

STANDARD TERMS AND CONDITIONS FOR CLASSWORKS PRODUCTS AND SERVICES

The terms and conditions contained in this document (the “**Standard Terms**”) apply to any sales by Curriculum Advantage, Inc. (“**CA**”, sometimes referred to in this document as “**We**,” “**Us**” and “**Our**”) of (1) license rights to software products, (2) hardware for use with the software, and (3) associated professional services which are also known as Classworks Managed Services (“**CMS**”). These Standard Terms are an integral part of an agreement (the “**Agreement**”) between Us and the Customer (referred to as “**You**” and “**Your**”) identified on a Classworks Purchase Contract (a “**Purchase Contract**”). The Agreement consists of (in order of precedence) a Purchase Contract, these Standard Terms, and any documents incorporated by reference into either the Purchase Contract or these Standard Terms (including those incorporated by hyperlink reference). You acknowledge that the Purchase Contract and the Standard Terms will supersede and replace any conflicting provisions in Your purchase order or other purchasing documents. The Agreement will be effective as of the date specified on the Purchase Contract and will be binding when the Purchase Contract has been signed by Your authorized representative. The Purchase Contract will identify the school sites which are licensed to use Classworks Software (the “**Licensed Sites**”), and the modules, content and components of the Classworks Software and CMS that have been purchased by each such Licensed Site; this license is only valid for the specified Classworks Software at the identified Licensed Sites. Capitalized terms used throughout the Agreement are defined in the Purchase Contract, in Section 5.0 (below), and elsewhere in boldface type in these Standard Terms. These Standard Terms may only be modified by other terms and conditions You and We have specifically documented in a signed Purchase Contract.

1.0 CLASSWORKS SOFTWARE. The following terms and conditions will apply to the Classworks Software listed on the Purchase Contract:

1.1. Licensing Rights.

1.1.1. We grant You a limited right and license to install and host the Software on Your Computer System and to have Your Users (limited to the number shown as License Quantity in the Purchase Contract) access and use the Classworks Software and the associated Documentation, solely for Your internal educational purposes. If the Classworks Software is purchased but is to be implemented with CMS, including hosting, then You will have the right to access and use the Software on our servers through the CMS hosting services, solely for Your internal educational purposes.

1.2. CMS Hosting:

1.2.1. Maintenance and Access. During the CMS Services Period, We will maintain the Software on Our data center servers and will use commercially reasonable efforts to make the Software available (subject to routine maintenance windows) to You and Your Users via the Internet 24 hours a day, 7 days a week. All access rights for You and Your Users will be via the worldwide web using a browser and Internet connection compliant with the System Requirements (described in Section 1.6). Certain content may be installed or cached locally.

1.2.2. Outage Periods. The term “**Outage Period**” applies to Software that we are hosting as part of the CMS Services and means a period of more than 48 consecutive hours in which Your Users are prevented from accessing the Software due to factors within Our control. Outage Periods exclude (a) planned downtime (for which We will give at least 8 hours notice by publishing maintenance windows on the login pages; or (b) any unavailability caused by an event of Force Majeure. In the unlikely event an Outage Period occurs, upon Your written request we will issue you a credit for the pro-rated share (based on the number of days of any Outage Period in the applicable month) of fees You have paid for the month during which the Outage Period occurs. Your request for this credit must be made within 30 days after the end of the Outage Period. You will not be entitled to this credit for any period during which You are in breach of this Agreement. Your sole and exclusive remedy for an Outage Period will be the credit described in this Section 1.2.

1.3. If you are not receiving CMS hosting services, You will be responsible for the installation and hosting of the Software on Your Computer System for access and use only by Your Users.

1.4. General License Terms. The above license grant is specifically subject to the following general terms and conditions:

1.4.1. All license grants to access and use the Software and Documentation are non-exclusive, non-transferable and non-assignable.

1.4.2. We may require Your Users to agree (via “click-wrap” agreement) to reasonable terms of use and restrictions as a condition of their initial access to the Software.

1.4.3. All licenses granted are under intellectual property rights in the Software and Documentation, including copyrights and trade secrets, which We either own or have licensed from third parties. We and our licensors own and retain all rights, title and interest in and to the Software and all ideas, concepts, methodologies, formats, specifications, and other know-how furnished by Us or our licensors in connection with this Agreement, as well as all related patents, copyrights, trademarks, trade secrets and other intellectual property rights.

