

## RECITALS

A. L8C is a provider of internet-based data management, development and assessment platforms, products, systems and hosting services for schools, district, educators and other educational institutions and customers.

B. This Subscription, Services and Hosting Agreement and the attached Exhibits (the "Agreement") comprise the complete agreement between the parties with respect to the subject matter, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. This Agreement may only be modified by a written agreement executed by both.

### **THE PARTIES AGREE AS FOLLOWS:**

1. **SITE SUBSCRIPTION AND L8C PRODUCTS AND SERVICES.** Subject to and conditioned upon Customer's and its Authorized Users' (as defined below) compliance with the terms and conditions of this Agreement during the Term of this Agreement, L8C agrees to provide Customer and Customer-identified authorized users, including Customer students ("Authorized Users") a subscription that includes access to and usage of a L8C hosted, Customer-branded website on the internet (the "Site") and L8C's internet-based student time scheduler products ("Products") as described in Exhibit A. The Site will include certain proprietary software and Products of L8C and will contain certain content and data entered by Customer. L8C will provide ongoing support and maintenance services for the Site and Products, including application software required to support the Products and enhancements when generally made available. In conjunction with the subscription, L8C will also provide (a) implementation Services, (b) hosting Services, (c) Software and Products, and (d) training Services, each as set forth in detail in Exhibit A.
  - a. **Hosting Services.** Unless otherwise specified in Exhibit A or in a separate Service Level Agreement ("SLA"), and subject to routine maintenance and upgrade requirements, L8C will use commercially reasonable efforts to have hosting services available for the Customer Site at all times. Customer will be notified by the L8C Project Team regarding scheduled system maintenance, product patch release dates and associated information. L8C provided hosting services for the Site do not include internet access at Customer's or any Authorized User's location. Obtaining and maintaining internet access will be solely Customer's responsibility and L8C shall have no liability for interruptions and outages caused by Customer's Internet Service Provider.
  - b. **Software and other Products.** Subject to Section 5, L8C will provide Customer access to and a limited license to access and use the Products and proprietary Software (as defined below) for the number of users, the subscription term and at the cost specified in Exhibit A. As provided in Section 5 below, all Software licenses are non-exclusive, limited, revocable and non-transferable, and shall terminate on the same date as this Agreement. L8C reserves the right, in its sole discretion, to make any changes to the Products that it deems necessary or useful.
  - c. **Training Services.** Training services, Site and Product training, videos and/or documentation ("Training Services") for Customer are detailed in Exhibit A, and will be scheduled at a time mutually agreeable to the parties. All Training Services listed in Exhibit A must be completed within the first twelve months of the initial Term of the Agreement. Any Training Services detailed in Exhibit A, which are not used during the first twelve months of the initial Term are forfeited by the Customer. Upon execution of the Agreement, any unused Training Services previously purchased by Customer will expire.

- d. Service Change Requests. Any Customer requested updates, revisions, enhancements or changes in scope, Products, or price that are not provided for in Exhibit A must be documented in a Service Change Request (“SCR”) in the form attached as Exhibit B. Each SCR is an amendment to the Agreement, and must be executed by the parties prior to L8C commencing any of the work requested.
2. **CUSTOMER RESPONSIBILITIES AND OBLIGATIONS**. During the Term of the Agreement, Customer will be responsible for the following:
  - a. Customer Data Format for Import and Implementation. L8C will provide Customer with specific data formatting and content requirements for the Customer Data that will be imported onto L8C’s platform (the “Data Import Requirements”). Customer will provide L8C with all employee and other authorized user information at its own expense and in the format set forth in Data Import Requirements to perform the implementation Services. Customer is responsible for insuring that the Customer Data to be imported complies with the Data Import Requirements. In the event Customer’s implementation requires L8C to process custom import files that differ from the Data Import Requirements, additional charges will apply and will be itemized in an SCR for approval by the parties prior to import services being performed.
  - b. Customer will manage and protect all Authorized User registration, maintenance of passwords and accounts for end-user access, will keep all passwords secure and confidential, and will disable accounts and passwords as appropriate upon termination of any Authorized User. Customer will use commercially reasonable efforts to prevent unauthorized access to its accounts. Customer will notify L8C within forty-eight (48) hours in the event Customer becomes aware of any breach or unauthorized access to its account(s). Customer will respond in a timely manner to requests for information in connection with the use of the Site or Products.
  - c. Customer be solely responsible for the accuracy and completeness of Customer Data and all activity in its account and on the Site
  - d. Customer will use the Site, Products and Services only in accordance with L8C’s written technical guides and Applicable Laws (as defined below). Customer may allow authorized third parties to access the Product(s) and Site in compliance with the terms of this Agreement, provided that (i) the access is for the sole benefit of Customer; and (ii) such Customer-authorized third parties are contractually bound to comply with all applicable federal, state and local laws and with the terms of this Agreement. L8C shall have no liability or responsibility for any failure of Customer to perform any of its obligations or for any delays in performance by L8C caused by any failure of Customer to perform any of its obligations under Section 2.
  - e. Customer shall obtain all required consents, approvals and agreements necessary for the Customer or Authorized Users (including students that are Authorized Users) to (i) access and use the Software and Products; and (ii) submit Customer Data to LS8 in conjunction with their use of the Software and Products; such consents, approvals and agreements shall include, but not necessarily be limited to, those required by FERPA, COPPA or other state or federal data privacy laws, regulations or rules. The Software or Products shall not be made available to anyone under the age of 13 without the prior written consent of LS8.
3. **EFFECTIVE DATE, TERM AND TERMINATION**. This Agreement begins on the last date of signature (“Effective Date”). The initial Agreement term (“Term”) is one year unless otherwise detailed in Exhibit A. The Agreement automatically renews on the anniversary of the Effective Date for successive one-year terms (“Renewal Term”) unless Customer gives L8C written notice no less than sixty (60) days before the

