



**Date of Board Meeting:** October 15, 2024

**Subject:** EdSights Retention Solution Software

**Recommendation:** Approve the acquisition of EdSights Retention Solution Software to support student engagement and retention through AI communications.

**Background and Rationale:**

WCJC has been awarded the Texas Higher Education Coordinating Board Student Success Acceleration Program Grant which seeks to increase student engagement, retention, and completion. As part of this grant, the College has included the adoption of an AI platform, EdSights, to provide direct-to-student texting campaigns. This system will allow for automated communication with students to increase awareness of resources that will aid in their persistence and encourage student engagement. EdSights has authorization to operate as a sole source service provider (see attached notarized acknowledgement) due to the highly specialized nature of their solution.

**Cost and Budgetary Support:** \$41,888 annual subscription for three years (all costs to be paid using THECB SSAP Grant Award funds)

**Strategic Priority Alignment:**  Student Success       Community Impact  
 Resource Optimization       Institutional Excellence

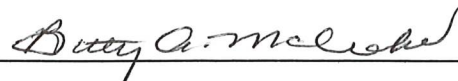
**Resource Person(s):** Amanda Allen, Ed.D.; Executive Vice President

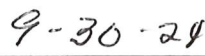
**Signatures:**

  
\_\_\_\_\_  
Cabinet-Level Supervisor

  
\_\_\_\_\_  
Date

**President's Approval:**

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Date

**EdSights, Inc.**  
 461 Washington Ave Unit. 2  
 Brooklyn, New York 11238

**ORDER FORM**

**Wharton County Junior College**  
 911 Boling Hwy, A-108  
 Wharton, TX 77488

**EdSights, Inc.**

Contact Name: Erica Stabley  
 Title: Senior Partnerships Director  
 Phone: (570) 974-4306  
 E-mail: erica@edsights.io

**Customer: Wharton County Junior College**

Contact Name: Dr. Amanda Allen  
 Title: Executive Vice President  
 Phone: (979) 532-6468  
 E-mail: allena@wcjc.edu

EDSIGHTS PRODUCTS & SERVICES	ANNUAL FEES		
	YEAR 1	YEAR 2	YEAR 3
EdSights Retention Solution	\$61,600	\$61,600	\$61,600
<b>First-Time Partnership Discount</b>	<b>\$19,712</b>	<b>\$19,712</b>	<b>\$19,712</b>
<b>Total Annual Fees*</b>	<b>\$41,888</b>	<b>\$41,888</b>	<b>\$41,888</b>

\*Exclusive of any applicable taxes

**Order Form Details and Terms**

- Products & Services under this Order Form are available to 5,700 undergraduate students actively taking courses at Wharton County Junior College.
- Order Form Initial Term years: 3 years as described below.
  - Initial Term start date: October 16, 2024
  - Initial Term end date: October 15, 2027
- This Order Form is governed by the Master Services Agreement executed by and between EdSights and the Customer, each identified below and is effective as of the Initial Term start date.

**Payment Terms**

- Customer shall be invoiced the Fees outlined above for a license to use the Services annually, and within one (1) calendar month prior to the commencement of each contract year of the Order Form Term. If applicable, please share all purchase orders with finance@edsights.io.

## EdSights - Sole Source Provider of Conversational-AI Persistence Insights

EdSights is the only student success platform that generates persistence insights for institutions by leveraging conversational AI over text message. Through a proprietary research-based framework EdSights systematically checks in with college students over text and asks research-based questions about their college experience. We are the only vendor in higher education capable of analyzing those interactions in real-time and producing persistence insights.

No other chatbot or SMS vendor analyzes chat interactions and generates the following data:

1. **Student Risk Levels:** Persistence risk predictions for each student based on their interactions with the AI. Risk levels are calculated using a predictive model that leverages millions of student responses and persistence outcomes to predict the likelihood of persistence for each student. A 2023 randomized controlled trial found that students labeled by EdSights as “high risk” were twice as likely to not persist. The risk profile (seen in Figure 1) that the AI updates with each conversation allows the framework to adapt communication and prioritize different check-ins and interventions with each student based on previous interactions. This unique approach ensures that every student receives the most personalized support.

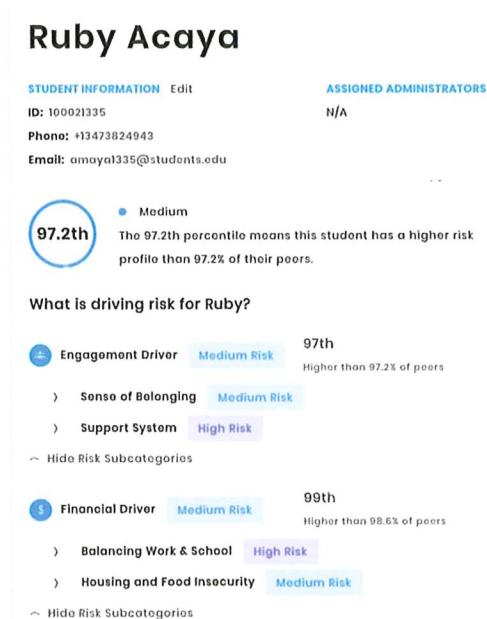


Figure 1: Student profile with persistence risk levels generated by the AI in real-time through its conversations with students

2. **Auto-generated student outreach lists:** while engaging with students and connecting them to resources, EdSights generates prioritized short lists of students who would benefit from staff outreach. Utilizing a machine learning model and insights from over 5 million interactions and persistence outcomes, it automatically identifies students where

outreach can have the greatest impact. This allows university staff to efficiently prioritize outreach, fostering more scalable and impactful human connections.

