

Waterford Software Terms of Service

Last updated: May 2025

Waterford Research Institute, LLC (“Waterford” or “we”) has developed certain programs, products and technology, as further described and defined below, to provide educational and learning services to educational institutions, entities, educators, parents and guardians and individuals. The educational institution, entity, educator, parent, guardian or individual identified during registration (“Customer” or “you”) desires to obtain the right for itself and its authorized Users to access and use Waterford’s Software and other applicable Products for the benefit of certain student Users, and Waterford desires to provide access to the Products through the Software, on the terms and conditions set forth below.

Waterford is willing to provide access to the Software, Services, Products and related Documentation to Customer for use by the specified User(s), only on the condition that Customer accepts all of the terms in these Terms of Service (this “Agreement”).

PLEASE READ THIS AGREEMENT BEFORE ACCEPTING THIS AGREEMENT AND SUBSCRIBING TO USE THE SOFTWARE AND PRODUCTS. BY CLICKING “I AGREE”, YOU INDICATE YOUR ACCEPTANCE OF THE ENTIRE AGREEMENT, INCLUDING THE LIMITATIONS OF WATERFORD’S LIABILITY IN SECTION 17. If you are agreeing to this Agreement on behalf of an institution or entity that is the Customer, you represent to Waterford that you have the requisite authority to bind Customer to the terms and conditions of this Agreement.

IF YOU ARE A PARENT OR GUARDIAN of a child using the Software, you are accessing the Software and/or the related Mentor mobile app for your child’s benefit, and the fees for the Software are being paid by an educational organization that is the primary Customer, then the following terms apply to you:

- You are agreeing to comply with the obligations of the Customer under this Agreement, except that Sections 2, 11 (as well as all other payment-related terms and conditions in this Agreement), and 16 do not apply to you.
- For any Customer or other individual who is not paying fees directly to Waterford to use the Software, the Software and other Products and Services of Waterford are provided “AS IS,” AND IN NO EVENT SHALL WATERFORD BE LIABLE TO SUCH INDIVIDUALS FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DIRECT DAMAGES, LOST PROFITS, LOST DATA, BUSINESS INTERRUPTIONS, OR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES) ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SOFTWARE, MENTOR APP, OR OTHER WATERFORD PRODUCTS OR SERVICES, EVEN IF WATERFORD HAS NOTICE OF THE POTENTIAL FOR SUCH LOSS OR DAMAGE, UNLESS SUCH DAMAGES OR LOSSES ARE CAUSED BY OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. This clause supersedes Section 17 below. This disclaimer may be superseded by applicable law in some jurisdictions.
- Your subscription and access to the Software and Products may terminate automatically, without notice, if the educational organization’s agreement with Waterford expires or terminates.

THE PARTIES HAVE READ AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

1. DEFINITIONS.

“Confidential Information” means all information regarding a party, its business, and Users, including, without limitation, the Products, Documentation, technical, marketing, financial, employee, planning, Customer Data, Personal Data, and other confidential or proprietary information, disclosed under this Agreement, that is clearly identified as confidential or proprietary at the time of disclosure or that the receiving party knew or should have known, under the circumstances, was considered confidential or proprietary. Confidential Information will not include information that the receiving party can prove: (i) is or becomes public knowledge, except through the fault of the receiving party; (ii) was already known to the receiving party at the time of disclosure by the disclosing party; (iii) is properly disclosed to the receiving party by a third party without obligation of confidentiality; or (iv) is independently developed by the receiving party without reference to the disclosing party’s Confidential Information.

“Customer Data” means any data, information or information contained in any database, template or other similar

document submitted by Customer or its Users through the Products or provided by Customer to Waterford in connection with Customer's or its Users' use of and access to the Products, including Personal Data. Customer Data does not include Feedback (as defined in [Section 13\(b\)](#)).

"[Documentation](#)" means the designated user manuals, handbooks, online materials, specifications or forms furnished by Waterford to Customer or Users that describe the features, functionality or operation of the Products and Software.

"[Education Partners](#)" means schools, school districts, and other educational institutions that utilize Waterford's Software and services in connection with their educational programs.