1.4.4. All access and use of Software under this Agreement will be subject to Our Privacy Policy, which can be found at <http://www.classworks.com>, which is expressly made a part of this Agreement.

1.4.5. Licenses granted under this Agreement will be automatically revoked if this Agreement is terminated. We reserve the right to revoke any license granted under this Agreement if You fail to promptly cure a material breach of this Agreement after We have provided You with notice of the breach.

1.5. Restrictions. You and Your Users will use the Software and Documentation solely for the purposes stated in license grant and will not: (i) modify, copy or create derivative works based on the Software or Documentation; (ii) frame or mirror any content forming part of the Software or Documentation, other than for Your own internal educational or training purposes; (iii) reverse engineer, decompile or disassemble the Software; (iv) access or allow others to access the Software or Documentation in order to build, market or offer a competitive product or service, or copy any ideas, features, functions or graphics of the Software; (v) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Software available to any third party, other than to Users or as otherwise contemplated by this Agreement; (vi) send spam or otherwise unsolicited messages in violation of applicable laws; (vii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (viii) intentionally send or store any viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs; (ix) interfere with or disrupt the integrity or performance of the Software or the data contained therein; (x) attempt to gain unauthorized access to the Software or its related systems or networks; or (xi) publicly display or publicly perform the Software or Documentation without Our prior written permission.

1.6. System Requirements. You acknowledge receipt of Our System Requirements document (current version available at <http://www.classworks.com> ("System Requirements")), which details the necessary hardware, system configuration, network infrastructure, and bandwidth requirements to successfully operate and use the Software. The System Requirements are subject to periodic change without notice. You also acknowledge that You are responsible for the cost, operation and availability of, and compliance of Your Users with, all elements of the System Requirements.

1.7. Responsibility for User Activity. You are responsible for all activities that occur in User accounts and for compliance by Your Users with these Standard Terms. You will: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Software, and notify Us promptly of any such unauthorized access or use; and (iii) in connection with this Agreement, comply (and ensure compliance by Your Users) with all applicable local, state and federal laws, rules and regulations, including the Children's Online Privacy Protection Act ("COPPA") and the Family Educational Rights and Privacy Act ("FERPA").

1.8. Intellectual Property

1.8.1. Reservation of Rights. The Software We are providing is licensed to You, not sold. Subject to the limited rights expressly granted to You and Your Users under these Standard Terms, We reserve all rights, title and interest in and to the Software and Documentation, including all related intellectual property rights (except for those owned by our third party vendors, which are reserved to them). No rights are granted to You or Your Users hereunder other than as expressly specified in these Standard Terms.

1.8.2. Rights to Customer Data. As between You and Us, You exclusively own all rights, title and interest in and to all Customer Data. Customer Data is deemed Your Confidential Information under this Agreement. You hereby grant Us a non-exclusive license to use, modify and distribute the Customer Data solely for the purpose of performing Our obligations to You as specified by the Agreement.

1.8.3. Suggestions. We will have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual right and license to use or incorporate into the Classworks Software any suggestions, enhancement requests, recommendations or other feedback provided by You or Your Users relating to the operation of the Classworks Software. You will not be entitled to any compensation if we elect to incorporate any of your suggestions in the Classworks Software or other CA products or services.

1.9. Limited Warranty for Software Products. Subject to the terms of Section 4.6, We warrant that the Classworks Software will perform in substantial accordance with the applicable Documentation for a period of (1) year after the Start Date. This warranty is contingent on the authorized use of the Classworks Software in accordance with the applicable Documentation. If We breach this express warranty, We will, at our option and expense: (a) as soon as commercially practical, consistent with industry practice, modify the affected Classworks Software to conform in all material respects with the applicable Documentation, or (b) provide a replacement for the affected Classworks Software which conforms in all material respects with that Documentation, or (c) accept the return of the affected Classworks Software and refund You the portion of Your purchase price attributable to the returned product. This will be Our sole obligation, and Your sole remedy, with respect to any breach of this warranty. **EXCEPT FOR THE EXPRESS WARRANTY PROVIDED IN THIS SECTION, THE SOFTWARE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY ADDITIONAL WARRANTIES OF ANY KIND. WE DO NOT WARRANT THAT THE SOFTWARE WILL PERFORM UNINTERRUPTED OR BE ERROR-FREE OR THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET YOUR PARTICULAR REQUIREMENTS OR PURPOSE. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHERS, WHICH VARY FROM JURISDICTION TO JURISDICTION.**

