

## PRO-ED END USER LICENSE AGREEMENT

v. 4-29-25

This End User License Agreement including the terms and conditions (“**License**”, “**License Agreement**” or “**Agreement**”) is a legal agreement between PRO-ED, Inc. (“**PRO-ED**”) and you, individually, or you and your organization (collectively “**you**” or “**your**”, “**Authorized User**” or “**customer**”) (An “Authorized User” is any individual that has been given authority to use the account by the customer) and applies to your use of the Product, including any assessments, databases, software, test and scoring products, digital, web-based products, systems and platforms, related paper materials, and all related documentation for the products (the “**Products**”), as well as any services provided by PRO-ED related to the Products including any online services (“**Services**”), as specified on the **Products and Services Description Sheet in Schedule “A” located at [Schedule A current.pdf](#)**.

PLEASE READ THIS LICENSE AGREEMENT CAREFULLY BEFORE ACCESSING OR USING THE PRO-ED PRODUCTS AND SERVICES. OUR PRODUCTS AND SERVICES ARE INTENDED TO BE USED IN K-12 SCHOOLS (OR BY PARENTS/GUARDIANS FOR HOME SCHOOLED STUDENTS), BY HEALTH CARE PROFESSIONALS, AND BY OTHER PROFESSIONALS THAT ARE QUALIFIED TO USE OUR TESTING AND RELATED PRODUCTS AND SERVICES.

BY CLICKING ON THE "ACCEPT" BUTTON BELOW, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS INCLUDED IN THIS LICENSE AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS IN THIS LICENSE AGREEMENT, CLICK THE "DECLINE" BUTTON AND THE INSTALLATION OR ACCESS PROCESS WILL NOT CONTINUE. IF YOU DECLINE THIS AGREEMENT, YOU WILL NOT BE ABLE TO INSTALL OR ACCESS THE PRODUCT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF A SCHOOL, HEALTH CARE ORGANIZATION, OR OTHER ORGANIZATION OR ENTITY, YOU REPRESENT THAT YOU ARE DULY AUTHORIZED TO BIND THAT ORGANIZATION OR ENTITY TO THIS LICENSE AGREEMENT OR YOU ARE AN AUTHORIZED USER OF CUSTOMER. BY ACCEPTING THESE TERMS, YOU REPRESENT YOU ARE AT LEAST 18 YEARS OF AGE.

PRO-ED may license certain products and services or portions thereof from others (“licensors”). In such instances, PRO-ED’s licensors refers to any individual, organization, or third party(ies) licensing all or any portion of the Products and Services to PRO-ED. This License is specifically intended for the benefit of PRO-ED and any PRO-ED licensors.

The following are the terms and conditions to which the parties agree in this Agreement:

1. **Orders and Payment.** All orders for online scoring and reporting for certain of PRO-ED’s Products and Services hosted on PRO-ED’s web based online systems (“**Systems**”) are subject to acceptance by PRO-ED, in its discretion, and will be fulfilled subject to PRO-ED’s then current Qualification Requirements (click at the following link to view: [PRO-ED Test User Qualifications : PRO-ED Inc. Official WebSite](#)).
2. **License Grant.** PRO-ED hereby grants you as an end user and licensee of our Products and Services a non-exclusive, limited, non-sublicensable, non-transferable license to use the Products and Services subject to the restrictions set forth below. No rights to the use of any PRO-ED, or its licensors’, names, logos, or trademarks are conveyed by this License. This License Agreement is not for the sale of Products or any other intellectual property. You may not further redistribute, sublicense, resell, rent, loan, or lease the Products to a third party. All rights, title and interest, and all intellectual property rights in and to the Products are retained and owned by PRO-ED or its licensors. Except as expressly stated herein, no other rights are granted to you by implication, estoppel, or otherwise, under any patent, copyright, trade secret, trademark, or other intellectual property right.
3. **Protection of Products, Services and Systems.** The Products, Services and Systems are the proprietary property of PRO-ED and contain trade secrets, copyright material, and in certain cases, patented intellectual

property, owned by PRO-ED and/or its licensors. The placement of a copyright notice on any portion of the Product or Systems does not mean that they have been published and will not derogate any claim by PRO-ED of trade secret protection. Title to the Product and Systems and copies thereof, and all intellectual property rights protecting the Products shall remain with PRO-ED and/or its licensors and the Products and Systems shall remain the property of PRO-ED. In the event you implement a single sign-on solution or an API to allow you or your Authorized Users access to a Product or System, it is your responsibility to implement appropriate safeguards regarding access to these through you or your chosen single sign-on or API provider, such as appropriate password rotations and multi-factor authentication.