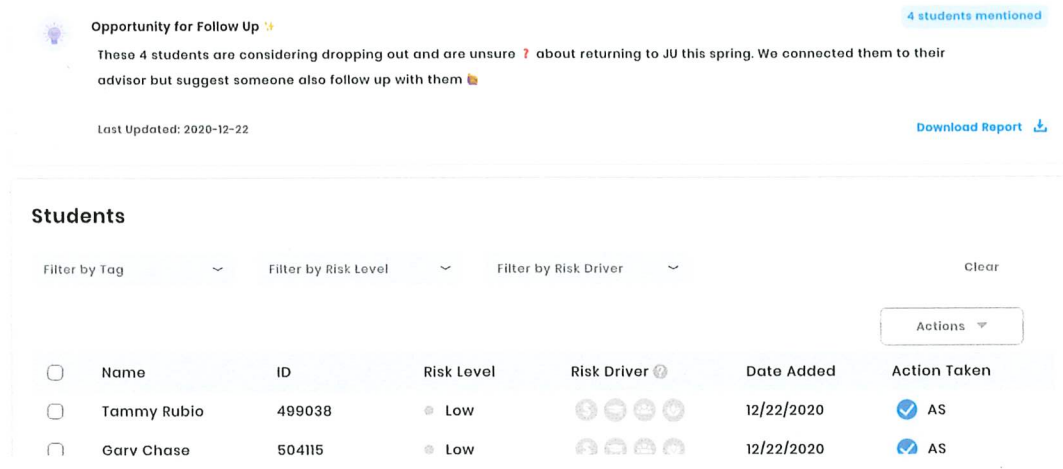


Figure 2: Auto-generated outreach recommendation using proprietary historical outcome model

**3. Institutional Trends:** EdSights automatically analyzes how persistence risk changes across an infinite number of student attributes that the institution selects (e.g., major, first-gen status). The model identifies cohorts of students at higher risk and pinpoints specific factors driving risk within these groups (e.g., food insecurity, wellness, belonging, academic engagement, etc.). These insights are automatically generated, requiring no staff analysis, enabling institutions to effortlessly monitor their student body and discover trends for making structural improvements and long-term actions.

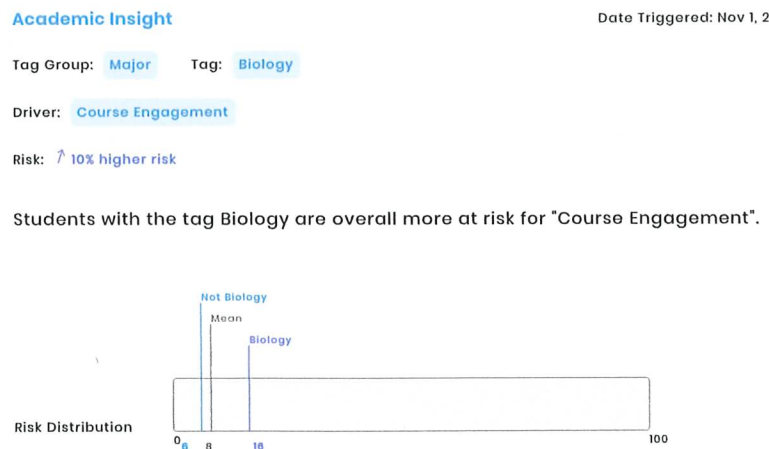


Figure 3: Institutional insight highlighting a cohort struggling more in one of the areas measured

4. **Auto-Forwarded Crisis Insights:** EdSights is the only technology that automatically escalates time-sensitive language used by students to the appropriate staff member(s) in real time. Incoming messages indicating time-sensitive needs are forwarded to predetermined staff based on the nature of the alert (e.g., mental health or violence). In parallel students are immediately and automatically supplied with an institutionally approved resource for the specific alert type, such as a crisis hotline. While some chatbot vendors may respond to the student with a resource, none have a rule-based forwarding workflow to escalate those conversations to targeted staff. EdSights' Alerts workflow is one of a kind and ensures earlier intervention and reduction in the volume of crises at our partner institutions.
5. **Student Voice Score (SVS):** EdSights provides its partners with an industry-first, trademarked system for measuring student sentiment. The Student Voice Score (SVS) provides partners with a simple, yet tangible number that measures student satisfaction. Via the dashboard, schools can measure their SVS over time, compare it to custom benchmarks as well as analyze SVS scores across different sub-populations (e.g., race, gender, major, etc.). Additionally, the SVS dashboard provides an AI-generated summary of the qualitative feedback students provided for things negatively and positively impacting their experience.

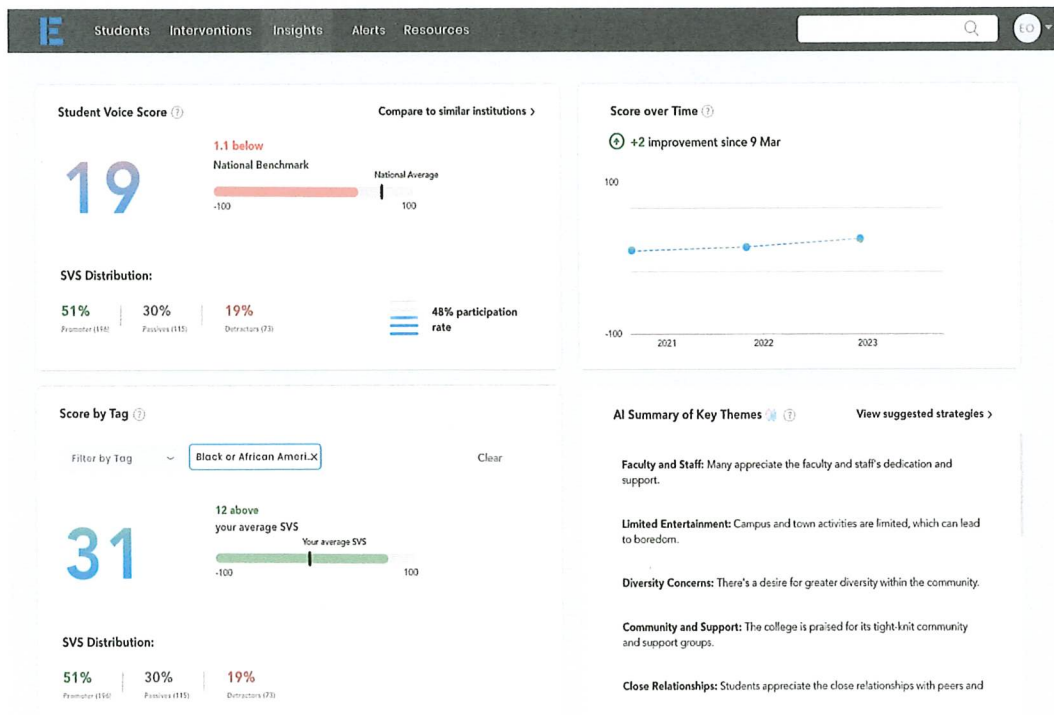


Figure 4: Student Voice Score (SVS) Dashboard

FLORIDA ACKNOWLEDGMENT

State of Florida )
County of Polk )

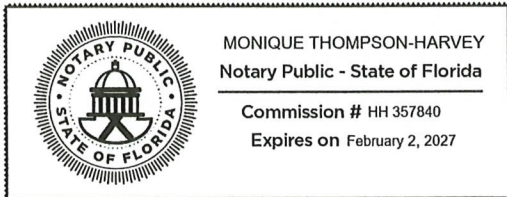
On 01/30/2024 before me, Monique Thompson-Harvey, by means of
Date Notary Name

- Physical Presence -- OR --
Online Notarization,

personally appeared Erica Stabley
Name(s) of Signer(s)

- personally known to me -- OR --
proved to me on the basis of the oath of Name of Credible Witness -- OR --
proved to me on the basis of satisfactory evidence: Pennsylvania Drivers License
Type of ID Presented

to be the individual(s) whose name(s) is/are subscribed to the within instrument, & acknowledged to me that they executed the same in their authorized capacity(ies) and by proper authority, and that by their signature(s) on the instrument, the individual(s), or the person(s) or entity upon behalf of which they acted, executed the instrument for the purposes and consideration therein stated.