Notwithstanding the warranty provisions of Section 1.9, We shall have no warranty obligations if (i) You have used or are using the Classworks Software in a manner that does not conform to Our written instructions or the provisions of the Documentation, (ii) You have moved the Classworks Software from the Designated Workstations or the Licensed Site, (iii) You or any third party has modified, or

attempted to modify, the Classworks Software, (iv) You have materially changed the network configuration at the Licensed Site after installation of the Classworks Software, (v) You have materially changed the hardware, software, or network configuration from that set forth in its Pre-Installation Checklist, (vi) the Classworks Software has been subjected to an extreme power surge or electromagnetic field, whether or not through Your fault, (vii) You have refused to implement any changes recommended by Us or (viii) You have failed to make payment of any fee as set forth in the Purchase Contract.

2.0 THIRD PARTY SOFTWARE AND HARDWARE. The following terms and conditions will apply to Third Party Software and Hardware listed on the Purchase Contract:

2.1. Subject to Provider's Warranties and Terms. Third Party Software and Hardware products are distributed by CA as a reseller. These products are provided subject to the separate license and sale terms, conditions and restrictions provided by the product manufacturer or producer. **WE DO NOT PROVIDE, AND WE EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED [INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE] ON ANY THIRD PARTY SOFTWARE AND HARDWARE WE SUPPLY TO YOU.**

2.2. Warranty Claims. We will use reasonable commercial endeavors to facilitate warranty claims You make against the manufacturer or producer of such products. This is our sole obligation relative to these products.

2.3. Return or Exchange Charges. You will be responsible for, and will pay, any return or exchange charges imposed by the third party vendor and to comply with the applicable return merchandise authorization procedures.

3.0 CLASSWORKS MANAGED SERVICES. Classworks Managed Services listed on the Purchase Contract will be provided subject to the following terms and conditions:

3.1. Statement of Work. If this Agreement includes CMS, the Purchase Contract will include a description of the services purchased. The Purchase Contract will define and communicate the goals, scope of services, work plan, and roles and responsibilities of each party as they relate to the delivery of Our Professional Services. CMS will be governed by the terms of this Agreement.

3.2. Mutual Cooperation. We mutually agree to cooperate with each other in a professional and courteous manner in the performance of our respective duties in the delivery of CMS. We may suspend delivery immediately upon written notice if Your employees or agents fail to act accordingly.

3.3. Changes to CMS. Any changes to the scope of work of CMS under the Purchase Contract will be made by a written amendment to the Purchase Contract signed by You and Us prior to implementation of the changes. Changes to the scope of work under the Purchase Contract may result in additional fees to You. Any changes You make to previously agreed-upon dates for onsite delivery of On-site Professional Services may likewise result in additional charges to You or forfeiture of Professional Service credits. **"On-site Professional Services"** are a part of CMS and include onsite delivery of professional development, technical support or consulting services.

3.3.1. Changes Caused by You. You agree to notify Us in writing at least 10 business days in advance of Your intention to reschedule previously confirmed On-site Professional Services sessions. If You do not provide such notice, and We are unable to re-assign the resources scheduled to provide Your On-site Professional Services, We reserve the right to forfeit the credit or charge You a cancellation fee of up to \$1,800 for each day cancelled without such notice.

3.4. Acceptance of CMS Services and Warranty.

3.4.1. Acceptance. Upon completion of each On-site Professional Services session, We will provide You with an e-mail requesting Your acknowledgement and acceptance of the Professional Services delivered. If You reasonably determine that the Professional Services have not met the objectives and expectations outlined in the Purchase Contract, You must provide Us written notice specifying any deficiencies in detail within 10 business days after our request. We will use reasonable commercial efforts to cure any such deficiencies promptly and then resubmit the sign-off form for Your signature. If You do not provide notice of any deficiencies to Us within the 10 day period, Your acceptance of the On-Site Professional Services will be considered final. If the objectives and expectations stated in the Purchase Contract are subsequently determined by the parties to be inappropriate or to require modification due to changed circumstances, incorrect assumptions or other reasons at the time of actual delivery, You and We will cooperate in good faith to appropriately modify such requirements.

3.4.2. Warranty. We warrant that the CMS We provide will be performed in a workerlike manner, in accordance with generally accepted industry standards. For any material breach of this service warranty reported within 10 days after acceptance (under the preceding Section), We will provide additional CMS at Our expense in an effort to promptly cure the breach.