You may not copy the Products or Systems other than as expressly provided in this License. You may not reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Products, or use any part of the Products or Systems for any use other than that for which it was supplied by PRO-ED, unless specifically authorized by PRO-ED. You may not: (i) modify, adapt, alter, translate, or create derivative works from the Products or Systems; (ii) work around any technical limitations in the Products, Systems, use any tool to enable features or functionalities that are otherwise disabled in the Products, or decompile, disassemble, or otherwise reverse engineer the Products or Systems except as otherwise permitted by applicable law; (iii) perform or attempt to perform any actions that would interfere with the proper working of the Products, Services or Systems, prevent access to or the use of the Products, Services or Systems by PRO-ED's other licensees or customers, or impose an unreasonable or disproportionately large load on PRO-ED's Systems and other infrastructure; (iv) use any Products, Services, Systems, any portion thereof, or any metadata to train any AI models or to generate any outputs; (v) remove or alter any copyright notice as shown on the Products; or (vi) otherwise use the Products or Systems except as expressly allowed under this Section and this Agreement. This Agreement does not grant you any rights to use the trademarks and service marks of PRO-ED.

4. **License Term.** This License shall remain effective as applicable for the number of uses, tests, scoring administrations, user seats, and/or for the subscription period as specified on our Product and Services description sheet located at [Schedule A current.pdf](#) for the corresponding Product you purchased and as evidenced in the order confirmation(s) and invoice(s) you receive, which shall be incorporated by reference as part of this Agreement. For clarification, the license term based on uses or scoring administrations shall commence upon the activation of the software and terminate upon the completion of the subscription or the last administration associated with the activation code provided in the Product. Subsequent use of existing accounts with a new activation code for additional uses shall create a new license for such existing account as if the account were being activated for the first time. You may terminate this License at any time by contacting PRO-ED at the following email address [privacy@proedinc.com](mailto:privacy@proedinc.com) and indicating your desire to terminate the license. If you terminate the License, you must delete or otherwise destroy any manuals, Products or desktop icons, if any, you may have downloaded as part of the Products within 30 days and cease all use of the Products and any Services. This License will immediately terminate if you fail to pay your license fee following notice from PRO-ED. Each party has the right to terminate this Agreement upon written notice to the other party if (i) a party materially breaches any provision of this Agreement, and (ii) the breaching party fails to cure such breach within 5 business days of receipt of notice of such termination from the other non-breaching party. No refund shall be given to you in the event that you terminate the License prior to its scheduled term once you have activated the Products. Provisions which by their nature should remain in effect beyond termination of this License Agreement shall survive.
5. **Grant of Rights in Submitted Data and User Data:** By providing any data, files, records, student information, patient information, records or data into the Products or Services or otherwise to PRO-ED (collectively "**Submitted Data**") and utilizing the Products and Services that generate additional data by PRO-ED (e.g. test scores, related score reports, and reports)(collectively the "**Generated Data**") (Submitted Data and Generated Data being separately and collectively the "**User Data**"), you grant PRO-ED a royalty free, non-exclusive, transferable, sublicensable, worldwide license to use the User Data for the purposes of providing and maintaining the Products and Services and purposes and as set forth in Section 9

("Restrictions on Use"). You acknowledge and agree that PRO-ED may use and disclose User Data to provide maintenance and support for the Products and Services. PRO-ED does not claim ownership of Submitted Data and retains only those rights in Submitted Data reasonably necessary or otherwise required to provide the Products, Services and Systems, and as otherwise contemplated under this License Agreement and associated PRO-ED documentation.

