

# **Education Resource Group, Inc.**

## **Software Application License Agreement**

Prepared for the

# **Keller ISD**

EDUCATION RESOURCE GROUP

21 Waterway Avenue, Suite 300  
The Woodlands TX 77380  
[EducationResourceGroup.com](http://EducationResourceGroup.com)

## SOFTWARE LICENSE AGREEMENT

ERG 220907-2008-01

Education Resource Group, Inc., a Texas Corporation, (ERG) proposes to license to the KELLER ISD one or more software application(s) listed in Appendix "A". The following Agreement describes the roles and responsibilities of both parties.

### Terms and Conditions

**1. PURPOSE OF AGREEMENT.** Licensee desires to acquire a license to one or more proprietary, Internet-based application(s), ("Software Application") from ERG and described in Appendix "A". Accordingly, the parties agree as follows:

**2. IDENTIFICATION OF The PARTIES.** This Agreement is made between KELLER ISD ("Licensee") located 350 Keller Parkway, Keller, TX 76248., and Education Resource Group, Inc. ("Licensor") with a principal place of business at 21 Waterway, Suite 300, The Woodlands, Texas 77380.

**3. CONSIDERATION.** In consideration for licensed access to the Software Application, Licensee agrees to pay a license fee listed in Appendix "A" for use of the Software Application.

**4. MATERIALS.** Licensee shall make available to LICENSOR, at Licensee's expense, the following materials, facilities and equipment: Electronic listings of classes and schedules, student and teachers, general class goals and plans. For the sole purposes of collecting, distributing and safeguarding student information required for the Software Application, LICENSOR will act as an authorized representative for the Licensee as defined and required under 20 USC 1232g, the Family Educational and Privacy Rights Act (FERPA). For all other intents and purposes, LICENSOR is and will continue to operate as an independent contractor.

**5. TRAINING.** LICENSOR shall provide appropriate training of Licensee personnel should such training be necessary to insure that developed systems are sustainable. Training will be conducted on such dates and locations as the parties may agree.

Licensee will be responsible for all costs and expenses of all Licensees' trainees, including room, board, transportation, salary, insurance and other benefits, and other expenses while attending the training. Licensor reserves the right to establish fees for training.

**6. OWNERSHIP OF SOFTWARE APPLICATION.** LICENSOR shall retain all copyright, patent, trade secret and other intellectual property rights created in performance of this contract. LICENSOR grants Licensee a nonexclusive, nontransferable, royalty-free license to use the Software Application.

This license shall authorize Licensee to use the Software Application in support of schools and locations designated in Appendix "A".

**7. OWNERSHIP OF CORE TECHNOLOGY.** Licensee acknowledges that LICENSOR owns or holds a license to use and sublicense various preexisting development tools, routines, subroutines and other programs, data and materials that LICENSOR may include in the Software Application. This material shall be referred to as "Core Technology." LICENSOR's Core Technology includes, but is not limited to; those items identified in the Exhibit, attached to and made a part of this Agreement.

LICENSOR retains all right, title and interest, including all copyright, patent rights and trade secret rights in the Core

Technology. For the term of this agreement LICENSOR grants Licensee a nonexclusive, perpetual district wide license to use the Core Technology in the Software Application developed for and delivered to Licensee under this Agreement, and all updates and revisions delivered to Licensee. However, Licensee shall make no other commercial use of the Core Technology without LICENSOR's written consent.

**8. WARRANTIES.** THE SERVICES FURNISHED UNDER THIS AGREEMENT IS PROVIDED ON AN AS "AS IS" BASIS, WITHOUT ANY WARRANTIES OR REPRESENTATIONS EXPRESS, IMPLIED OR STATUTORY; INCLUDING, WITHOUT LIMITATION, WARRANTIES OF QUALITY, PERFORMANCE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NOR ARE THERE ANY WARRANTIES CREATED BY A COURSE OF DEALING, COURSE OF PERFORMANCE OR TRADE USAGE. SERVICE PROVIDOR DOES NOT WARRANT THAT THE SOFTWARE APPLICATION WILL MEET LICENSOR'S NEEDS OR BE FREE FROM ERRORS, OR THAT THE OPERATION OF THE WORK PRODUCT WILL BE UNINTERRUPTED. THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN ESSENTIAL PART OF THIS AGREEMENT AND FORMED THE BASIS FOR DETERMINING THE PRICE CHARGED FOR THE WORK PRODUCT.

**9. INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.** LICENSOR represents, BUT DOES NOT WARRANT, that to the best of its knowledge the Services provided to Licensee under this Agreement will not infringe any valid and existing intellectual property right of any third party.

### 10. LIMITATIONS OF LICENSOR'S LIABILITY TO LICENSEE.

(a) In no event shall LICENSOR be liable to Licensee for lost profits of Licensee, or special or consequential damages, even if LICENSOR has been advised of the possibility of such damages.

(b) LICENSOR's total liability under this Agreement for damages, costs and expenses, regardless of cause, shall not exceed the total amount of fees paid to LICENSOR by Licensee under this Agreement.