"[Effective Date](#)" means the date that Customer has (i) initially placed an order for the Software by registering and submitting Order Documents and (ii) clicking "I agree" to accept the terms of this Agreement.

"[Fees](#)" means the subscription fees Customer is required to pay for use of the Software and Products, and fees for Services, as set forth on the applicable Order Documents.

"[Order Documents](#)" means: (i) an account registration and order form for the Products and/or Services duly submitted online or in any other manner required by Waterford, in the form provided by Waterford, setting forth the Products or Services ordered and the applicable Fees, and/or (ii) such other documents as may be required by Waterford from time to time in connection with the subscription for the Products or ordering of Services. When submitted by Customer and accepted by Waterford, all applicable Order Documents of Customer are incorporated into this Agreement by this reference and are part of this Agreement as if fully set forth in this Agreement.

"[Personal Data](#)" shall mean any information relating to an identified or identifiable natural person as defined by applicable privacy laws, including as applicable U.S. federal or state laws or regulations, the General Data Protection Regulation of the European Union ("GDPR" EC-2016/679), and/or other applicable laws or regulations.

"[Processing](#)" of Personal Data includes collecting, recording, organizing, structuring, storing, altering or modifying, retrieving, transmitting, disclosing or otherwise making available to third parties, deleting, and otherwise using or dealing with Personal Data. See [Sections 10 and 13](#) and Waterford's [Privacy Policy](#) for additional details.

"[Products](#)" means the educational products of Waterford specified on the Order Documents as having been subscribed to by Customer.

"[Professional Services](#)" has the meaning set forth in [Section 2](#).

"[Services](#)" means Professional Services, Software hosting, support and maintenance, and all other services provided by Waterford to Customer and Users under or in connection with this Agreement.

"[Software](#)" means Waterford's online software provided as a subscription service to Users, as specified in the Order Documents, and any related Documentation, web pages, products, progress reports, education recommendations and services offered by Waterford that are made available online as part of the Software.

"[Term](#)" means the entire term of this Agreement, as determined in accordance with [Section 14\(a\)](#).

"[Users](#)" means Customer's students, children for whom Customer is the parent or guardian, and/or others (including parents and guardians) who are authorized to use the Products through Customer's subscription to the Products and who have been supplied UserIDs (as defined below) and passwords for this purpose.

"[Waterford Assessment Data](#)" is the resulting data from periodic testing of students using the Software and Products, to assess their performance and progress, including changes and improvements in performance. Waterford Assessment Data does not include students' names, which are de-identified, but does include individual test scores with an anonymous identifier.

"[Website](#)" means Waterford websites where the Software may be accessed by Users via the available login.

2. ORDERS. The Order Documents will specify the Products that Customer is subscribing for, the related number of Users, and any consulting, configuration, customization or other professional services that Customer is purchasing from Waterford ("[Professional Services](#)"). Following Waterford's acceptance of each Order Document

and Customer's payment of any initial Fees due under such Order Documents, Waterford will make the Products available to Customer and its Users for access, using a password-protected account on Waterford's Website.

3. ACCESS AND SERVICE.

- a. Grant of Rights. Subject to the terms of this Agreement, including without limitation the timely payment of Fees, Waterford hereby grants to Customer a non-sublicensable, non-transferable, non-exclusive right, during the Term, for authorized Users to access and use the Products, subject to the terms of the Order Documents related to the authorized number of Users. Customer and its Users may use the Software and Products solely for the provision of education and learning services and instruction to the authorized Users. Customer and its Users are authorized to use the Products only as part of the Software. Customer will inform Users of proper use of the Software and Products under this Agreement, and is responsible for Users' compliance with the terms of this Agreement and proper use of the Software and Products.
- b. Future Developments. Customer agrees that its purchase of the Software is not contingent upon the delivery of any future functionality or features, or dependent upon any statement or representation made by Waterford with respect to future functionality or features of the Products.
- c. Modifications. Customer acknowledges and agrees that the Software, Website, Services and Products may be updated and modified by Waterford from time to time, in Waterford's sole discretion.