By providing the Submitted Data, you represent and warrant that you own such Submitted Data (including intellectual property rights therein), or that you have obtained all required consents and/or authorization under applicable laws to use and disclose the Submitted Data. **YOU ARE SOLELY RESPONSIBLE FOR OBTAINING ALL LEGALLY REQUIRED CONSENTS AND/OR AUTHORIZATIONS FROM EXAMINEES, STUDENTS, PARENTS, GUARDIANS, PATIENTS, AND ANY OTHER USERS OF THE PRODUCTS OR SERVICES; AND YOU RELEASE PRO-ED FROM ANY CLAIM, ACTION, PENALTY OR LIABILITY RELATING TO ANY FAILURE TO OBTAIN REQUIRED CONSENT AND/OR AUTHORIZATION, INCLUDING ATTORNEY'S FEES AND EXPENSES.**

Student PII: If you are using any of our Products, Services or Systems on behalf of a school, you represent and warrant that you have provided appropriate disclosures to your school and to parents and guardians regarding your sharing of any student personally identifiable information ("PII") with PRO-ED in compliance with the U.S. Family Educational Rights and Privacy Act ("FERPA"). PRO-ED relies on each school to obtain and provide applicable consent and disclosures for PRO-ED to process any student PII, including the collection of student PII directly from students under age 13 as permitted by FERPA. By submitting or providing us access to student PII and our agreement with the school district to comply with FERPA and state student privacy laws, you agree that PRO-ED is a "school official" as defined by FERPA and may use the student PII solely for the purposes of (i) providing the Products, Services and Systems; (ii) improving and developing our Products, Services and Systems, (iii) enforcing our rights under this Agreement, and (iv) as permitted with the school's consent. You also agree that PRO-ED may provide information about new PRO-ED features and offerings to school or district users and teachers from time to time, provided that such marketing shall not be based on student PII. PRO-ED shall not use student PII to engage in direct or targeted advertising to student users or any sale of student or any other PII.

Healthcare Professionals: If you are using any of our Products, Services or Systems as, or on behalf of, a Covered Entity or Business Associate and are subject to the Health Insurance Portability and Accountability Act ("HIPAA") or state consumer health data laws, you represent and warrant that you will comply with all applicable Privacy and Security Regulations (as defined in the PRO-ED BAA) and that you agree to the [PRO-ED's Business Associate Agreement](#) ("BAA"). You also agree that PRO-ED may provide information about new PRO-ED features, products, services and offerings to you from time to time, provided that such marketing shall not be based on PHI from you, a Covered Entity or another Business Associate. PRO-ED shall not use PHI to engage in targeted advertising to users or sell any PHI.

- 6. License Access Information and Account Data.** You are solely responsible for: (i) maintaining the confidentiality and security of your login information, activation codes, and any other security or access information, used by you to access the Products, Services and Systems ("**account information**"); and (ii) preventing unauthorized access to any User Data. You are responsible for providing access and assigning passwords to other Authorized Users (e.g., students; teachers; patients) under your account for the Products, Services and Systems and ensuring that such Authorized Users comply with this Agreement. PRO-ED reserves the right to terminate any unused activation codes.

PRO-ED assumes that any communications it receives through the Products or Systems or otherwise were sent or authorized by you. **You agree to promptly notify PRO-ED in writing at [privacy@proedinc.com](mailto:privacy@proedinc.com) if you become aware of any loss, theft or unauthorized use, disclosure or access to or of any User Data.** PRO-ED reserves the right to deny you access to the Products, Systems or Services or User Data (or any part thereof) if PRO-ED reasonably believes that any loss, theft or unauthorized use, disclosure or

access to or of User Data has occurred to allow PRO-ED to mitigate an incident. You must inform PRO-ED of, and hereby grant to PRO-ED permission to use Submitted Data and your account information to enable PRO-ED to provide the Products, Systems and Services to you, including communicating with you by email or telephone, updating and maintaining your account information included in any User Data, addressing errors or service interruptions, and to enhance the types of data and services PRO-ED may provide to you in the future. You also grant PRO-ED permission to combine or aggregate your account information included in the User Data with that of others in a way that does not identify you or any individual personally, to improve the Products and Services.

7. **Products/Services Retention, Changes, and Maintenance.** You are advised to export and safeguard your important data and back-up important information frequently. You are responsible for exporting User Data (e.g., download data if your system allows or print a report) as applicable within the time periods in Schedule A located at [Schedule A current.pdf](#) for each Product or Service or as specified in notices that we will provide you during activation or use of the Product and Services.