WITNESS my hand and official seal.

Notary Public Signature: [Signature]

Notary Name: Monique Thompson-Harvey

Notarized online using audio-video communication

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document: EdSights - Sole Source Provider of Conversational-AI Persistence Insights

Document Date: 01/30/2024 Number of Pages (w/ certificate): 4

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: N/A

- Corporate Officer Title: Senior Partnership Director
Partner - Limited General
Individual Attorney in Fact
Trustee Guardian of Conservator
Other:
Corporate Officer Title: N/A
Partner - Limited General
Individual Attorney in Fact
Trustee Guardian of Conservator
Other: N/A

Signer Is Representing: EdSights

Signer Is Representing:

**EDSIGHTS  
MASTER SERVICES AGREEMENT**

This Master Services Agreement including all Exhibits attached hereto (“**Agreement**”) is made on the date of the later signature below (“**Effective Date**”) between EdSights Inc. (“**EdSights**”), a Delaware corporation and the customer identified on the signature block below (“**Customer**”) (each, a “**Party**” and collectively, the “**Parties**”).

**RECITALS**

**WHEREAS**, EdSights is the owner and provider of proprietary technology solutions that are focused on student success in the United States;

**WHEREAS**, EdSights offers a chatbot that interacts with and provides resources to students on behalf of Customer (the “**Chatbot**”), a software-as-a-service platform for its customers to visualize and analyze data related to student success (the “**Platform**”), and certain other services related to the foregoing (collectively with the Chatbot and the Platform, the “**Services**”); and

**WHEREAS**, the Parties desire that EdSights supply the Services to Customer, in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, for good and valuable consideration of the mutual covenants and promises herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**AGREEMENT**

**1. DEFINITIONS.** Capitalized terms have the meaning set forth below or as otherwise defined within this Agreement.

**1.1 “Aggregated Data”** is Customer Data that relates to a group or category of individuals, customers, and/or Students, from which individual, Customer, and/or Student identities have been removed in compliance with Applicable Data Protection Laws.

**1.2 “Applicable Data Protection Laws”** means the U.S. federal and U.S. state privacy, data protection, data security and telemarketing laws and regulations applicable to the collection, storage, use, disclosure and/or other processing of Personal Data under this Agreement, including, without limitation, the California Consumer Privacy Act (“CCPA”), EU General Data Protection Regulation 2016/679 (“EU GDPR”) as implemented by countries within the EEA and the EU GDPR as retained as UK law by the European Union (Withdrawal) Act 2018 (“UK GDPR”) (collectively (“GDPR”), the Family Educational Rights and Privacy Act, the Controlling the Assault of Non-Solicited Pornography And Marketing Act of 2003), and the Telephone Consumer Protection Act of 1991.

**1.3 “Authorized Users”** means the employees, agents and independent contractors engaged by the Customer who are authorized to access the Platform pursuant to Customer’s rights under this Agreement.

**1.4 “Customer Data”** means any data, content or information that is provided or submitted by, or on behalf of, Customer, or its representatives, or Student, to EdSights in connection with the Services, including the Student Data.

**1.5 “Customer Marks”** means trademarks, service marks, logos and names identifying Customer or its products or services, including the name, image, and likeness of the mascots affiliated with Customer and used to brand the Chatbot.

**1.6** “**Documentation**” means all specifications, user manuals, and other technical materials relating to the Platform and the Services that are provided or made available to Customer, and as may be modified by EdSights from time to time.

**1.7** “**EdSights Technology**” means the Chatbot, the Platform, Usage Data, Aggregated Data, the Documentation, any standardized questionnaires or templates or other materials used by EdSights in connection with the Chatbot, and any applicable software, data, or technical information contained within the foregoing.

**1.8** “**Fees**” means the fees for the Services as set forth on an Order Form.

**1.9** “**Intellectual Property Rights**” means all past, present, and future rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, and mask work rights; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patent and industrial property rights; (e) other proprietary rights of every kind and nature; and (f) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (a) through (e) of this sentence.

**1.10** “**Order Form**” means an ordering document for Services referring to and governed by this Agreement, outlining, at minimum, a description of the Service, mutually agreed upon rates for outlined Services, and the duration of Services, where the initial accepted Order Form is attached hereto, and all additional Order Forms shall be issued and accepted only if signed by each of the Parties.

**1.11** “**Output**” means the output, including without limitation content, copy, responses, visuals, results, video, text, and imagery, generated via the Chatbot in response to Students’ prompts or inputs.

**1.12** “**Personal Data**” means any information that constitutes “personal data,” “personal information,” “personally identifiable information”, or similar term as defined in Applicable Data Protection Laws.

**1.13** “**Service Level Agreement**” means the service level agreement pertaining to the Platform that is provided at **Exhibit A**.

**1.14** “**Student**” means an enrolled, prospective, or former student of Customer who is eligible to interact with the Chatbot.

**1.15** “**Student Data**” means the information (including Personal Data) related to a Student that is supplied by such Student or Customer, directly or indirectly, to EdSights, including via the Chatbot, through web-based applications or SMS messages.

**1.16** “**Third-Party Provider**” means certain third-party services or applications that are integrated into the Services, including without limitation, providers of artificial intelligence tools.

**1.17** “**Usage Data**” means general performance and usage data generated or collected through or in connection with Customer’s use of the Platform and Services (such as usage statistics, technical logs, account and login data, processed volumes).