4. USE RESTRICTIONS. Customer will not, and will not attempt to, or allow its Users to:

- reverse engineer, disassemble or decompile any component of the Software or Products;
- use the Software in any manner which could damage, disable, or overburden the Software or interfere with any other party's use and enjoyment of the Software;
- share passwords or Software account access with any unauthorized person;
- upload to the Software any libelous or unlawful content or any materials or instructions that may cause harm or injury, or that violate any person's right of privacy or any copyright, trademark, or other intellectual property rights;
- obtain or attempt to obtain any data or information on or through the Software through circumventing any access or use restrictions or by any other unauthorized methods, such as hacking or password mining;
- distribute, or otherwise make available the Products (or any portion thereof) to third parties (other than authorized Users), including, but not limited to, making Products (or any portion thereof) available by broadcast or transmission by telephone, cable, satellite, the Internet or interactive television;
- embed or incorporate in any manner the Products (or any element thereof) into other applications of Customer or third parties;
- modify or create derivative works of the Software or Products;
- copy or reproduce any part of the Software or Products;
- attempt or permit any third party to violate the terms of this Agreement or attempt to modify, alter, or circumvent the access control and protection mechanisms within the Products or for the Software;
- use or transmit the Products in violation of any applicable law, rule or regulation, including any export/import laws, or use the Products for anything other than their intended purposes;
- in any way access, use, or copy any portion of the Software, Products, or Waterford's code included therein (including the logic and/or architecture thereof and any trade secrets included therein) to directly or indirectly develop, promote, distribute, sell or support any product or service that is competitive with the Products, Software or Services; or
- remove, obscure or alter any copyright notices or any name, trademark, service mark, tagline, hyperlink or other designation of Waterford displayed on any display screen within the Software or Products.

Customer shall not permit any User or other third party to perform any of the foregoing actions and shall be responsible for all damages and liabilities incurred as a result of such actions.

5. NO ACCOUNT SHARING; ADDITIONAL USERS AND SERVICES. Each child and person using the Software must have their own individual account; Users may not share their accounts with others. Access to the Products cannot be shared with anyone other than the number and types of Users authorized in the Order Documents. If Customer desires to add Users to the same subscription in excess of the number originally purchased ("Additional Users") or if Customer desires to order additional or upgraded Products, Services or modules from Waterford ("Additional Services"),

Customer must submit an updated Order Document. Upon Waterford's acceptance of such an updated Order Document, (i) if Additional Users were ordered, Waterford shall make the Products available to the Additional Users through the Software; or (ii) if Additional Services were ordered, Waterford shall make the Additional Services available to Customer on the terms and conditions set forth in this Agreement and the updated Order Document. With respect to Additional Users: (i) the term will be coterminous with the preexisting subscription Term; and (ii) Customer will be responsible for any additional Fees for the Additional Users in full for the month in which the updated Order Document is accepted by Waterford.

6. ACCESS TO SOFTWARE. Subject to the terms of this Agreement, Waterford shall use commercially reasonable efforts to enable Customer and Users to access the Products through the Software on a continual basis during the Term, excluding downtime of the system (i) for maintenance and updating of the system, (ii) caused by the fault of Customer or Users, or (iii) due to other causes outside of Waterford's reasonable control, including without limitation interruption of Internet service or force majeure events as described in [Section 17\(d\)](#).

7. CUSTOMER SYSTEM OBLIGATIONS. Except to the extent specified in an Order Document, Customer shall be solely responsible to provide or maintain any hardware or other software required for Customer to access the Software and use the Products. Waterford shall have no liability, obligation or responsibility for the maintenance of Customer's hardware or other software required for Customer to use the Products, and disclaims any such responsibility.

8. ACCESS AND SECURITY GUIDELINES. Each User must have a unique user identification name and password ("[UserID](#)") for access to and use of the Products. Customer shall be responsible for ensuring the security and confidentiality of the UserIDs of its Users. UserIDs may not be provided to any individual who is not a User. Customer will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Products, and will notify Waterford promptly of any such unauthorized use. Customer will not use its access to the Products to: (a) access, copy, harvest or collect any information or data of or about other Waterford customers without their prior written consent; (b) interfere with or disrupt the integrity or performance of the Software, Products or the data contained therein; or (c) harass or interfere with another Waterford customer's or their Users' use and enjoyment of the Products. Customer will, at all times, comply with all applicable local, state, federal, and foreign laws in using the Software and Products.