**PRO-ED will only retain User Data during the license term, and reserves the right to delete User Data after the expiration of such license and will provide you notice of applicable retention periods. PRO-ED will not be able to recover User Data once it is deleted.** For Products you have purchased with online features such as scoring and reporting, you may download, archive and/or export User Data (depending on the Product) at any point throughout the term of the subscription, when you have activation codes, and when you have an active account; however, depending on the access you are allowed to the Product, Service or System by your organization or institution, you may only be able to download certain User Data (e.g., for Edmark Reading Program Online administrators may download all User Data, teachers may only download their students' data). **You must make regular backups and you agree that PRO-ED shall have no liability to you resulting from any failure in our systems that are storing your data.**

8. **Account Inactivity:** As long as you have an Active Account (defined below), purchased Product and/or Services, including subscriptions and activation codes, your account will remain accessible and available for Authorized Users of the account. Accounts deemed to be Inactive Accounts (as defined below) will have all data (including scores, reports, history, etc.) and digital allocations (activation codes, usages, inventory, manuals, etc.) permanently expunged from the system and rendered no longer retrievable by you or PRO-ED after Notice (as defined below) has been provided to the account owner named on the account. An "Active Account" is any account that in the previous forty-eight (48) month period has had an Authorized User generate a report, download materials, and/or conduct an administration and/or where there is an active scoring subscription license or activation codes for any inventory on the account. An "Inactive Account" is any account that has not been an Active Account in the last forty-eight (48) month period. "Notice" means communication efforts (email or letter) by PRO-ED with no less than three attempts to contact you (the "Account Owner") over a forty five (45) day period after the account is deemed an Inactive Account using the contact information (email and billing address) on file for the account in question informing the Account Owner that the account should be reactivated or that all customer information for all Authorized Users should be downloaded from the applicable Product, Service or System prior to a specific date. If PRO-ED does not receive an appropriate response the User Data on the account and the account will be permanently deleted and will no longer be available. Any school users are responsible for checking their accounts and email throughout the year, including when school is not in session as notices may be sent during these periods.
9. **Restrictions on Use.** You may not use any of the Products, Services or any Systems for any illegal purpose or in any manner inconsistent with this Agreement. You agree to use the Products, Services and Systems solely for your own noncommercial use and benefit and not for resale or other transfer or disposition to any other person or entity.

**Permitted Use:** You have our permission to print a reasonable number of copies of any output reports or

curricula materials associated with the Product for noncommercial personal or classroom/clinical use, provided that any copies you print continue to show all originally included notices concerning copyright, trademark and other proprietary rights that appear in the material you reproduce and do not exceed the license set forth in this Agreement, in **Schedule “A”** ([Schedule A current.pdf](#)) and in any order confirmation or invoice.

**Educational Use:** For Products and Services used in a K-12 or Post-Secondary school, the Products, Systems and Services shall only be used by authorized individuals for legitimate educational purposes, and in compliance with FERPA and applicable state education laws and regulations. In such instances, PRO-ED is providing any Products and Services pursuant to an agreement with the school or teacher authorized to enter into this agreement for the school as a “school official” under FERPA for legitimate educational purposes.

**Health Care Professional Use:** For Products and Services that are used by health care professionals who are subject to HIPAA or state consumer health data laws, the Products, Systems and Services shall only be used by licensed healthcare professionals. You also acknowledge and agree that Submitted Data that may arise from your use of the Products and Services will be stored by PRO-ED with a HIPAA-compliant cloud vendor.

**Additional Restrictions: You may not:** (a) publish the results of benchmark tests of any Product, Services or Systems, or use any Product, Service or Systems, in any manner which is competitive with services provided by PRO-ED; (b) knowingly use or permit any others to use any Products, Systems and Services of PRO-ED in connection with any effort that you know seeks to breach the security or confidentiality of any Product or Systems; (c) use the Products, Services or Systems in a manner contrary to the educational or health care or other related purpose of the Products, Services or Systems, such as by posting answers to test or assessment questions provided through the Products or Systems; (d) upload, post, or otherwise transmit through, or otherwise use the Products, Services or Systems, to upload any content that contains any malware, viruses, spyware, worms, or other malicious code or files; (e) disrupt the normal flow of communication in the Products, Services or Systems or otherwise act in a manner that negatively affects any other users’ ability to use or benefit from the Products and Services; (f) interfere with or disrupt the Products, Services or Systems, including servers or networks connected to the Products, Services or Systems; (g) use any Product, Service, System or any portion thereof to train any AI models or generate any outputs therefrom; or (h) otherwise use the Products and Services in violation of this License Agreement.