3.4.3. Sole remedies. The remedies specified in this Section 3.4 are Your only remedies for Our breach of service warranties or failure to meet the acceptance criteria.

3.5. Compliance with Workplace Rules. We will have the person or persons We assign to perform the On-site Professional Services comply with those of Your workplace rules You have provided to them in advance.

3.6. Subcontractors. We may, in our reasonable discretion, use third party subcontractors to perform any of Our obligations regarding delivery of the CMS.

3.7. Expiration of Unscheduled On-site Professional Services. We will use all reasonable efforts to schedule and deliver the On-site Professional Services in accordance with Your schedule and requirements. However, unless we agree otherwise in writing, we retain the right to terminate our obligations to deliver any On-site Professional Services that have not been delivered within 12 months of the Order Date.

3.8. Reservation of right to change terms and prices of CMS. We reserve the right to change the terms and prices of any CMS at any time without advance notice.

4.0 GENERAL TERMS

4.1. Fees and Payment

4.1.1. Fees. You agree to pay all amounts due to Us as shown on the Purchase Contract (“**Total Fees**”). Except as specified in the Purchase Contract or in Section 1.2.2 (re Outages) all such amounts are non-cancellable and non-refundable. Amounts due for Software are based on the right to access the Software and are not dependent on actual usage, nor are they contingent upon delivery of any future functionality or features.

4.1.2. Taxes. Except to the extent You provide us with a valid tax exemption certificate authorized by the appropriate taxing authority, We will invoice You for and You will pay any applicable direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes associated with Your purchases under this Agreement, except for taxes based on Our net income or property.

4.1.3. Acceptance. All Software and Hardware will be deemed accepted upon delivery to You (or, for Subscription Software, upon making available to You online) and will thereafter be subject to the warranty provisions of this Agreement.

4.1.4. Invoicing & Payment. Unless otherwise stated in the Purchase Contract, fees for products and services will be invoiced at the time of order with payment due net 30 days from the invoice date. Invoices unpaid after 30 days shall accrue interest at a rate of 1% per month.

4.1.5. Suspension of Access to Software for Non-Payment. If Your account is 30 days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of Our other rights or remedies, We reserve the right to suspend Your access to the Software and the delivery of CMS, without liability to You, until such amounts are paid in full. You will also promptly certify that You have de-installed all such software and destroyed all copies of it, if applicable.

4.2. Confidentiality

4.2.1. Definition of Confidential Information.

“**Confidential Information**” means all confidential and proprietary information disclosed by one party (the “Discloser”) to the other (the “Receiver”) and either designated as confidential or of a type reasonably expected to be confidential. Confidential Information includes the terms and conditions of this Agreement (including pricing and other terms reflected in all Purchase Contracts hereunder), the Customer Data, the Software, business and marketing plans, technology and technical information, product designs, and business processes, but does not include any information that, without breach of obligation owed to Discloser: (a) is or becomes generally known to the public; (b) was known to the Receiver prior to its disclosure by the Discloser; (c) was independently developed by the Receiver; or (d) is received from a third party.

4.2.2. Protection. The Receiver will not disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement, except with the Discloser's prior written permission. The Receiver will protect the Confidential Information of the Discloser as if it were the Receiver's own Confidential Information, and at a minimum, with reasonable care. This obligation will survive termination of this Agreement for a period of 3 years.

4.2.3. Compelled Disclosure. If by court order or other legal authority the Receiver is forced to disclose Confidential Information of the Discloser, the Receiver will (to the extent legally permitted) give the Discloser prompt notice of the order and will provide, at the Discloser's request and cost, reasonable assistance to contest the disclosure.

4.2.4. Remedies. If the Receiver discloses or uses (or threatens to disclose or use) any Confidential Information of the Discloser in breach of this Section, the Discloser will have the right, in addition to any other available remedies, to seek injunctive relief to prevent further (or the threatened) disclosure.