9. CUSTOMER DATA.

- a. Customer is solely responsible for the accuracy and its use of Customer Data, and obtaining all necessary consents for Waterford to Process Personal Data of Users as described in this Agreement. Customer will not provide, post or transmit any Customer Data or any other information, data or material to the Products or Waterford that: (a) infringes or violates any intellectual property rights, publicity/privacy rights, law or regulation; or (b) contains any viruses or programming routines intended to damage, surreptitiously intercept or misappropriate any system, data or Personal Data. Waterford may take remedial action if Customer or the Customer Data violates this [Section 9\(a\)](#), however, Waterford is under no obligation to review Customer Data for accuracy or potential liability.
- b. Waterford reserves the right to de-identify and aggregate Customer Data to remove all personally identifiable information ("[De-Identified Data](#)"). Waterford may use, publish and disclose De-Identified Data for any lawful purpose, including without limitation benchmarking, development of best practices, product and service development, and research and statistical purposes without reimbursement or notification to, or consent or authorization from, Customer. See also [Section 13\(d\)](#) for terms related to Waterford Assessment Data.
- c. If Customer is an educational entity or institution, Customer agrees, to the fullest extent permissible under applicable law, that Waterford may, to the fullest extent permissible under applicable law, use and retain Personal Data included in such Customer's Customer Data for research projects conducted in conjunction with such Customer, provided that at the conclusion of such research project, such Customer Data will be de-identified or removed at Waterford's discretion, and in no event will identifiable Personal Data be disclosed to other third parties.
- d. Waterford conducts ongoing research into the best teaching practices. To ensure Waterford Products remain current and effective, Users may be presented with test content. Waterford analyzes the results of test content to inform further research and Product development. Test results are anonymized and have no effect on Users scores and are not disclosed outside of Waterford, except that if the Product is provided to the User through an Education Partner's contract with Waterford, authorized personnel of such Education Partner will also have access to the User's test scores.

10. DATA PRIVACY AND SECURITY.

- a. Reasonable Safeguards. Waterford will collect, Process, and maintain all Personal Data of individuals contained in the Customer Data in compliance with applicable data privacy and protection laws, statutes, and regulations. Waterford agrees to maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, including Personal Data. Customer will also maintain commercially reasonable administrative, physical, and technical safeguards and standards for its Users' use of the Software and the security of the Software and Users' passwords. Please refer to Waterford's Privacy Policy at this link: <https://www.waterford.org/privacy-policy/> (the "Privacy Policy"), which provides additional information regarding Waterford's policies and practices related to collection, storage, processing, sharing, destruction, and other use of Personal Data, as well as our additional details regarding Waterford's data security safeguards.
- b. Waterford Use and Processing of Data. We use and Process the Personal Data you provide to us (i) to provide our Products and Services to you and your Users; (ii) to improve the Software and Waterford's Products and Services generally; (iii) to de-identify such data and use it for the purposes described in Section 13; and (iv) as otherwise set forth in this Agreement and our Privacy Policy. Waterford does not use Personal Data collected by it for any targeted advertisements displayed on its Website or online, or sell or share Personal Data with third parties for their use in marketing or advertising their products or services. The Software itself does not include any advertisements.

The servers that host Waterford's Software, Products, and Website are based in the United States of America and all content, information, and Personal Data you provide through the Website will be received, Processed and stored in the United States of America. When you submit any such content, information, or Personal Data through Waterford's Software, Products, or Website or through your interactions with our customer service team, you authorize and instruct Waterford to transfer the information to the United States of America (if you are in a different country) and to Process that information in the United States.

You agree that you will not submit the Personal Data of minors to the Products or otherwise share it with Waterford unless and until (i) you have previously obtained consent from the parent or guardian of the minor, or (ii) you are the parent or guardian of the minor, and you are hereby providing such consent.