10. **Privacy:** PRO-ED understands the importance of protecting personal information, including any “PII”, protected health information (“PHI”) or personal data, which may be provided to us by teachers, other educational professionals, parents, health care and other qualified professionals when using our Products and Services and we are committed to protecting this personal information. You understand that User Data is subject to the [PRO-ED Privacy Policy](#). By agreeing to this License Agreement, you represent that you have reviewed the Privacy Policy and agree to the policy as stated and find the policies meet the minimum standards you require about the types of Submitted Data that you will be sending PRO-ED. This Privacy Policy is incorporated by reference into this Agreement.
11. **PRO-ED’s Use of Usage Data.** PRO-ED may, from time to time deidentify User Data so that it constitutes De-Identified Information, as that term is defined in FERPA and/or HIPAA. PRO-ED will only use De-Identified Information for lawful purposes including, but not limited to, performing quality assurance, research and test development. PRO-ED may de-identify information to develop, evaluate, and provide improved educational Products and Services, as permitted by HIPAA and/or FERPA. PRO-ED will not re-identify De-Identified information. In the event that PRO-ED de-identifies information, PRO-ED shall aggregate and de-identify User Data in accordance with applicable law and regulations such that the data cannot be re-identified to identify individuals.

12. **Updates and Amendment.** PRO-ED shall have the right to change or add to the terms of this License Agreement, and/or to change, delete, discontinue, end of life, or impose conditions on any feature or aspect of Products, Services and/or Systems (including but not limited to Internet based services, pricing, technical support options, and other product-related policies) by providing reasonable, advance notice as described below.

We may provide notice in one or more of the following ways: (i) when you receive the initial email to access or activate your Products or otherwise during your use of the Product, Service or System; (ii) when you log into the site for the Product, Service or System; and/or (iii) in documentation we provide to you on how to end your subscription or account. PRO-ED shall have the right, in its sole discretion and with reasonable notice posted on the Products, Services, and/or Systems and/or sent to your email address provided in the registration form for each Product or Service to revise, update, disable or otherwise modify the Products, Services and/or Systems and establish or change terms concerning use of the Products, Services and/or Systems, temporarily or permanently, including but not limited to (i) deletion of data, or the amount of storage space you have for the Products and User Data at any time; and (ii) the number of times (and the maximum duration for which) you may access the Products, Services and/or Systems in a given period of time. PRO-ED reserves the right to make any such changes effective immediately to maintain the security of the Product, System or User Data, to comply with applicable laws or regulations, and to provide you with electronic or written notice within thirty (30) calendar days or such other reasonable period after such change.

You may reject changes by discontinuing use of the Products and Services to which such changes relate. You understand that you will not be able to access or install the product if you decline to agree to a EULA and any existing licenses will be considered terminated. In the event of termination of such license or declination of the EULA you shall not receive any refund. Following our notice to you and your assent, your continued use of the Products, Systems and/or Services will constitute your acceptance of and agreement to such changes.

PRO-ED may, from time to time, perform maintenance upon the Products, Services or Systems resulting in interrupted service, delays or errors in the Products, Services or Systems. PRO-ED will attempt to provide prior notice of scheduled maintenance but cannot guarantee that such notice will be provided.