## **2. ACCESS TO THE EDSIGHTS TECHNOLOGY; PROVISION OF SERVICES.**

**2.1** **Access.** During the Term, EdSights shall host, deploy, and operate the Chatbot and Platform. Subject to the terms and conditions of this Agreement, EdSights hereby grants to Customer, and Authorized Users on Customer’s behalf, a limited, non-exclusive, non-transferable (except as permitted under Section 12.3), non-sublicensable right during the Term to: (a) use and access the Platform in accordance with the Documentation and the terms of this Agreement; (b) use and make reasonable copies of the Documentation, in each case solely for Customer’s internal business purposes. As part of this grant of access, and subject to the terms and conditions of this Agreement, EdSights hereby grants Students of Customer a limited, non-exclusive, non-transferable, non-sublicensable right during the Term to use the Chatbot. For purposes of improvements to the Services included in



this Agreement, Customer acknowledges and agrees that EdSights may update the EdSights Technology from time to time, including leveraging new technologies and tools. Customer shall be responsible for all acts and omissions of Authorized User's use of the Platform and all Student's use of the Chatbot, including but not limited to any act or omission in breach of any term of this Agreement.

**2.2 Restrictions.** Customer shall not, and shall procure that its Authorized Users shall not: (a) allow any third party to access the Platform except as expressly allowed herein; (b) modify, adapt, alter or translate the EdSights Technology; (c) sublicense, lease, sell, resell, rent, loan, distribute, transfer or otherwise allow the use of the EdSights Technology for the benefit of any unauthorized third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the EdSights Technology; (e) interfere in any manner with the operation of the Services or the hardware and network used to operate the same, or attempt to probe, scan or test vulnerability of the Services without prior authorization of EdSights; (f) modify, copy or make derivative works based on any part of the EdSights Technology; (g) access or use the EdSights Technology to build a similar or competitive product or service or otherwise engage in competitive analysis or benchmarking of any EdSights Technology; (h) attempt to access the EdSights Technology through any unapproved interface; (i) use the EdSights Technology in connection with any of Customer's time-critical or mission-critical functions; (j) remove, alter, or obscure any proprietary notices (including copyright and trademark notices) of EdSights or its licensors on the EdSights Technology or any copies thereof; or (k) otherwise use the EdSights Technology in any manner that exceeds the scope of use permitted under this Agreement or in a manner inconsistent with applicable law. EdSights reserves the right to suspend Customer's, any Authorized Users', or any Student's access to the EdSights Technology for any failure, or suspected failure, to comply with the foregoing conditions.

**2.3 Usernames and Passwords.** Promptly following the Effective Date, EdSights will provide to Customer the access codes, passwords, authentication keys or any other relevant procedures, to the extent needed to enable Customer and its Authorized Users access to the Platform. Customer acknowledges and agrees that only Authorized Users are entitled to access the Platform with their unique usernames and passwords. Customer will notify EdSights promptly of any actual or suspected unauthorized use of any account, username, or passwords, or any other known or suspected breach of this Agreement. EdSights reserves the right to suspend, disable or terminate any Authorized User's access to the Platform that EdSights reasonably determines may have been used by an unauthorized third party.

**2.4 Services.** Subject to the terms and conditions of this Agreement, and specifically those set forth in **Exhibit A**, EdSights will exercise commercially reasonable efforts to (a) provide support for the use of the Platform, and (b) keep the Platform operational and available to Customer, in each case in accordance with its standard policies and procedures.

**3. CUSTOMER OBLIGATIONS.** Promptly following the Effective Date, and throughout the Term as reasonably necessary, Customer shall deliver to EdSights all Customer Data, including but not limited to a list of mobile phone numbers of Students whom Customer wishes to invite to use the Chatbot and necessary (a) for the provision of Services generally; (b) to train and enable the Chatbot to provide accurate, relevant and up-to-date information to Students in response to their prompts or queries. Customer is solely responsible for any and all obligations with respect to maintaining the security of Customer Data in its or its provider's systems, and the accuracy, quality, and legality of such Customer Data. Customer is responsible for obtaining or providing all licenses, rights, consents, permissions, terms and conditions, notices, and/or disclosures required under applicable law for Customer to offer the Chatbot to Students and for Customer and EdSights to process the Customer Data in accordance with this Agreement. Customer shall be responsible for all use of the EdSights Technology and all Outputs resulting therefrom. Customer acknowledges and agrees that the Chatbot provided by EdSights "as is" and is intended as an informational tool only.

#### **4. FEES, PAYMENT, AND TAXES.**

**4.1 Fees; Payment.** Unless otherwise expressly specified in the applicable Order Form, the Fees for the license to the Services granted hereunder are payable annually in advance. All Fees are quoted in United States Dollars and, except as otherwise set forth in this Agreement, are non-refundable. Fees are payable thirty (30) days from the date of invoice and will be deemed overdue if they remain unpaid thereafter.

**4.2 Late Payments.** Payments by Customer that are past due will be subject to interest at the rate of one and one-half percent (1.5%) per month (or, if less, the maximum allowed by applicable law) on that overdue balance. Customer will be responsible for any costs resulting from collection by EdSights of any such overdue balance, including, without limitation, reasonable attorneys' fees, collection expenses, and court costs. EdSights reserves the right (in addition to any other rights or remedies EdSights may have) to suspend Customer's, and all Authorized Users' access to the Platform and/or suspend its performance of the Services if any Fees are more than thirty (30) days overdue until such amounts are paid in full.

**4.3 Taxes.** The Fees do not include taxes, duties or charges of any kind. If EdSights is required to pay or collect any local, value added, goods and services taxes or any other similar taxes or duties arising out of or related to this Agreement (not including taxes based on EdSights' income), and if Customer is not otherwise exempt from such taxes and/or duties, then such taxes and/or duties shall be billed to and paid by Customer.

## **5. PROCESSING OF DATA; DATA SECURITY.**

**5.1 Compliance with Law.** Without limiting Customer's obligations under Section 3, each Party shall comply in all material respects with all Applicable Data Protection Laws (as applicable to each Party) in connection with its, collection, storage, use, disclosure and/or other processing of Personal Data in the performance of such Party's obligations under this Agreement. EdSights shall not be in breach of the foregoing provision if such breach is caused by Customer's failure to comply with its obligations under this Agreement.

**5.2 Use of Customer Data.** As between Customer and EdSights, Customer retains all right, title and interest in and to the Customer Data and all Intellectual Property Rights therein. Customer grants EdSights a non-exclusive, worldwide, royalty-free and fully paid license, (i) during the Term, to process, use and disclose Customer Data and Output as necessary to provide and improve the Services, including providing Customer with analytics; and (ii) on a perpetual basis, (x) to provide, build, commercialize, develop and improve the Services and EdSights' related products and services (including improving any algorithmic models used to provide the Services); (y) provide analytics and benchmarking on EdSights's products and services (e.g., a nationwide sentiment index against which a Customer can compare its own student body's sentiment score); and (z) generate and disclose Usage Data. EdSights shall ensure that any use of Customer Data under clause (ii) is conducted in a manner that anonymizes and removes all personally identifiable information (PII) to safeguard the privacy of both Students and Customers.