You acknowledge and agree that if the Software or Product is provided to the User through an Education Partner's contract with Waterford, then authorized personnel of such Education Partner will also have access through the Software to the Personal Data of student Users in that school or district who are provided access to the Software under such contract, as well as testing, Waterford Assessment Data, and De-Identified Data relevant to such student Users.

- c. Confidentiality and Security – Waterford Personnel. Waterford shall require its employees and service providers to be subject to confidentiality undertakings. Waterford also follows the security measures outlined in its Privacy Policy and uses multifactor authentication for all internal Waterford personnel with access to Personal Data of Users in the Software system. You acknowledge and agree that Waterford does not control and is not liable for any security incidents or data breaches caused by Education Partners' or other third parties' systems, including weak or insecure passwords or processes on such systems, such as where the User is logging in to use the Software through an Education Partner's computer system.
- d. Responding to Individual Requests Relating to Personal Data. We rely upon our Customers to maintain the accuracy of the Personal Data they provide through our Software, including the ability to administer User accounts and the ability to add, edit and delete contact information. Waterford agrees to assist in meeting obligations under the GDPR or other applicable laws for responding to an individual's exercise of their choices with respect to their Personal Data. In accordance with applicable law, Waterford shall promptly notify you if it receives a request from or on behalf of a child or individual for whom you submitted Personal Data in respect of the exercise of their choices relating to their Personal Data and shall not respond to that request except on your documented instructions provided to us within a reasonable timeframe, or as required by law, in which case Waterford shall to the extent permitted by law inform you of that legal requirement before responding to the request. You agree that a reasonable timeframe to provide us with documented instructions is 2 weeks. When we do receive your timely instructions we will make reasonable efforts to comply with your instructions, consistent with applicable law. Where we do not receive your documented instructions within a two (2) week timeframe from

the time that we notify you of the individual's request, we will comply with the request made by the Data Subject in exercise of their choices.

- e. Data Breach and Other Obligations. In the event of any breach or compromise of the security, confidentiality or integrity of Personal Data, Waterford will inform you of the breach as required under applicable law, typically through contacting you via email and posting a notice on the Website. In addition, we will make available to you all available information necessary for you to demonstrate or maintain your compliance with your data protection obligations under applicable law.
- f. Retention of Data. Waterford may retain Personal Data provided by Customers and Users for the Term of this Agreement, subject to deletion requests under Section 10(d). In some instances, Users have the option to add, update or delete Personal Data contained within the Software through use of Software features, including deactivating or deleting a User's account. You authorize Waterford to delete your Customer Data from our systems upon termination of this Agreement, as follows: Upon termination of this Agreement, Customer Data (including Personal Data of applicable student Users) is generally retained for 90 to 365 days after such termination unless earlier deletion is requested by Customer at such time. Thereafter, Waterford may retain only De-identified Data and Waterford Assessment Data. On your request, we shall return Personal Data to you if such request is made prior to performing our standard delete function.

11. FEES, PAYMENT AND SUSPENSION OF SERVICES.

- a. As consideration for the subscription to the Products and the support Services provided by Waterford under this Agreement, Customer will pay Waterford the Fees for the number of Users and the Products and Services ordered by Customer, as set forth on the applicable Order Document. Customer understands and agrees that Customer is ordering the Software for the full Term of this Agreement; however, the Fees will be charged on a monthly basis for each month of the Term.
- b. Unless otherwise agreed to in writing by the parties, Customer will pay to Waterford all undisputed Fees owed within 30 days after Waterford's issuance of an invoice for such amounts. Payments will be sent to Waterford's address on the invoice. All amounts shall be payable in the currency of the United States. All Fees owed by Customer in connection with this Agreement are exclusive of, and Customer shall pay, all sales, use, excise and other taxes that may be levied upon Customer in connection with this Agreement, except for employment taxes and taxes based on Waterford's net income.
- c. If any amount owing by Customer under this Agreement is 15 or more days overdue, Waterford may, without limiting its other rights and remedies, accelerate Customer's unpaid fee obligations so that all such obligations throughout the remainder of the Term become immediately due and payable, and suspend Customer's access to the Software and suspend all UserIDs until such amounts are paid in full. Waterford will give Customer at least 5 days' prior notice that Customer's account is overdue before suspending access to the Software.