end of the Term or current Renewal Term. The Term and each Renewal Term includes the Subscription Term identified in Exhibit A.

- a. Mutual Termination for Material Breach. Except for non-payment, if either party is in material breach of this Agreement, the non-breaching party may terminate this Agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.
- b. Suspension for Violations of Law. L8C may temporarily suspend the Service or remove the applicable Customer Data, or both, if L8C in good faith believes that Customer has violated any Applicable Law as part of using the L8C System (as defined below).
- c. Effect of Termination. Upon termination or expiration of the Agreement:
  - i. L8C will end Customer's subscription, and terminate Customer's access to the Site, Services, Products, and related Software.
  - ii. Customer will immediately pay any fees due and owing prior to the termination date.
  - iii. Upon written request of Customer, L8C will make the Site and any Product available for Customer to export customer data for 60 days after termination.
- d. Funding-Out Clause. Customer's payment obligation may be conditioned upon the availability of funds that are appropriated or allocated by the applicable government agency. If funds are not allocated, Customer may terminate this Agreement at the end of the period for which funds are available. Customer must notify L8C in writing before such termination, and provide L8C with sufficient legal documentary proof of the non-availability of the funds. If Customer terminates Agreement due to lack of funding, Customer agrees not to acquire similar services from a third party for the remainder of the Term of the Agreement.
- e. Non-payment of Fees. L8C may terminate this Agreement and Customer's access to the Site, Services, Products and associated Software for Customer's non-payment of amounts owed.
- f. Survival. The following terms shall survive termination of this Agreement: Sections 3, 4, 5, 6, 7, 9 and 11.

#### 4. **FEES.**

- a. Fees and Payment Terms. Customer will pay all fees set forth on Exhibit A within thirty (30) days of receipt of invoice, unless other payment terms have been provided for and agreed upon in Exhibit A. Payments not made when due, shall bear interest at the rate of one-half percent (0.5%) per month, or the highest legal rate, whichever is less, commencing as of the due date, until fully paid. If any invoice is not timely paid, L8C shall be entitled to suspend access to and use of the Services until such payment is made in full.
- b. Taxes. If Customer provides L8C with a valid tax exemption certificate authorized by the appropriate taxing authority, L8C will not charge or collect sales or other taxes as the exemption certificate provides. If no exemption certificate is provided, Customer must pay any taxes, impositions, or other charges imposed or levied by any governmental authority, including any sales, use, value-added, or withholding taxes, in connection with the Invoice (except for any L8C income or L8C employee taxes).

#### 5. **INTELLECTUAL PROPERTY, OWNERSHIP AND LICENSE.**

- a. License to Use Products. L8C grants to Customer a limited, non-exclusive, non-transferable and revocable license to access and use software and Product(s) for the number of users and for the subscription term specified in Exhibit A. This license is solely for Customer's internal educational and training purposes.
- b. Customer Data. Customer represents and warrants that Customer has appropriate rights to any data and content Customer (including Authorized Users) uploads or enters into the Site or a Product ("Customer Data"). All Customer Data remains the property of Customer, as between

L8C and Customer. Customer grants L8C the right to use the Customer Data solely for purposes of performing under this Agreement and in accordance with all applicable federal, state and local laws and regulations (“Applicable Law(s)”). L8C will adopt, implement and maintain commercially reasonable security measures and procedures (including, firewalls, passwords, encryption, commercially available virus protection, access and use of adequate back-up computer servers, and periodic back-up of data) on a continuing basis.