**5.3 Usage Data.** EdSights may generate Usage Data to operate, improve, analyze, and support the EdSights Technology and the Services for benchmarking and reporting and for EdSights's other lawful business purposes. The Usage Data shall not be disclosed outside of EdSights in a manner that would identify Customer or any individual without Customer's consent.

**5.4 Data Security.** During the Term, EdSights shall use commercially reasonable efforts to maintain an information security program that includes administrative, technical and physical safeguards designed to: (a) maintain the security and confidentiality of Customer Data; and (b) protect against unauthorized access to or use of Customer Data that could result in substantial harm to any such Customer Data.

**5.5 Education Records.** Without limiting the obligations of each Party hereunder, each Party shall comply with applicable requirements of the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and its implementing regulations, 34 C.F.R. Part 99 (together, "FERPA"). If and to the extent EdSights has access to "Education Records" and "Personally Identifiable Information" (as those terms are defined in 34 C.F.R. § 99.3) in connection with its provision of the EdSights Technology and Services: (a) Customer agrees that EdSights has met the criteria for being a "School Official" with "Legitimate Educational Interests" (as those terms are used under FERPA) in such Education Records and Personally Identifiable Information; and (b) EdSights agrees that such Education Records and Personally Identifiable Information will be used only for authorized purposes under this Agreement, and EdSights will not redisclose such Education Records or Personally Identifiable Information except with authorization from the Customer and such redisclosure is otherwise permitted under FERPA.

## **6. TERM AND TERMINATION.**

**6.1 Term.** This Agreement will begin on the Effective Date and will continue in full force and effect for as long as any Order Form remains in effect, unless earlier terminated in accordance with this Agreement (the “Term”).

**6.2 Order Form Term.** The initial Term of an Order Form will begin on the effective date of the Order Form and continue in full force and effect for the term set forth in the Order Form (the “Initial Term”), unless earlier terminated in accordance with the Agreement. Thereafter, the Order Form will automatically renew for successive terms of the same length as the Initial Term (each a “Renewal Term” and, together with an Initial Term, the “Order Form Term”) unless either Party gives written notice of non-renewal to the other Party at least sixty (60) days prior to the expiration of the then-current Order Form Term. Upon renewal of the applicable Order Form Term, EdSights reserves the right to increase Fees for the forthcoming Renewal Term upon written notice to the Customer. Unless an Order Form specifies otherwise, any discounted pricing in the Initial Term or any Renewal Term will not carry over into any subsequent Renewal Term.

**6.3 Termination for Breach.** Either Party may terminate this Agreement immediately upon notice to the other Party if: (a) the other Party materially breaches this Agreement, and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach.

**6.4 Effect of Termination.** Upon the earlier of expiration or termination of this Agreement: (a) each Party shall immediately return or, if requested by a Party, destroy all (including any copies of) Confidential Information of the other Party and, upon request, each Party shall provide written certification that the foregoing obligations have been completed; (b) all Order Forms will immediately terminate, (c) the rights and licenses granted to Customer hereunder will immediately terminate; (d) Customer will cease use of the EdSights Technology, and return or destroy all copies of the Documentation in its possession/control; and (e) the Parties’ rights and obligations under Sections 1, 2.2, 4, 5.2, 5.3, 6.4, 7, 8.1, 8.2, 8.4, 9.4, 9.5 and 10 – 12 shall survive termination of this Agreement. Termination of this Agreement will not limit either Party from pursuing any other remedies available to it, including injunctive relief. If the Agreement is terminated for Customer’s breach, EdSights shall retain all Fees paid for Services, by or before the date of termination, regardless of such Fees have accrued. If Agreement is terminated for EdSights’ breach, Customer will only be obligated to pay all Fees accrued prior to such termination.

## 7. CONFIDENTIALITY.

**7.1 Confidential Information.** Each Party (“Receiving Party”) acknowledges that it may receive from the other Party (“Disclosing Party”) confidential information relating to the Disclosing Party and such confidential information may include, but is not limited to, technical, business, marketing and financial information, and any other information that could reasonably be considered confidential or proprietary (“Confidential Information”). The terms of this Agreement and any Order Form, the EdSights Technology, and all technical information relating thereto shall be considered Confidential Information of EdSights. Customer Data is Customer’s Confidential Information.

**7.2 Exclusions.** Confidential Information does not include information that: (a) is or becomes generally available to the public other than through a wrongful act of the Receiving Party; (b) is or becomes available to the Receiving Party on a non-confidential basis from a source that is entitled to disclose it to the Receiving Party; or (c) is independently developed by the Receiving Party, its employees or third-party contractors without access to or use of the Disclosing Party’s Confidential Information.

**7.3 Obligations.** During and after the Term, the Receiving Party shall: (a) not use or disclose Confidential Information of the Disclosing Party without the prior written consent of the Disclosing Party, other than as necessary to provide the Services (including sharing with applicable Third-Party Providers); and (b) take no less than the same measures that it takes with its own Confidential Information, and in any case no less than reasonable measures, to maintain the Confidential Information of the Disclosing Party in confidence. Either Party may disclose Confidential Information to the extent required by law or court order, provided that the Receiving Party gives the Disclosing Party reasonable advance notice of such required disclosure if legally permitted and cooperates with the Disclosing Party so that the Disclosing Party has the opportunity to obtain appropriate confidential treatment for such Confidential Information.

**7.4 Ownership.** All Confidential Information disclosed by Disclosing Party shall remain the property of the Disclosing Party. The Disclosing Party reserves all rights in its Confidential Information. Nothing in this Agreement or the disclosures envisioned by this Agreement shall (except for the limited use right above) operate to transfer, or operate as a grant of any Intellectual Property Rights in the Confidential Information.

## **8. INTELLECTUAL PROPERTY RIGHTS.**

**8.1 EdSights Technology.** The EdSights Technology, including all results thereof, including all Outputs (but excluding any Customer Data incorporated therein) is proprietary to EdSights and its licensors, and EdSights and its licensors have and shall retain all right, title, and interest, including all Intellectual Property Rights therein. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer, any Authorized User, or any Student regarding the EdSights Technology or Outputs resulting therefrom, including any right to obtain possession of any source code, data, or other technical material relating to the EdSights Technology. All rights not expressly granted to Customer are reserved to EdSights.

**8.2 Customer Ownership.** Customer Data, and all worldwide Intellectual Property Rights therein, are the exclusive property of Customer. All rights in and to the Customer Data not expressly granted to EdSights in this Agreement are reserved by Customer.