13. **Compliance with Laws.** Each party shall comply with all applicable laws and regulations that apply to this Agreement and the Products and Services.
14. **Your Representations and Warranties.** You represent and warrant that the person clicking that they agree to this License Agreement possesses the legal right and ability to agree to this License Agreement on behalf of you or your organization (including any other users of the Products within your organization) or that you are a duly Authorized User.
15. **Indemnifications.**
- a) With respect to any judicial, administrative, or arbitration action, suit, claim, investigation, or proceeding brought by a third party (a "**Third Party Claim**"), you as the Customer of PRO-ED hereby agree that you will defend, indemnify and hold harmless PRO-ED, its directors, officers and employee, from and against any costs, expenses (including reasonable attorneys' fees), liabilities, losses, and damages, arising out of or related to your (a) breach or alleged breach of this Agreement and/or any use of the Products and Services in a manner not permitted under this Agreement; (b) gross negligence; or (c) willful misconduct.
  - b) PRO-ED hereby agrees to indemnify, and defend you, your directors, officers and employees ("**Indemnified Customer Parties**") from and against reasonable and documented costs, expenses (including reasonable attorneys' fees), liabilities, and damages suffered by

Indemnified Customer Parties, arising out of any third-party claim that Customer's receipt, access, and use or possession of the Products and/or Services infringed the Intellectual Property Rights of a third party ("**IP Claim**"). Notwithstanding the foregoing, PRO-ED shall have no liability or obligation to indemnify Indemnified Customer Parties against any IP Claim to the extent such IP Claim results from: (a) any modification or unauthorized use of the Products, Systems and/or Services; or (b) any material breach of this Agreement by Customer Parties; ((a) and (b), collectively "**Indemnity Exclusions**").

- c) IP CLAIM. If the provision by PRO-ED of any Product or Service becomes the subject matter of a third-party IP Claim that does not fall within the Indemnity Exclusions, PRO-ED may, at its option: (i) obtain for Customer the right to continue using the affected portion of the Products and/or Services; or (ii) replace or modify the affected portion of the Product and/or Services. If either of the above options are not reasonably available, PRO-ED may immediately terminate this Agreement upon giving twenty-four (24) hour prior written notice to Customer. This Section states PRO-ED's sole and exclusive liability with respect to any IP Claim (whether actual or alleged) resulting from PRO-ED's provision of Products and/or Services (or any part thereof) pursuant to this Agreement.

- 16. **Limited Warranty.** PRO-ED warrants subject to the other terms in this Agreement that the Product purchased by Customer will operate consistent with the specifications or manuals for the Product related to scoring and reporting only. PRO-ED warrants that neither the Products in their standard form nor normal use of the Products will infringe any U.S. copyrights existing at the time the Products are made available on PRO-ED's Systems to you, provided, however, that this warranty does not extend to any infringement arising out of the use of Products in combination with systems, equipment data or platforms not supplied by PRO-ED.

- 17. **DISCLAIMER OF WARRANTY.** EXCEPT FOR THE LIMITED WARRANTY PROVIDED ABOVE, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE USE OF THE PRODUCTS, SERVICES AND SYSTEMS IS AT YOUR SOLE RISK AND THAT THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT RESIDES WITH YOU. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, AND PRO-ED HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE PRODUCTS AND SERVICES, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, AND OF QUIET ENJOYMENT. PRO-ED DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN, OR SERVICES PERFORMED OR PROVIDED BY, THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE PRODUCTS AND SERVICES WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PRO-ED OR ITS AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY. SHOULD THE PRODUCTS PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO YOU.

- 18. **LIMITATION OF LIABILITY.**
  - a) **EXCLUSION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL PRO-ED, ITS AGENTS, LICENSORS, OR SUPPLIERS BE LIABLE TO YOU WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF A STATUTORY DUTY OR OTHERWISE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING ANY LOST PROFITS, LOST

SAVINGS, PURE ECONOMIC LOSS, REPUTATIONAL DAMAGE, LOST GOODWILL, LOST (INCLUDING THEFT THROUGH HACKING) OF CORRUPTED DATA OF CUSTOMER OR ANY THIRD PARTY, ANY COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, OR OTHER DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCTS, SERVICES AND/OR SYSTEMS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR HAVE LEGISLATION THAT RESTRICTS THE LIMITATION OR EXCLUSION OF LIABILITY, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

