

KELVIN EDUCATION, INC.

STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions (“Standard Terms”) are part of and incorporated into the Agreement (“Agreement”) referenced in an Order Form (“Order”) executed by Kelvin Education, Inc. (“Kelvin”) and the customer identified in such Order (“Customer”). Capitalized terms used and not otherwise defined herein shall have the same meanings given for those terms in the Order.

1. **Certain Definitions.**

- 1.1. “Customer Data” means information Customer creates or otherwise owns, licensed to Customer from third parties or otherwise provided to Kelvin on Customer’s behalf and, in each case, that is loaded to or processed or accessed by any Service.
- 1.2. “Data Services” means those Services consisting of hosted data aggregation and analytics and related services.
- 1.3. “Kelvin Data” means any and all information provided by third parties to Kelvin or created by Kelvin that is made available to Customer via the System (defined below), other than Customer Data.
- 1.4. “Kelvin Technology” means all of Kelvin’s proprietary software and other technology with respect to the Services, all documentation relating to the Services (both printed and electronic), and any derivatives, improvements, enhancements, upgrades and updates of the foregoing conceived, reduced to practice or otherwise developed.
- 1.5. “Output” means the output generated from Customer’s or its Customer Users’ (defined below) use of the System, namely reports generated by the System at Customer’s or its Customer User’s direction.
- 1.6. “Service Term” means each service term set forth in an Order for Customer’s subscription for the Service.
- 1.7. “Third Party Add-On” means third-party, integrated “add-on” products, services or data subscribed to by Customer pursuant to an Order.

2. **General Provision of Services.**

- 2.1. *Orders.* Subject to the terms and conditions of the Agreement, Kelvin will make the Service(s) identified in Customer’s Order available to Customer for the applicable Service Term, solely for use with respect to schools within Customer’s district or similar organization (or with respect to Customer, if Customer is itself a school). In the case of any module of the Service for which the Order indicates that the total price has been determined on a per-unit basis (such as per-student, per-teacher, per-school or per-district), Customer’s access to such module will be limited to the number of units (e.g., students, teachers or schools) indicated on the Order. Except as otherwise provided in the Order or elsewhere in the Agreement, each Order is non-cancellable and will be subject to the terms and conditions of the Agreement. If required as part of Customer’s internal procedures, an Order may be supplemented by a purchase order issued by Customer, but in no event will a Customer purchase order modify any of the pricing, deliverables or terms set forth in the Order or elsewhere in the Agreement.
- 2.2. *Customer Users.* The applicable Service may permit Customer to enable its faculty, administrators, consultants, students and guardians to access and use one or more

modules or features of that Service, in which case those faculty, administrators, consultants, and (if applicable) students and guardians are referred to as “Customer Users.” Customer Users may be required to agree to or accept (including electronically) end user terms applicable to the relevant Service before accessing or using the Services (the “Customer User Terms”). Customer is solely responsible for determining and assigning access levels and authority to the Services to Customer Users and for all use of the Services by those Customer Users. Customer is responsible for the actions of all Customer Users and other Customer employees and agents, for ensuring that only Customer Users are provided access to the Services (including ensuring security of usernames, passwords and related information, collectively, “Access Credentials”), and that access of Customer Users is limited to that portion of the Services as is reasonably necessary in order to fulfill the purposes of the Agreement. Customer will not permit the sharing of Access Credentials by its Customer Users and will notify Kelvin immediately if its Access Credentials are compromised. Kelvin will not have any liability to Customer or any third party for any Customer User’s or other Customer employee’s or Customer agent’s use or misuse of the Services.

- 2.3. *Service Suspension.* Kelvin may suspend the Services in whole or in part and without notice: (i) if Kelvin believes Customer’s or Customer Users’ use of the Services represents a direct or indirect threat to the function or integrity of the Services, Kelvin’s or its service providers’ system or networks, or any third party’s use of the Services; (ii) if reasonably necessary to prevent unauthorized access to customer data (including, without limitation, the Customer Data); or (iii) to the extent necessary to comply with legal requirements. If Kelvin suspends the Services without notice, Kelvin will provide the reason for such suspension, upon Customer’s request. Any suspension of Services for the foregoing reasons will apply to the minimum necessary portion of the Services and only be in effect for as long as reasonably necessary to address the issues giving rise to the suspension. Kelvin may also, upon such notice as is reasonably practicable under the circumstances, perform scheduled or emergency maintenance (including temporary suspension of the Services as necessary) to maintain or modify the Services or Kelvin Technology.