**8.3 Trademark.** During the Term, Customer hereby grants to EdSights a non-exclusive, non-transferable (except as set forth in Section 12.3 below), sublicensable, worldwide, royalty-free, fully paid-up license to use Customer Marks, for the purpose of providing the Chatbot on a white-labeled basis and for display on the Platform. Use of Customer Marks shall be in accordance with Customer's trademark usage policies as communicated to EdSights in writing.

**8.4 Feedback.** Customer hereby grants EdSights a perpetual, irrevocable, royalty-free and fully paid right to use and otherwise exploit in any manner any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer related to the EdSights Technology, including for the purpose of improving and enhancing the Services; provided that Customer is not referenced in such use.

## **9. WARRANTIES; DISCLAIMERS.**

**9.1 Mutual Warranties.** Each Party hereby represents and warrants to the other Party that: (a) it has full, right, power and authority to enter into this Agreement and to perform its obligations under this Agreement; (b) it is duly organized and existing in good standing under the laws of the jurisdiction in which it is organized, and has the power to own its property and to carry on its business as now being conducted; and (c) it has not entered into and will not enter into any agreements with any third party that conflict with such Party's obligations under this Agreement.

**9.2 EdSights Warranties.** EdSights represents and warrants that: (a) it shall use commercially reasonable efforts to host the EdSights Technology in accordance with the Service Level Agreement attached hereto as Exhibit A; (b) the EdSights Technology will operate in accordance with the Documentation in all material respects; and (c) any support services provided in connection with the Platform will be performed in a professional, workmanlike manner consistent with generally accepted industry practices. Customer must report any deficiencies in the performance of the foregoing warranties to EdSights in writing within thirty (30) days of the non-conformance. Provided that the Customer has complied with the foregoing, Customer's exclusive remedy, and EdSights's entire liability, in connection with a breach of: (i) the warranty specified in Section 9.2(a) will be the remedy specified in the Service Level Agreement; and (b) the warranty specified in Section 9.2(b) will be the correction of the deficiency or the re-performance of the support services in a compliant manner, as applicable, and if EdSights fails to correct such deficiency or re-perform in a complying manner within thirty (30) days of Customer's notice, Customer's sole and exclusive remedy shall be to terminate this Agreement, or the applicable Order Form(s), and receive a refund of any prepaid but unearned Fees prorated on a monthly basis for the remainder of the Order Form Term(s) of the applicable Order Form(s) terminated.

**9.3 Customer Warranty.** Customer represents and warrants that: (a) it shall not use any EdSights Technology for any unlawful purpose or in breach of any of its commitments described hereunder; (b) it has obtained or provided all applicable licenses, rights, permissions, notices, disclosures and/or consents, including but

not limited to all consents from Students to provide EdSights the Student Data, as required by Applicable Data Protection Laws; and (c) it will not share with EdSights, or upload any Personal Data or other information to the EdSights Technology or otherwise use the EdSights Technology in a manner that: (i) constitutes “Protected Health Information” under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations; (ii) constitutes biometric data (or similar term) under Applicable Data Protection Laws (iii) infringes or misappropriates any third party’s Intellectual Property Rights, (iv) is deceptive, defamatory, obscene, pornographic or unlawful, (v) knowingly contains any viruses, worms or other malicious computer programming codes intended to damage the EdSights Technology; or (vi) otherwise violates the rights of a third party.

**9.4 Third-Party Providers.** EdSights makes no representations or warranties about the performance of any Third-Party Provider. Such Third-Party Providers are not under the control of EdSights and do not constitute EdSights Technology. EdSights is not responsible for any Third-Party Providers. EdSights shall ensure that its agreements with such Third-Party Providers obligate the Third-Party Providers to treat any Customer Data shared with such Third-Party Providers confidentially. For the avoidance of doubt, Customer acknowledges that the Chatbot is provided by a Third-Party Provider of EdSights.

**9.5 DISCLAIMERS.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES, EDSIGHTS TECHNOLOGY, THE CHATBOT, AND ALL OUTPUTS RESULTING THEREFROM, INCLUDING BUT NOT LIMITED TO THOSE PROVIDED BY ANY THIRD-PARTY PROVIDER, ARE PROVIDED BY EDSIGHTS “AS IS” AND “AS AVAILABLE” AND EDSIGHTS AND ITS LICENSORS MAKE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, ORAL, STATUTORY, EXPRESS, IMPLIED, BY COURSE OF COMMUNICATION OR DEALING, OR OTHERWISE. EDSIGHTS DOES NOT PROVIDE ANY WARRANTY OR GUARANTY THAT THE CHATBOT WILL PROVIDE ACCURATE, TIMELY, TAILORED, INFORMATIVE OR APPROPRIATE OUTPUT OR RESULTS, IS PROTECTED BY INTELLECTUAL PROPERTY RIGHTS, OR WILL BE FREE FROM THIRD-PARTY CONTENT. CUSTOMER ACKNOWLEDGES THAT THE CHATBOT MAY LEVERAGE THIRD-PARTY PROVIDERS AND THAT EDSIGHTS IS NOT LIABLE, FOR THE CONDUCT OF THIRD-PARTY PROVIDERS OR CONTENT GENERATED THEREFROM, INCLUDING ANY OUTPUTS. EXCEPT AS SPECIFIED IN SECTION 9, EDSIGHTS AND ITS LICENSORS SPECIFICALLY DISCLAIM ANY AND ALL OTHER WARRANTIES, AND THERE ARE NO OTHER WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE, WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF, OF THE EDSIGHTS TECHNOLOGY, CHATBOT, OR OUTPUTS, AND ANY OTHER PRODUCT OR SERVICES PROVIDED UNDER THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EDSIGHTS DOES NOT WARRANT THAT THE EDSIGHTS TECHNOLOGY, CHATBOT, OR OUTPUTS ARE ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION, NOR DOES EDSIGHTS WARRANT OR GUARANTEE THE COMPREHENSIVE DETECTION OF ALL TIME-SENSITIVE OR CRISIS-RELATED COMMUNICATIONS.