12. CONFIDENTIAL INFORMATION.

- a. Obligation. Each party agrees (i) to hold the other party's Confidential Information in strict confidence, (ii) to limit access to the other party's Confidential Information to those of its employees or agents having a need to know and who are bound by confidentiality obligations at least as restrictive as those contained herein, and (iii) not to use such Confidential Information for any purpose except as expressly permitted hereunder. The receiving party shall give Confidential Information at least the same level of care and protection as it gives its own confidential information of similar nature, but not less than a reasonable level of care. The receiving party shall maintain Confidential Information in a safe and secure place and shall not copy Confidential Information except to the extent necessary for the purposes of this Agreement.
- b. Legal Orders. The receiving party may disclose Confidential Information to the extent it is legally compelled to do so by a valid order or requirement by a court or other governmental body or as necessary to comply with open records acts or other freedom of information laws or regulations; provided that, if legally permissible, the receiving party shall first notify the disclosing party in writing of such order or requirement to disclose; to enable the disclosing party to seek to limit or prevent such disclosure.

13. OWNERSHIP.

- a. Waterford Ownership. Waterford owns and retains all right, title and interest in and to the Products and all software, materials, formats, interfaces, information, data, content and Waterford proprietary information and technology used by Waterford or provided to Customer and Users in connection with the Software and Products (the “Waterford Technology”). The Waterford Technology is protected by intellectual property rights owned by or licensed to Waterford. Other than as expressly set forth in this Agreement, no rights in the Waterford Technology are granted to Customer, and all such rights are hereby expressly reserved by Waterford. Waterford shall also own all De-Identified Data and may retain and use it perpetually.
- b. Feedback. If Customer or Users provide any suggestions, enhancement requests, improvements, complaints, or other feedback relating to the Software or Services (“Feedback”), Waterford shall solely own all right, title and interest in and to such Feedback and all intellectual property rights therein, including any software or products developed by Waterford that may be based on or incorporate such Feedback.
- c. Customer Data and Personal Data. As between the parties, Customer owns the Customer Data. For clarity, the parties agree that all Personal Data is owned by the applicable individual but is controlled by Customer. Customer grants Waterford a perpetual license to use Personal Data for the limited purposes set forth in this Agreement and the Privacy Policy, including creating De-Identified Data.
- d. Waterford Assessment Data and Usage Data. The Software tracks Waterford Assessment Data and other usage data related to Customer’s and Users’ use of the Software (“Usage Data”) and provides such Waterford Assessment Data and Usage Data to Waterford. Waterford shall own such Waterford Assessment Data and Usage Data, provided that any Customer Data used in creating such data is in aggregated or anonymized form so that it is not identifiable as to any individual person (except where otherwise permitted to be disclosed in identifiable form, such as to parents and applicable Education Partners). Customer agrees that Waterford shall have the perpetual right to collect, aggregate, store, use, and distribute Waterford Assessment Data and Usage Data for any legal purpose, including without limitation for the purposes of providing services, providing performance assessments to applicable Education Partners, and improving the Software and Waterford’s Products and Services generally.

14. TERM AND TERMINATION.

- a. Term. This Agreement is effective on the Effective Date. The Term of this Agreement and Customer’s subscription will commence on the Effective Date and continue for the period set forth in the applicable Order Document. At the end of each subscription Term, Waterford’s practice is to offer Customer the opportunity to renew its subscription, subject to Customer’s agreement to Waterford’s then-current Terms of Service and pricing.
- b. Early Termination. Either party may terminate this Agreement upon written notice if the other party materially breaches the Agreement and does not cure such breach (if curable) within thirty (30) days after receiving written notice of such breach.
- c. Effect of Termination. Upon the termination of this Agreement for any reason, (i) any amounts owed to Waterford under this Agreement before such termination will become immediately due and payable; and (ii) all Services, and Customer and User access to the Software and the Products, will be immediately terminated. The rights and duties of the parties under Sections 1, 4, 9, 10, 11, 12, 13, 14(c), 15, 16, 17, 18 and 19 will survive the termination or expiration of this Agreement.