- c. **Restrictions.** Customer will not (i) sell, resell, rent or lease the Site, Products, Software, or any other deliverable under this Agreement, (collectively, the “L8C System”) or use the L8C System in a service provider capacity; (ii) use the L8C System to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights or Applicable Law; (iii) interfere with or disrupt the integrity or performance of the L8C System or attempt to gain unauthorized access to the L8C System or their related systems or networks; (iv) use the L8C System for any use other than for internal Customer educational purposes; (v) reproduce, frame, mirror, modify, translate, enhance, decompile, disassemble, copy, download or reverse engineer the L8C System, or modify, create derivative works based on the L8C System; or (vi) access the L8C System to build a competitive service or product, or copy any feature, function or graphic for competitive purposes. Any materials placed on the L8C System inconsistent with the foregoing requirements shall be deemed to be a material breach of this Agreement and may be removed by L8C.
- d. **Products.** All audio, video and other content, curriculum, documentation, and software (including without limitation applets, animations, and application software) required to support the L8C System provided by L8C as part of the subscription (collectively the “Software”) are licensed to Customer as follows: L8C grants Customer a non-exclusive, non-transferable, limited, revocable license during the Agreement Term to access and use the L8C System for internal educational and training purposes solely in connection with this Agreement.
- e. **Artistic and Content Control.** Except as expressly provided otherwise under the Agreement, Customer shall have exclusive artistic and editorial control over the Site, including the Site design and integration of Customer content. Any changes made to the artistic and editorial content of the Site following Customer’s initial acceptance of the Site, will be subject to a SCR executed by the parties.
- f. **L8C’s Reservation of Rights.** The content, documentation, code, software, workflow processes, user interface, website, designs, design concepts, know-how, methodologies, used in or as part of the L8C System are the sole property of L8C and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain solely with L8C and its licensors. Customer may not remove or modify any proprietary marking or restrictive legends in the L8C System. L8C reserves all other rights not expressly granted to Customer in this Agreement.

## **6. MUTUAL CONFIDENTIALITY.**

- a. **Definition of Confidential Information.** Confidential Information means all non-public information including Personally Identifiable Information (“PII”) as defined by Applicable Law, which is disclosed by a party (“Discloser”) to the other party (“Recipient”), whether before or after the Effective Date, and whether disclosed orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (“Confidential Information”). L8C Confidential Information includes without limitation its user interface design and layout, pricing information, the Products, the Services or any deliverables.

- b. Protection of Confidential Information. The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this Agreement.
- c. Exclusions. Confidential Information excludes information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but to the extent that it may legally do so will provide the non-disclosing party with advance notice to object to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.

**7. INDEMNIFICATION.**

- a. During the term of this Agreement, L8C will defend or settle any third party claim against Customer to the extent that such claim alleges that L8C technology used to provide the Site, Services or Products violates a copyright, patent, trademark or other intellectual property right, if Customer, promptly notifies L8C of the claim in writing, cooperates with L8C in the defense, and allows L8C to solely control the defense or settlement of the claim. L8C will pay infringement claim defense costs, L8C-negotiated settlement amounts, and court awarded damages incurred as part of its obligations under this Agreement. If such a claim appears likely, then L8C may modify the Site, Services or Products, procure the necessary rights, or replace the infringing part of the Site, Services or Products with a functional equivalent. If L8C determines that none of these are reasonably available, then L8C may terminate access to the Site, Services or Products and refund any prepaid and unused fees. L8C has no obligation for any claim, in whole or in part, arising from information, items or technology not provided by L8C or for any third party web services not owned by L8C. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND L8C'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.
- b. To the extent permitted under Applicable Law, Customer will defend, indemnify and hold harmless L8C from and against any third party claims, losses, damages, settlements, penalties, fines, costs, or expenses (including reasonable attorneys' fees) that arise from or relate to (i) Customer's negligence, misconduct or breach of this Agreement, (ii) any Customer Data or third party content, products, services or systems, including their integration or their required third party integration with the Service, and (iii) any Customer violation of Applicable Laws which results in third party claim against L8C.

**8. WARRANTY AND WARRANTY EXCLUSION.**

- a. Compliance Warranty. Each party will comply with, and will cause each of its employees, agents, and contractors to comply with all laws applicable to its performance under this Agreement, including without limitation the Family Educational Rights and Privacy Act ("FERPA") and the Children's Online Privacy Protection Act ("COPPA"). L8C is not responsible for Customer's compliance with FERPA or COPPA.