- b) **LIMITATION OF LIABILITY.** PRO-ED'S ENTIRE LIABILITY FOR ALL CLAIMS IN AGGREGATE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF PRODUCTS, SYSTEMS AND/OR SERVICES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE, IS LIMITED TO AND SHALL NOT EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO PRO-ED FOR THE PRODUCTS, SYSTEMS OR SERVICES DURING THE PERIOD OF TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE DATE ON WHICH THE CLAIM AROSE.
- c) **EXCEPTIONS TO LIABILITY LIMITATION.** NOTWITHSTANDING SECTIONS a AND b ABOVE, NEITHER PARTY SEEKS TO EXCLUDE LIABILITY FOR WILLFUL DEFAULT, FRAUD, DEATH OR BODILY INJURY RESULTING FROM ITS NEGLIGENCE AND/OR ANY OTHER MATTER FOR WHICH LIABILITY MAY NOT BE EXCLUDED OR LIMITED BY LAW (COLLECTIVELY, "**LIABILITY CAP EXCEPTIONS**").
- d) **FAIRNESS OF LIABILITY PROVISION.** YOU ACKNOWLEDGE AND AGREE THAT PRO-ED HAS ENTERED INTO THIS AGREEMENT AND PROVIDED YOU WITH ACCESS TO THE PRO-ED PRODUCTS, SYSTEMS AND/OR SERVICES FOR THE AGREED PRICE IN RELIANCE UPON THE EXCLUSIONS OF LIABILITY SET FORTH IN THIS SECTION (COLLECTIVELY, "**AGREED RESTRICTIONS**"). YOU FURTHER ACKNOWLEDGE AND AGREE THAT AS AN ESSENTIAL CONDITION OF PRO-ED ENTERING INTO THIS AGREEMENT AND PROVIDING THE PRO-ED PRODUCTS, SYSTEMS AND SERVICES, SUCH AGREED RESTRICTIONS REFLECT A REASONABLE AND FAIR ALLOCATION OF THE RISK BETWEEN PRO-ED AND YOU, UPON WHICH THE AMOUNT OF THE PRICE(S) HAS BEEN PREDICATED AND AGREED.

19. **Governing Law.** This License Agreement shall be governed by and construed in accordance with the laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Texas. Any legal suit, action or proceeding arising out of or related to this License Agreement or the Products, Systems and Services provided hereunder shall be instituted exclusively in the state or federal courts of the United States located in Travis County, Texas, and each party irrevocably submits to the personal jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail or hand deliver to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

20. **Export Law Assurances.** You may not use or otherwise export or re-export the Products except as authorized by United States law and laws of the jurisdiction in which the Product(s) was obtained. But without limitation, the Products may not be exported or re-exported (a) into (or to a national or resident of) any U.S. embargoed countries (any foreign country currently subject to export controls) or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Products, you represent and warrant that you are not located in, under control of, or a national or resident of any such country or on any such list.

21. **Confidentiality.** A receiving Party shall maintain strict confidentiality concerning the disclosing Party's confidential information, including, but not limited to, all protected health information (PHI), PII and all business, financial, trade secret or other proprietary information, written or oral, shared, or provided under the Agreement (collectively, "**Confidential Information**"), and shall not use, disclose or allow access to such Confidential Information to any other person or organization, except on a need to know basis as required to perform under the License, without your prior written consent. Upon request, the receiving party shall return to the disclosing party non-oral Confidential Information furnished by the disclosing party. In the event a receiving Party receives a request for Confidential Information from a court or governmental authority, or regulatory agency ("Request"), the receiving party shall immediately notify the disclosing party to allow the disclosing party the opportunity to seek the appropriate protective order to protect its Confidential Information.
22. **No Publicity.** Neither party may use the name, logo or trademark of the other in any form of publicity or promotional or advertising material, or in any communications with the media without the other's prior written consent to the specific contemplated use.
23. **Miscellaneous.** Each provision of this License Agreement is severable. If a provision is found to be unenforceable, this finding does not affect the enforceability of the remaining provisions, terms, or conditions of this License Agreement. This License Agreement is binding on successors and assigns. PRO-ED will not be responsible for any non-performance or delay attributable in whole or in part to any cause beyond its reasonable control. Any failure of PRO-ED to enforce or delay in enforcing any right or remedy under the terms of this License Agreement shall not be deemed a continuing waiver or a modification thereof. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties. You acknowledge that you have read this License Agreement, that you understand it, that you agree to be bound by its terms, and that the foregoing is the complete and exclusive statement of the License Agreement.