4.3. Indemnities.

4.3.1. Our Indemnification of You. Subject to the conditions described below and the provisions of Section 4.6, We will defend,

indemnify and hold You harmless from and against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings (collectively called "Claims") made or brought against You by a third party, as follows:

a. **For Personal Injury or Property Damage.** Our indemnity covers Claims alleging personal injury or property damage to the extent caused by the willful misconduct or negligence of Our personnel while on Your premises.

b. **For Infringement:** Our indemnity covers Claims alleging that the use of the Classworks Software as specified in this Agreement, or Our Professional Services, or any information, design, specification, instruction, software, data, material (collectively called "Material") furnished by Us in connection with this Agreement infringes the intellectual property rights of a third party. This indemnification does not apply to Hardware, which We resell subject to whatever warranties and indemnities are provided by the manufacturer. We will have no liability for any claim of infringement or misappropriation to the extent (a) the Material is based on specifications You provided, or (b) Your use of a superseded or altered version of some or all of the Material if infringement or misappropriation would have been avoided by the use of a subsequent or unaltered release of the Material provided to You. If the Classworks Software becomes, or in Our opinion is likely to become, the subject of an infringement claim, We may, at Our option and expense, either procure for You the right to continue using the Classworks Software; replace or modify the Classworks Software so that it becomes non-infringing and remains functionally equivalent; or require the return of the affected Classworks Software and refund You the portion of Your purchase price attributable to the returned product.

4.3.2. Your Indemnification of Us. Subject to the conditions described below and Section 4.6, and to the extent not prohibited by applicable law, You will defend, indemnify and hold Us harmless from and against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with Claims made or brought against Us by a third party alleging that the Customer Data, Your use of the Software in violation of this Agreement, or any Material provided by You either: (a) infringes the intellectual property rights of a third party, or (b) has otherwise harmed a third party.

4.3.3. Conditions. These indemnities will be conditioned on the party seeking indemnity: (a) promptly providing the other with a written notice of the Claim; (b) giving the other party sole control of the defense and settlement of the Claim, provided that the other party may not settle any Claim unless the party seeking indemnity is unconditionally released from liability; and (c) at no charge, providing the other party with all reasonable assistance relative to the defense of the Claim.

4.3.4. Exclusive Remedies. Our and Your responsibility for infringement of third party rights is stated in this Section 4.3. The indemnities in this Section will be the sole and exclusive remedies for infringement of third party rights in connection with this Agreement.

4.4. Care of Customer Data. We will make regular backups (typically daily) of data entered using our CMS hosting services and will otherwise use reasonable commercial care, consistent with general industry practice, to protect such data against loss, but We will not otherwise be responsible for lost Customer Data. You will be responsible for the maintenance of Customer Data held in our application and for replacing it if it is lost for any reason.

4.5. Force Majeure. The term "Force Majeure" means circumstances beyond the reasonable control of a party (such as acts of God, government restrictions, wars, insurrections, labor strife, or failure of suppliers, subcontractors, or carriers) which delay or prevent the party from performing under the terms of this Agreement. The party affected by an event of Force Majeure will promptly notify the other of the circumstances and the expected impact on its performance. Affected performance obligations will be suspended during the duration of the Force Majeure. If the Force Majeure persists for more than 90 days, the other party may terminate the affected portions of this Agreement.

4.6. Disclaimers, Limitations and Exclusions.

4.6.1. Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 1.9 AND 3.4.2 OF THESE STANDARD TERMS, WE MAKE NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND WE SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

4.6.2. Limitation of Liability. EXCEPT FOR BREACHES OF CONFIDENTIALITY OBLIGATIONS OR INDEMNIFICATION OBLIGATIONS ARISING OUT OF PERSONAL INJURIES OR PROPERTY DAMAGE CLAIMS, IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY AND DUE FROM YOU. BECAUSE SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

4.6.3. Exclusion of Consequential and Related Damages. EXCEPT FOR INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PRECEDING SENTENCE WILL NOT APPLY TO INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM A BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS HEREUNDER, PROVIDED ANY SUCH DAMAGES WILL BE LIMITED TO \$100,000.

4.7. U.S. Governmental Users. The Software and Documentation are “Commercial Items,” as defined at 48 C.F.R. §2.101, and are licensed subject to Restricted Rights applicable to Commercial Items and only with those rights expressly granted under this Agreement. The U.S. Government will not be entitled to technical information that is not customarily provided to the public or to use, modify, reproduce, release, perform, display, or disclose the Software or Documentation except as specifically permitted under these Standard Terms.

4.8. Term and Termination

4.8.1. Term of this Agreement. This Agreement will begin on the Order Date and will, unless earlier terminated in accordance with this Section, continue in effect until the end of the last License Period covered by this Agreement.

4.8.2. Termination for Cause. A party may terminate this Agreement for cause: (i) 30 days after written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party ceases to conduct business in the ordinary course, files a petition for liquidation bankruptcy, fails to have an involuntary petition for bankruptcy dismissed or converted to a non-liquidation bankruptcy within 60 days after filing, or makes an assignment of essentially all assets for the benefit of creditors.