- b. L8C Service Warranty. L8C warrants that commercially reasonable efforts will be made to maintain the online availability of the Site, Services or Products. CUSTOMER'S EXCLUSIVE REMEDY AND L8C'S ENTIRE LIABILITY UNDER THIS WARRANTY WILL BE FOR L8C TO REPAIR THE NON-CONFORMING SERVICES OR PRODUCT, OR IF L8C CANNOT MAKE SUCH REPAIR WITHIN A REASONABLE PERIOD OF TIME, THEN L8C MAY TERMINATE ACCESS TO THE SITE, SERVICES OR PRODUCTS AND REFUND THE PORTION OF THE FEE ATTRIBUTABLE TO SUCH NON-CONFORMING SERVICE.
- c. DISCLAIMERS. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, ALL PRODUCT AND SOFTWARE IS PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. L8C EXPRESSLY DISCLAIMS ANY REPRESENTATIONS AND WARRANTIES THAT (I) THE PRODUCT AND SOFTWARE WILL BE PROVIDED IN AN ERROR FREE OR UNINTERRUPTED MANNER; (II) THE PRODUCT AND SOFTWARE WILL SATISFY ALL OF CUSTOMER'S REQUIREMENTS; (III) THE RESULTS OBTAINED FROM THE USE OF THE PRODUCT AND SOFTWARE WILL BE EFFECTIVE, ACCURATE, OR RELIABLE; (IV) ANY ERRORS OR DEFECTS IN THE PRODUCT AND SOFTWARE WILL BE CORRECTED; OR (V) THAT THE SITE, SERVICES OR PRODUCTS WILL BE FREE OF ALL POSSIBLE METHODS OF UNAUTHORIZED ACCESS, ATTACK, OR INTRUSION.

9. LIMITATIONS OF LIABILITY.

- a. EXCLUSION OF INDIRECT DAMAGES. L8C IS NOT LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY; LOSS OF DATA, RECORDS OR INFORMATION; AND LOST PROFITS), EVEN IF IT KNOWS OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.
- b. TOTAL LIMIT ON LIABILITY. L8C'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) DOES NOT EXCEED THE AMOUNT PAID BY CUSTOMER WITHIN THE 12-MONTH PERIOD PRIOR TO THE EVENT THAT GAVE RISE TO THE LIABILITY.

10. **MUTUAL REPRESENTATIONS AND WARRANTIES. Each party represents and warrants to the other party that: (i)** it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; (ii) it has the legal right and authority to enter into and perform its obligations under this Agreement; (iii) the execution and performance of this Agreement will not conflict with or violate any provision of any Applicable Law; and (iv) this Agreement, when executed and delivered, will constitute a valid and binding obligation of the party and will be enforceable against such party in accordance with its terms.

11. GENERAL.

- a. Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement, in whole or in part, without the other party's prior written consent; provided however that L8C may assign this Agreement to a purchaser of all or substantially all of its assets or its business provided that the assignee agrees to be bound by all of L8C's duties and obligations under this Agreement. Any attempt to assign this Agreement without such consent will be null and void.
- b. Severability. In the event that any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, that provision will be enforced to the fullest extent permitted by law, and the remaining provisions shall remain in full force and effect.

- c. Force Majeure. Except for payments due under this Agreement, neither party will be responsible for any failure to perform due to causes beyond its reasonable control including acts of God, war, riot, embargoes, acts of civil or military authorities, denial of or delays in processing of export license applications, fire, floods, earthquakes, accidents, strikes, failure of the internet, or fuel crises, provided that such party gives prompt written thereof to the other party. The time for performance will be extended for a period equal to the duration of the Force Majeure, but in no event longer than sixty (60) days, at which time this Agreement will be deemed terminated by mutual consent of the parties subject to each party's post-termination obligations set forth in this Agreement.
- d. Notices. All notices under this Agreement shall be in writing and will be deemed given when delivered personally, or by nationally recognized express courier, to the address shown above, attention the parties' authorized representative, or as may otherwise be specified by either party.
- e. Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. Neither L8C nor Customer shall be obligated by any agreement, representation or warranty made by the other, nor shall L8C or Customer be obligated for damages to any person or organization for personal injuries or property damage directly or indirectly arising out of the conduct of the other party's business or caused by the other party's negligence, willful act, or failure to act.
- f. Waiver. No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights.
- g. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the state of Minnesota, except for that state's conflict of law provisions. All legal or equitable actions related to this Agreement or a dispute regarding this Agreement shall be resolved on an exclusive basis in the state or federal courts in Hennepin, County Minnesota.
- h. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and to constitute one and the same instrument. Electronic copies of this Agreement, including without limitation, those transmitted by facsimile or scanned to an image file, shall be considered originals.
- i. Entire Agreement: Amendment. This Agreement and the attached Exhibits A and B comprise the complete agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. This Agreement may only be modified by a written agreement executed by both parties.