15. WARRANTY DISCLAIMER. Waterford makes no warranty concerning the Software, Products and Services. ACCORDINGLY, THE SOFTWARE, PRODUCTS, SERVICES AND ALL DATA, MATERIALS, AND DOCUMENTATION PROVIDED IN CONNECTION WITH THIS AGREEMENT BY WATERFORD ARE PROVIDED “AS IS” AND “AS AVAILABLE,” WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. WATERFORD DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW, STATUTE, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR REGARDING THE ACCURACY OR EFFICACY OF THE PRODUCTS AND SERVICES, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USE OF TRADE. ANY STATEMENTS OR REPRESENTATIONS MADE BY ANY PERSON OR ENTITY THAT CONTRADICT THE TERMS OF THIS THIS SECTION ARE VOID. CUSTOMER AND USERS ASSUME ALL RISK AS

TO THE QUALITY, FUNCTION, PERFORMANCE, AND ACCURACY OF THE SOFTWARE, PRODUCTS AND SERVICES. WATERFORD DOES NOT WARRANT THAT THE SOFTWARE, PRODUCTS OR SERVICES WILL BE PROVIDED ERROR-FREE, UNINTERRUPTED, COMPLETELY SECURE, OR VIRUS-FREE.

16. INDEMNITY.

- a. By Waterford. If any action is instituted by a third party against Customer based upon a claim that the Products, as delivered, infringe a United States patent, copyright or trademark, Waterford shall defend such action at its own expense on behalf of Customer and shall pay all damages attributable to such claim which are finally awarded against Customer or paid in settlement of such claim. Waterford may, at its option and expense, (a) procure for Customer the right to continue using the Products, (b) replace or modify the Products so that they are no longer infringing but continue to provide comparable functionality, or (c) terminate this Agreement and Customer's access to the Products and refund any prepaid amounts previously paid for the Software attributable to the remainder of the then-current term of this Agreement. Waterford shall have no liability to Customer for any infringement action that arises out of (i) a breach of any term or condition of this Agreement by Customer or a User; (ii) any modification of the Product by Customer or a third party, or (iii) any combination of a Product with any other software, service, equipment, or process not provided by Waterford. This Section 16(a) sets forth the entire obligation of Waterford and the exclusive remedy of Customer for any alleged infringement or adjudicated infringement of any patent, copyright or other intellectual property right by the Products or Services.
- b. Indemnification Process. Any party that is seeking to be indemnified under this Section 16 (an "Indemnified Party") must (i) promptly notify the other party (the "Indemnifying Party") of any third-party claim, suit, or action for which it is seeking an indemnity hereunder (a "Claim"), and (ii) give the Indemnifying Party the sole control over the defense of such Claim. However, if an Indemnified Party fails to notify the Indemnifying Party promptly, the Indemnifying Party will be relieved of its obligations under this Section only if and to the extent that its ability to defend the Claim is materially prejudiced by such failure. The Indemnifying Party may settle or compromise a Claim without the Indemnified Party's prior approval of any such settlement or compromise only if (x) such settlement involves no finding or admission of any breach by an Indemnified Party of any obligation to any third party, and (y) the sole relief provided in connection with such settlement is monetary damages that are paid in full by the Indemnifying Party. Upon the Indemnifying Party's assumption of the defense of such Claim, the Indemnified Party will cooperate with the Indemnifying Party in such defense, at the Indemnifying Party's expense. The Indemnified Party may, at its option and expense, be represented by separate counsel in any such action.