4.8.3. Outstanding Fees. Termination will not relieve You of the obligation to pay any fees payable to Us prior to the effective date of termination.

4.9. Surviving Provisions. The following provisions will survive any termination or expiration of this Agreement: 1.5, 1.7, 1.8, 2.1, 4.1, 4.2, 4.3, 4.6, 4.7 and 5.0.

4.10. Assignment. You may not assign any of Your rights or obligations hereunder, whether by operation of law or otherwise, without Our prior written consent (not to be unreasonably withheld, conditioned or delayed). We may assign this Agreement in its entirety without Your consent to any affiliate, or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of Our assets. Any attempted assignment of this Agreement in breach of this Section will be void and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

4.11. Counterparts. This Agreement may be executed by facsimile and in counterparts, which taken together will form one legal instrument.

4.12. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes all prior agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by both parties. To the extent of any conflict or inconsistency between the provisions in these Standard Terms and a Purchase Contract, the terms of the Purchase Contract will prevail.

4.13. Governing Law. If You are a publicly funded, non-profit educational institution, this Agreement will be governed by the internal laws of the State in which You are situated, without regard to its conflicts of laws rules. In all other cases, this Agreement will be governed by the internal laws of the State of Georgia, without regard to its conflicts of laws rules.

4.14. Third Parties. There are no third-party beneficiaries to this Agreement.

4.15. Notices. All notices under this Agreement must be in writing and will be deemed given upon: (a) personal delivery; (b) the second business day after mailing; (c) the second business day after sending by confirmed facsimile; or (d) the second business day after sending by confirmed email. Notices to Us will be addressed to the attention of Lindsey L. Cook, CEO, at our corporate offices as set forth at <http://www.classworks.com>. Notices to You will be addressed to the attention of the person signing the Purchase Contract for You.

4.16. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

4.17. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be subject to modification by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect.

4.18. Waiver and Cumulative Remedies. No failure or delay by either party to exercise a right under this Agreement will be a waiver of that right. Other than as expressly stated in this Agreement, the remedies provided in this Agreement are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

5.0 DEFINITIONS

- “Classworks Managed Services” means fee-based services We provide to You to assist in Your implementation and on-going use of the Software.

- “Classworks Software” (sometimes referred to as “Classworks” or the “Software”) means educational software that We market under a brand name owned by CA and make available either via Our CMS hosting services or via readable media or electronic download.

- **“Computer System”** means Your server and network equipment (conforming to the System Requirements) used to host and deliver the Software for access and use by Your Users via Your LAN or WAN (i.e., a local area network or wide area network You own and operate which conforms to the Systems Requirements referenced in the Purchase Contract).
- **“Customer Data”** means all electronic data, materials and other information You and/or Your Users (or CA on behalf of You or Your Users) have entered or stored in the Software, including data and records relating to student information, performance or use, teacher data and supplemental instructional materials.
- **“Documentation”** means technical specifications, system requirements, user guides and similar materials accompanying or accessible from the Software, accessible via Our customer support website (<http://www.classworks.com>) or provided during the delivery of Professional Services, and any updates We (or our third party licensors) may issue from time to time.
- **“Hardware”** means a hardware product marketed by Us which is listed on the Purchase Contract and is intended to be used in connection with Software provided by Us.
- **“License Period”** means the period of time during which You will have access to the Software You license under this Agreement. This period will begin with the Start Date identified in the applicable Purchase Contract, and (unless earlier revoked in accordance with this Agreement) will last forever.
- **“License Quantity”** means the maximum number of simultaneous Users granted access to Software as designated in the Purchase Contract.
- **“Purchase Contract”** means the Purchase Contract prepared and offered by Us and signed by You to indicate Your acceptance of the terms and conditions of this Agreement.
- **“Software”** means software marketed by Us which is listed on the Purchase Contract. The term “Software” includes both Classworks Software and Third Party Software.
- **“Third Party Software”** means software We acquire from a third party producer for distribution to our customers under licensing terms and conditions specified by the producer.
- **“Users”** means individuals You authorize to use Software and supply (or authorize Us to supply) user identifications and passwords. Users may include Your students and their parents, teachers, faculty and administrators.

THE PARTIES have caused this Agreement to be executed by their undersigned, duly authorized representatives as the date first above written.

Curriculum Advantage, Inc.

By: _____

By: _____

(signed)

(signed)

Name:

Name:

Title:

Title: