY FURTHER AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, BASE SHALL NOT BE LIABLE FOR BODILY INJURY, HARM, LOSS OF LIFE, OR IMPAIRMENT TO HEALTH OR WELLBEING THAT MAY ARISE OUT OF OR RESULT FROM ANY BREACH OF ANY PROVISION OF THIS AGREEMENT OR FROM THE USE OF, OR FAILURE TO USE, THE SERVICES. IN NO EVENT WILL BASE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO BASE UNDER THIS AGREEMENT IN THE SIX-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CERTAIN DAMAGES, IN SUCH STATES OR JURISDICTIONS, THE LIABILITY OF BASE SHALL BE LIMITED IN ACCORDANCE WITH THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW.

11. **REMEDY LIMITATIONS.** Excluding any third-party services, programs, equipment or hardware, BASE warrants that the Services will perform substantially in accordance with the Documentation for a period of ninety (90) calendar days from the date of first use of the Services ("**Limited Warranty**"). BASE's sole and entire liability, and Licensee's sole and exclusive remedy, for system unavailability, bugs, or other problems with the operation of the Services during the Limited Warranty period shall be, at BASE's option, to either: (a) return to Licensee the license fee for the period during which the Services did not perform; or (b) repair any defects or replace the Services. BASE is not responsible or liable for any third-party branded services, programs, equipment or hardware used in conjunction with the Services, and Licensee agrees in each case to look solely to the warranties and remedies, if any, and such additional terms and conditions provided by the applicable third-party provider. This Limited Warranty is void if failure of the Services results from Licensee's or its Authorized User's breach of the terms and conditions herein.

12. **PROPRIETARY INFORMATION.** Licensee acknowledge that the Services, including but not limited to all screens, reports, data arrangements, "look and feel", and other components of the Services, constitute proprietary information of BASE ("**Proprietary Information**"). Licensee shall not, directly or indirectly, without BASE's prior written consent, use the Proprietary Information for any purpose other than as expressly permitted under this Agreement, and shall not divulge, provide, transmit, copy, make available or otherwise communicate the Proprietary Information to any third party. Proprietary Information shall not include information that (a) is in or enters the public domain without breach of this Agreement, (b) was possessed by Licensee as proven by written documentation prior to first receiving it from BASE, (c) was developed by Licensee independently and without use of or reference to the Proprietary Information, or (d) was received by Licensee from a third party without restriction on disclosure and without breach of a non-disclosure obligation or other agreement. Notwithstanding the foregoing, Licensee shall be permitted to disclose Proprietary Information if such disclosure is required by law, provided that Licensee (i) provides BASE with prompt notice of any potential disclosure requirement so as to permit BASE to seek a protective order or other appropriate remedy, and (ii) cooperates with BASE Education's attempts to prevent disclosure or otherwise protect the Proprietary Information. Licensee acknowledges and agrees that a violation of this Section would cause BASE irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event

of such breach or threatened breach, BASE will be entitled to seek equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

13. **ASSIGNMENT.** The rights conferred by this License shall not be assignable by the Licensee without BASE Education's prior written consent. If allowed, BASE Education may impose a reasonable fee on any such assignment.

14. **GOVERNMENT CONTRACTS AND RIGHTS.**

- (a) Government Requirements. To the extent any Federal, State, or local laws, rules or regulations relating to contracting with government entities or downstream contracting with other parties contracting with government entities ("**Government Contracting Requirements**") impose any requirements or require terms and conditions that contradict the provisions in this Agreement, Licensee shall notify BASE in writing of such Government Contracting Requirements and upon acceptance and written agreement by BASE, such Government Contracting Requirements shall govern and be enforceable between Licensee and BASE as to only those provisions that contradict any such provision in this Agreement.
- (b) U.S. Government Rights. Each of the Documentation and the software components that constitute the Services is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Licensee is an agency of the US Government or any contractor therefor, Licensee only receives those rights with respect to the Services and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.

15. **GENERAL PROVISIONS.**

- (a) Entire Agreement. This Agreement together with any applicable Order Form or other documents incorporated herein by reference and all related exhibits, attachments, schedules, or addenda constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of conflict between this Agreement and any applicable Order Form or other documents incorporated herein by reference and all related exhibits, attachments, schedules, or addenda, this Agreement shall control.
- (b) Amendment and Modification; Waiver. Except as set forth in Section 16, no amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right,

remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

- (c) Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Colorado. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Colorado in each case located in the city of Denver and County of Denver, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.
- (d) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a “**Notice**”) must be in writing and addressed to the parties at the addresses set forth herein, in an applicable Order Form, or to such other address that may be designated by the party giving Notice from time to time in accordance with this Section. All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving party; and (ii) if the party giving the Notice has complied with the requirements of this Section. Notwithstanding the foregoing, except where otherwise required by applicable law, BASE may provide Notices to you through electronic means. You consent to receiving Notices from BASE in electronic form, and you agree that all terms and conditions, agreement, notices, disclosures, and other communications that BASE provides to you electronically satisfy any legal requirement that such communications be in writing.
- (e) Relationship of the Parties. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- (f) Contact. BASE may periodically contact Licensee or administrative users for customer service purposes. By accessing the Services, Licensee and each user consents to receive such communications. Licensee agrees that BASE may reference its business relationship with Licensee in its marketing or sales materials.
- (g) Interpretation. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires: (i) the terms defined herein include the plural as well as the singular and vice-versa; (ii) any reference to an “Attachment” or “Exhibit” or a “Section” refers to an Attachment, Exhibit, or a Section, as the case may be, of this Agreement; (iii) all references to this Agreement and the words “herein”, “hereof”, “hereto” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Exhibit, Section, or other subdivision; (iv) all Section headings are for convenience only and shall not affect the interpretation or construction of this Agreement; (v) the words “including,” “included” and “includes” mean inclusion without limitation; (vi) the word “or” is not exclusive and shall have the meaning commonly ascribed to the term “and/or”; and (vii) each of the parties have had the option to consult with their respective legal counsel prior to using or providing the Services, as

the case may be, and any legal or equitable principles that might require or permit the construction of this Agreement or any provision hereof against the party drafting this Agreement shall not apply in any construction or interpretation of this Agreement.

- (h) Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement. Such unenforceable term or provision is to be construed either by modifying it to the minimum extent necessary to make it enforceable (if permitted by law) or disregarding it (if not). If an unenforceable term or provision is modified or disregarded in accordance with this Section, the rest of this Agreement is to remain in effect as written, and the unenforceable term or provision is to remain as written in any circumstances or jurisdictions other than those in which the provision is held to be unenforceable.
- (i) Waiver of Jury Trial. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

16. CHANGES TO TERMS OF PURCHASE AND USE.

- (a) Updates to Terms. BASE reserves the right to change these terms of this Agreement from time to time. Such changes will become effective when BASE posts the revised terms as part of the Service or on any related website. In the event that BASE makes material changes to this Agreement, BASE may make commercially reasonable efforts to notify you that this Agreement has changed by posting a prominent notice on the Services or the BASE Education website, by sending you an email, or other similar methods of contacting you, but such notice is for your convenience only and shall not be required for the effectiveness of the changes.
- (b) Current Version. The most current version of this Agreement can be reviewed by clicking on the License Agreement and Terms of Purchase hypertext link located in the home page for the service. Licensee and users should check the terms from time to time, as they are bound by the terms so posted from and after the time the changes are posted. Any revised terms shall supersede all previous versions.

BASE Contact Email Address: info@base-ed.com

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