## 10. INDEMNIFICATION.

**10.1 By EdSights.** EdSights will defend at its expense any suit brought against Customer, and will pay any settlement EdSights makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party (“**Third-Party Claim**”) alleging that the use of the EdSights Technology by Customer in accordance with the Documentation and this Agreement infringes such third party’s Intellectual Property Rights (“**Infringing Technology**”). If any portion of the EdSights Technology becomes, or in EdSights’s opinion is likely to become, Infringing Technology and the subject of a Third-Party Claim of infringement, EdSights may, at EdSights’s option: (a) procure for Customer the right to continue using the Infringing Technology; (b) replace the Infringing Technology with non-infringing software or services which do not materially impair its functionality; (c) modify the Infringing Technology so that it becomes non-infringing; or (d) terminate this Agreement and refund any unused prepaid Fees for the remainder of the term then in effect, and upon such termination, Customer will immediately cease all use of the Infringing Technology. Notwithstanding the foregoing, EdSights will have no obligation under this Section or otherwise with respect to any Third-Party Claim of infringement based upon: (i) any use of the EdSights Technology not in accordance with this Agreement or as specified in the Documentation; (ii) any use of the EdSights Technology in combination with other products, equipment, software or data not supplied by EdSights; (iii) Customer Data or Output; or (iv) any modification of the EdSights Technology by any person other than EdSights. This Section states the sole and exclusive remedy of

Customer and the entire liability of EdSights, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for such claims and actions.

**10.2 By Customer.** To the extent permitted under applicable law, Customer will defend at its expense any Third-Party Claim arising out of or relating to: (a) any Customer Data; or (b) any breach by Customer of Section 3 or its representations and warranties in Section 9.3. This Section states the sole and exclusive remedy of EdSights and the entire liability of Customer, or any of its officers, directors, employees, shareholders, contractors or representatives, for the claims and actions described herein.

**10.3 Procedure.** The indemnifying Party's obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified Party promptly notifying the indemnifying Party in writing of any threatened or actual claim or suit; (b) the indemnifying Party having sole control of the defense or settlement of any claim or suit; and (c) the indemnified Party cooperating with the indemnifying Party to facilitate the settlement or defense of any claim or suit.

## 11. LIMITATION OF LIABILITY.

**11.1 Types of Damages.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EDSIGHTS BE LIABLE FOR LOST PROFITS OR LOST DATA OR FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, RELIANCE OR PUNITIVE LOSSES OR DAMAGES HOWSOEVER ARISING UNDER THIS AGREEMENT OR IN CONNECTION WITH THE EDSIGHTS TECHNOLOGY, WHETHER UNDER CONTRACT, TORT OR OTHERWISE, WHETHER FORESEEABLE OR NOT AND REGARDLESS OF WHETHER EDSIGHTS HAS BEEN ADVISED OF THE POSSIBILITY THAT SUCH DAMAGES MAY ARISE, OCCUR OR RESULT. IN NO EVENT SHALL EDSIGHTS BE LIABLE FOR PROCUREMENT COSTS OF SUBSTITUTE PRODUCTS OR SERVICES.

**11.2 Amount of Damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EDSIGHTS'S AGGREGATE CUMULATIVE LIABILITY UNDER THIS AGREEMENT (INCLUDING ALL EXHIBITS) EXCEED THE AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER TO EDSIGHTS UNDER THE APPLICABLE ORDER FORM IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

**11.3 Basis of the Bargain.** THESE LIMITATIONS OF LIABILITY WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE PARTIES ACKNOWLEDGE THAT THE PRICES HAVE BEEN SET AND THE AGREEMENT ENTERED INTO IN RELIANCE UPON THESE LIMITATIONS OF LIABILITY AND THAT ALL SUCH LIMITATIONS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE PROVISIONS OF THIS AGREEMENT ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN EDSIGHTS AND CUSTOMER. EDSIGHTS'S FEES FOR THE SERVICES REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

## 12. GENERAL PROVISIONS.

**12.1 Relationship Between the Parties.** EdSights is an independent contractor; nothing in this Agreement will be construed to create a partnership, joint venture, or agency relationship between the Parties. Neither Party will have, nor represent to any third party that it has, any authority to act on behalf of the other Party.

**12.2 Injunctive Relief.** Customer acknowledges that the EdSights Technology contains valuable Intellectual Property Rights and proprietary information of EdSights, that any actual or threatened breach of Sections 2 or 7 will constitute immediate, irreparable harm to EdSights for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If Customer continues to use the EdSights Technology after its right to do so has terminated or expired, EdSights will be entitled to immediate injunctive relief without the requirement of posting bond.

**12.3 Assignment.** Neither Party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other Party, and any assignment or transfer in derogation of the foregoing shall be null and void, provided, however that either Party shall have the right to assign the Agreement, without the prior written consent of the other Party, to the successor entity in the event of merger, corporate reorganization or a sale of all or substantially all of such Party's assets. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.

**12.4 Subcontracting.** Customer understands and agrees that EdSights may use third party subcontractors (including the Third-Party Providers) to provide services or perform under this Agreement, and that EdSights may transfer Confidential Information of Customer to such third-party subcontractors in connection with such services. EdSights shall ensure that third party subcontractors are required to protect Customer's Confidential Information on terms consistent with this Agreement.

**12.5 Notices.** All notices required or permitted under this Agreement must be delivered in writing, if to EdSights, by emailing the EdSights contact on the Order Form and if to Customer by emailing the email address listed on the Order Form, provided, however, that with respect to any notices relating to breaches of this Agreement or termination, a copy of such notice will also be sent in writing to the other Party at the Party's address as listed on the Order Form by courier, by certified or registered mail (postage prepaid and return receipt requested), or by a nationally-recognized express mail service. Each Party may change its email address and/or address for receipt of notice by giving notice of such change to the other Party.

**12.6 Governing Law; Jurisdiction.** This Agreement will be governed by, subject to, and interpreted in accordance with the laws of the state of New York, without regard to conflict of laws principles. The parties agree that the sole and exclusive jurisdiction and venue for any disputes arising hereunder will be in any court of competent jurisdiction sitting in New York, New York, and each party hereby waives all defenses of lack of personal jurisdiction and forum non conveniens related thereto

**12.7 Waivers; Severability.** Any waivers shall be effective only if made by writing signed by representatives authorized to bind the Parties. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

**12.8 Construction.** The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including but not limited to." Words used in this Agreement, regardless of the number or gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context shall require.

**12.9 Force Majeure.** Any delay in the performance of any duties or obligations of either Party (except for the obligation to pay Fees owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, war, fire, earthquake, typhoon, flood, natural disasters, governmental action, pandemic/epidemic, cloud-service provider outages any other event beyond the reasonable control of such Party, provided that such Party uses reasonable efforts, under the circumstances, to notify the other Party of the circumstances causing the delay and to resume performance as soon as possible.