17. LIMITATION OF LIABILITY. WATERFORD'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER AND USERS FOR ANY AND ALL CLAIMS ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE, PRODUCTS OR SERVICES (UNDER ANY LEGAL THEORY INCLUDING CLAIMS IN CONTRACT OR TORT), WILL NOT EXCEED THE AMOUNTS ACTUALLY PAID TO WATERFORD BY CUSTOMER IN THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE CUSTOMER'S FORMAL WRITTEN NOTICE OF THE CLAIM FOR LIABILITY HEREUNDER. ALL CLAIMS THAT CUSTOMER MAY HAVE AGAINST WATERFORD WILL BE AGGREGATED TO SATISFY THIS LIMIT AND MULTIPLE CLAIMS WILL NOT ENLARGE THIS LIMIT. IN NO EVENT WILL WATERFORD BE LIABLE FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (UNDER ANY LEGAL THEORY INCLUDING CLAIMS IN CONTRACT OR TORT), INCLUDING, BUT NOT LIMITED TO, INTERRUPTED COMMUNICATIONS, LOST DATA OR LOST PROFITS, AND DAMAGES THAT RESULT FROM INCONVENIENCE, DELAY OR LOSS OF USE OF ANY INFORMATION OR DATA OR OF THE PRODUCTS OR SERVICES, EVEN IF WATERFORD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

18. GENERAL PROVISIONS.

- a. Publicity. Waterford may make public announcements, including but not limited to, press releases and media announcements, of the existence of this Agreement and the relationship between the parties. Customer agrees to allow Waterford to use Customer's name in customer lists and other promotional materials describing Customer as a customer of Waterford and a user of the Software and Products.

- b. Assignment. Neither party may assign any rights or obligations arising under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other; except that either party may assign this Agreement without consent of the other party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing limitation, this Agreement shall inure to the benefit of and shall be binding on the successors and assignees of the parties.
- c. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Georgia, without giving effect to principles of conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
- d. Force Majeure. Waterford will not be liable for any failure or delay in the performance of its obligations hereunder for any cause which is beyond Waterford's reasonable control, including without limitation acts of God; changes in laws or acts of government; flood, fire, and earthquakes; civil unrest; terrorist acts or threats; strikes or other labor problems; war or hostilities; riot or other civil unrest; emergencies; strikes, embargoes or blockades; epidemic, pandemic or other illness outbreaks; telecommunications failures or delays; computer failures involving hardware or software not within Waterford's possession or reasonable control; and acts of vandalism (including network intrusions and denial of service attacks). The impacted party will promptly notify the other party of such force majeure event and shall use reasonable efforts to reduce the consequences of the event and to resume performance of all relevant obligations as soon as possible.
- e. Notices. Any notice or other communication required or permitted under this Agreement and intended to have legal effect must be given in writing to the other party at the address set forth on the Order Documents (each party may change its address from time to time upon written notice to the other party of the new address). Notices will be deemed to have been given upon receipt (or when delivery is refused) and may be (i) delivered personally, (ii) sent via certified mail (return receipt requested) (iii) sent via e-mail with non-automated confirmation of receipt, or (iv) sent by commercial express delivery service.
- f. Entire Agreement; Amendment. This Agreement, together with the Order Documents, is the entire understanding and agreement of the parties, and supersedes any and all previous and contemporaneous understandings, agreements, proposals or representations, written or oral, between the parties, as to the subject matter hereof. Only a writing signed by both parties may modify it. Any preprinted terms on a Customer purchase order are expressly agreed to be void and of no effect, and are superseded in their entirety by this Agreement.
- g. Severability and Waiver. If any provision of this Agreement is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining provisions of this Agreement will remain in full force and effect. 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. All waivers must be in writing. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- h. Relationship of the Parties. The parties to this Agreement are independent contractors, and no agency, partnership, franchise, joint venture or employee-employer relationship is intended or created by this Agreement.
- i. Injunctive Relief. If Customer or a User violates or attempts to violate Waterford's intellectual property rights or the scope of the rights granted to Customer, Customer agrees that Waterford will be irreparably harmed and will not have an adequate remedy in money or damages and, therefore, that Waterford shall be entitled to seek an injunction against such breach from any court of competent jurisdiction immediately upon request, without the necessity of posting bond, in addition to any other remedies that may be available at law or in equity.
- j. Electronic Signatures. Customer may sign this Agreement by clicking "I Accept" in the online link provided by Waterford related to this Terms of Service Agreement. Such acceptance shall be treated as and shall have the same effect as an original signature.

ACCEPTANCE

The Customer hereby accepts the Agreement. Except as expressly amended hereby, all terms and conditions of this Agreement shall remain in full force and effect.

School or District Name:

By: _____

Printed Name: _____

Title: _____

Date: _____