(c) LICENSOR shall not be liable for any claim or demand made against Licensee by any third party except to the extent such claim or demand relates to copyright, trade secret or other proprietary rights, and then only as provided in the section of this Agreement entitled Intellectual Property Infringement Claims.

**11. CONFIDENTIALITY.** During the term of this Agreement and perpetually, LICENSOR will use reasonable care to prevent the unauthorized use or dissemination of Licensee's confidential information. Reasonable care means at least the same degree of care that Licensor uses to protect its own confidential information from unauthorized disclosure.

Confidential information is limited to information clearly marked as confidential, or disclosed orally that is treated as confidential when disclosed and summarized and identified as confidential in a writing delivered to the other party within 15 days of disclosure.

Confidential information does not include information that:

- was known to the other party before disclosure and such knowledge is also disclosed
- is or becomes public knowledge through no fault of the party to which the information was disclosed
- is obtained from sources other than disclosing party who owe no duty of confidentiality to disclosing party, or
- is developed independently.

**12. TERM OF AGREEMENT.** This Agreement commences on the date it is executed and shall continue until cancelled by either party.

**13. TERMINATION OF AGREEMENT.** Each party shall have the right to terminate this Agreement by written notice to the other if a party has materially breached any obligation herein and such breach remains uncured for a period of 30 days after written notice of such breach:

Upon termination of this agreement:

(a) Licensee shall immediately cease use of the Software Application.

(b) Licensee shall, within 10 days of such termination, deliver to LICENSOR all copies and portions of the Software Application and related materials and documentation in its possession furnished by LICENSOR under this Agreement.

(c) All rights and licenses granted to Licensee under this Agreement shall immediately terminate.

Licensee may terminate this Agreement for its convenience upon ninety (90) days prior written notice to LICENSOR. Upon such termination, all rights and licenses granted by LICENSOR to Licensee under this Agreement shall immediately terminate.

**14. MEDIATION AND ARBITRATION.** If a dispute arises under this Agreement, the parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator in the following location: Houston, TX. The parties shall share any costs and fees other than attorney fees associated with the mediation equally.

If it proves impossible to arrive at a mutually satisfactory solution through mediation, the parties agree to submit the dispute to binding arbitration in the following location Austin, TX under the rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court with jurisdiction to do so.

## 15. GENERAL PROVISIONS.

(a) Complete Agreement. This Agreement together with all exhibits, appendices or other attachments, which are incorporated herein by reference, constitutes the sole and entire Agreement between the parties. This Agreement supersedes all prior understandings, agreements and documentation relating to such subject matter. In the event of a conflict between the provisions of the main body of the Agreement and any attached exhibits, appendices or other materials, the Agreement shall take precedence.

(b) Modifications to Agreement. Modifications and amendments to this Agreement, including any exhibit or appendix hereto, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.

(c) Applicable Law. The laws of the State of Texas will govern this Agreement.

(d) Notices. All notices and other communications given in connection with this Agreement shall be in writing and shall be deemed given as follows:

- When delivered personally to the recipient's address as appearing in the introductory paragraph to this Agreement;
- Three days after being deposited in the United States mail, postage prepaid to the recipient's address as appearing in the introductory paragraph to this Agreement, or
- When sent by fax or telex to the last fax or telex number of the recipient known to the party giving notice. Notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first-class or certified mail, or the recipient delivers a written confirmation of receipt.

Any party may change its address appearing in the introductory paragraph to this Agreement by giving notice of the change in accordance with this paragraph.

(e) Assignment. The rights and obligations under this Agreement are freely assignable by either party.

**Approved by:**

**Licensee**

**KELLER ISD**

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Name

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Date

**Licensor**

**EDUCATION RESOURCE GROUP, INC.**

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Name

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Date

- 1.0 This Appendix "A" is hereby made part of Software License Agreement  
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- 2.0 Licensed applications are designated in the following table under the "Select"  
column:

| <b>Annual License - Assessment Applications</b> |                |        |
|---|----------------|--------|
| Application                                     | Annual License | Select |
| Policy Analyst                                  | \$2,395*       | X      |
| District Analyst                                | \$9,595        | X      |
| Campus Analyst                                  | \$11,995       | X      |
| Classroom Analyst                               | \$16,995       | X      |
| Student Analyst                                 | \$16,995       | X      |
| TAKS Analyst                                    | \$16,995       | X      |
| TWB   | \$16,995       |        |
| AMS Local Test Reporting                        | \$16,995       |        |
| AMS QBank & Online Testing                      | \$19,995       |        |
| Total for Base Applications                     | \$72,575       |        |
| Discount for First Time Bundled License         | (\$7,575)      |        |
| First Year License Fee                          | \$65,000       |        |
| <b>Training and Services</b>                    |                |        |
| Professional Services                           | \$1,000/Day    |        |
| Training  | \$750/Class    |        |
| Student Data Integration                        | \$5,000        |        |

\* License fee for Policy Analyst is included in fee for any other DAS module

Approved by:

\_\_\_\_\_  
Keller ISD  
(Licensee)

\_\_\_\_\_  
Education Resource Group, Inc.  
(Licensor)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date