**12.10 Entire Agreement; Amendment.** This Agreement and any applicable Order Form constitutes the complete agreement between the Parties and supersedes all previous and contemporaneous agreements, proposals, or representations, written or oral, concerning the subject matter of this Agreement. This Agreement shall govern any Order Form. To the extent that a conflict arises between the terms and conditions of an Order Form and the terms of this Agreement, the terms and conditions of this Agreement will govern, except to the extent that the Order Form, as applicable, expressly states that it supersedes specific language in the Agreement. It is expressly agreed that the terms and conditions of this Agreement and any Order Form supersede the terms any of Customer's purchase order. Neither this Agreement nor an Order Form may be modified or amended except in writing signed by a duly authorized representative of each Party; no other act, document, usage, or custom will be deemed to amend or modify this Agreement or an Order Form.

**12.11 U.S. Government Restricted Rights.** If Customer is a government end user, then this provision also applies to Customer. The software contained within the Platform and provided in connection with this Agreement has been developed entirely at private expense, as defined in FAR section 2.101, DFARS section 252.227-7014(a)(1) and DFARS section 252.227- 7015 (or any equivalent or subsequent agency regulation thereof), and is provided as “commercial items,” “commercial computer software” and/or “commercial computer software documentation.” Consistent with DFARS section 227.7202 and FAR section 12.212, and to the extent required under U.S. federal law, the minimum restricted rights as set forth in FAR section 52.227-19 (or any equivalent or subsequent agency regulation thereof), any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the U.S. Government shall be governed solely by this Agreement and shall be prohibited except to the extent expressly permitted by this Agreement.

*[Signature block follows]*

**AGREED AND ACCEPTED** on behalf of the Parties by their duly authorized representatives as of the last date of signature below.

**EdSights, Inc.**

**Wharton County Junior College**

Signed:

Signed:

Name:

Name:

Title:

Title:

Date:

Date:



**EXHIBIT A  
SUPPORT SERVICES & SERVICE LEVEL AGREEMENT**

1. **Definitions.** Capitalized terms not otherwise defined in this Exhibit A will have the meanings attributed to them in the Agreement.

(a) **“Availability”** means that the EdSights Technology is readily available to Customer and Authorized Users and operating without material Error, excluding Availability Exceptions.

(b) **“Availability Exceptions”** means (i) Scheduled Downtime; (ii) emergency maintenance activities; (iii) periods of unavailability attributable to Customer’s negligent acts or omissions; (iv) Customer’s failure to timely respond to EdSights in connection with resolution of any Problem; or (v) unavailability caused by factors beyond EdSights’s control, including interruption or failure of telecommunications or digital transmission circuits, delays or failures attributable to the Customer’s internet service provider, network attacks, cases fortuitous, network congestion, as well as third-party software or hardware. (b)

(c) **“Error”** means (i) any material problem that adversely interferes with access to or use of the EdSights Technology; (ii) material failure of the EdSights Technology to conform to the Documentation and this Agreement (including any requirements set forth in an applicable Order Form); or (iii) any software execution that is either materially incorrect or is not in material conformance with the Documentation.

(d) **“Problem”** means any problem, inquiry or request relating to any Error. Problems will be initially classified by Customer in accordance with the Severity level classifications set forth in Section 4 below.

(e) **“Scheduled Downtime”** means the downtime required by EdSights for upgrading or maintaining the EdSights Technology; provided, that (i) such downtime occurs between the hours of 22:00 ET USA on Friday and 19:00 ET USA on Sunday (or such other hours that Customer has previously and specifically approved in writing); and (ii) EdSights has provided five business days’ prior written notice of such downtime.

(f) **“Severity”** is the assessed possible risk or effect of a Problem on Customer’s business operations.

(g) **“Unavailability”** means that the EdSights Technology is not available to Customer and Authorized Users (and no Availability Exception applies) and/or is operating with a material Error.

2. **Monthly Availability Percentage Standard.** EdSights will maintain Availability of the EdSights Technology in accordance with the following standards:

Days of the Week	Time	Availability
Weekdays (Monday to Friday)	19:00 LOCAL TIME Sunday to 21:00 LOCAL TIME Friday	97%*
Weekends	21:00 LOCAL TIME Friday to 19:00 LOCAL TIME Sunday	97%*

\* As measured by ping.com, an independent service

3. **Customer Service Availability.** EdSights will maintain help desk support that will receive Problem calls as specified in the Order Form.

4. **Remedies.**

(a) **Credits Against Fees:** In the event of Unavailability, Customer will be entitled to credits against its subsequent payment obligations (as set forth in the Agreement) (“**Service Credits**”) according to the following table:

<u>SERVICE AVAILABILITY</u>	<u>CREDIT AS A PERCENTAGE OF MONTHLY BILLING</u>
Less than 97% and equal or higher than 96.0%	[5%]
Less than 96.0% and equal or higher than 95.0%	[10%]
Less than 95.0%	[20%]

Customer’s rights under this Section 4(a) (Credits Against Fees) are Customer’s sole and exclusive remedy with respect to any failure by EdSights to meet the Availability required by Section 2 (Monthly Availability Percentage Standard).

(b) **Maximum Service Credits:** The maximum amount of Service Credits that EdSights will issue to Customer for Unavailability in a single calendar month will not exceed twenty percent (20%) of the monthly billing for such month.

(c) **Requesting Service Credits:** As a condition to EdSights’s obligation to provide Service Credits to Customer, Customer must request such Service Credits by sending an email identifying the date and time of the Unavailability for which Customer is requesting Service Credits, with sufficient evidence (including description of the incident and duration of the incident) to finance@edsights.io within thirty (30) days following such Unavailability. If Customer fails to request any Service Credits to which Customer is entitled in accordance with this Section 4(c) (Requesting Service Credits), EdSights will have no obligation to issue such Service Credits to Customer.

**5. Problems Resolution Standards.**

(a) **High Priority –** A High Priority Problem is a Problem resulting from an Error or other emergency condition that causes the EdSights Technology to cease operating, severely impairs Availability or normal operation of the EdSights Technology, or results in corruption or unavailability of Customer data. An EdSights technician will respond to a High Priority Problem as soon as possible during business hours, but in any event within thirty minutes to eight hours.

(b) **Medium Priority –** A Medium Priority Problem is a Problem resulting from an Error or other emergency condition that results in a negative impact to critical EdSights Technology functions or the EdSights Technology are unable to process Customer Data or to send notifications or communications but does not meet the criteria defined for High Priority Problems above. An EdSights technician will respond to a Medium Priority Problem as soon as possible, but in any event within 48 hours.

(c) **Low Priority –** A Low Priority Problem is a Problem resulting from an Error or other condition that results in no performance degradation of the EdSights Technology and during which the Customer Data remains fully accessible and unharmed, but requires non-critical, remedial maintenance to the EdSights Technology or consists of reasonable requests for modifications to the EdSights Technology. An EdSights technician will initially respond to Low Priority Problems as soon as possible, but in any event within five business days.