3. **Data Services.**

- 3.1. *Agreement to Provide Services.* Subject to the terms and conditions of the Agreement, Kelvin agrees to provide Customer the specific Data Services set forth on the Order, which Data Services include, at a minimum, access, via the Internet, to Kelvin’s proprietary hosted data platform software application described in the Order and the Kelvin Data subscribed to by Customer and included in such hosted application (collectively, the “System”), together with technical support with respect to use of the System, as described in Section 3.5 of these Standard Terms. The Data Services may also include one or more of the following (each as more specifically described on the Order): (i) implementation services with respect to the System as described in that Order in order to integrate the System with Customer’s computing environment; (ii) training services for Customer and its faculty and administrator Customer Users with respect to their use of the System; and (iii) access, via the System, to various Third Party Add-Ons.
- 3.2. *Grant of Rights to Access and Use.* Subject to the terms and conditions of the Agreement, Kelvin grants to Customer, during the Service Term for the applicable Data Services, a limited, nontransferable, nonexclusive (i) license to use the Kelvin Data solely for its own internal business and research purposes as set forth in these Standard Terms; (ii) right to permit Customer Users to access over the Internet and use the System solely to support Customer’s normal course of business and according to the access authority levels configured or assigned by Customer.

- 3.3. *Restrictions on Use.* Customer and its Customer Users may not (i) use, license, sell, redistribute, lease, extract or otherwise transfer or assign the Data Services, Kelvin Data, Third Party Add-Ons or any component thereof, except as expressly permitted herein; (ii) alter or permit a third party to alter any part of the Data Services, Kelvin Data or Third Party Add-Ons; (iii) use or permit the use of the Data Services, Kelvin Data or Third Party Add-Ons for any unlawful purpose; (iv) reverse engineer or otherwise attempt to derive source code or other trade secrets from the Data Services, Kelvin Data or Third Party Add-Ons; (v) use the Data Services in a way that could harm Kelvin's network or System or impair a third party's use of the Data Services (including by transmitting by or uploading to the System any viruses, worms, Trojan horses or other malicious code); or (vi) use the Data Services to try to gain unauthorized access to any service, data, account or network by any means.
- 3.4. *Customizations and Enhancements.* From time to time, Kelvin may make enhancements or customizations to the System. Any intellectual property created in the course of performing the Data Services, whether by Kelvin alone or jointly with Customer, shall be and remain the exclusive property of Kelvin, and Customer assigns any of its rights, interest or title in or to the same to Kelvin.
- 3.5. *Customer Support.* Kelvin will provide Customer and its faculty and administrator Customer Users with reasonable technical assistance by email or other Internet-based communication with respect to the access and use of the System and the identification and reporting of problems or errors with the System; any limitations on usage of such support services are identified in the Order. Kelvin will respond to Customer within a reasonable period of time from a request placed by Customer. Kelvin may also provide support and technical assistance or reference guides to Customer Users online, via the System or at such other locations as Kelvin may elect, in its sole discretion.

4. **Configuration of Data Services and Kelvin Data.**

- 4.1. *Configuration of Data Services.* Kelvin may from time to time update the functionality, features, user interface, user documentation, training and educational information, and any other aspects of or relating to the Data Services in its sole discretion, provided that such changes do not materially adversely affect the functionality of the Data Services.
- 4.2. *Transmission of Data.* Kelvin does not make any guarantee as to the integrity or accuracy of the Kelvin Data as provided to Kelvin, and Kelvin does not make any guarantee or warranty as to the quality of transmission of data over telephone, digital subscriber lines or any other method of Internet delivery, including, without limitation, server downtimes or other network related problems except as described in Section 6, below.
- 4.3. *Redistribution of Kelvin Data.* As part of the Data Services, Kelvin may offer data and information for which Kelvin has obtained redistribution rights. If for any reason Kelvin does not possess these redistribution rights, it will immediately discontinue the distribution of the Kelvin Data, reports or information that was predicated on Kelvin's possession of such rights.

5. **Customer Requirements.**

- 5.1. *Customer Equipment.* Kelvin may establish, from time to time, minimum browser system requirements (the "System Requirements"), for the equipment from which the System should be accessed so that all licensed functionalities are operational. Customer may be required to purchase software, hardware or services (such as Internet access services) in order to utilize the Data Services or satisfy the System Requirements, as may

be amended by Kelvin from time to time. Customer shall be solely responsible for all such software, hardware and services.

- 5.2. *Customer Modifications and Equipment Failure.* Kelvin is not responsible for, nor will it have any liability resulting from, (i) modifications to or alterations of the System or databases by Customer or Customer Users or Customer employees or agents, unless such modification or alteration is approved in writing by Kelvin, or (ii) any failure of Customer equipment or software.
- 5.3. *No Social Security Numbers.* Customer agrees that it will not collect or store on the System any social security numbers.
6. **Limited Warranty.** Kelvin warrants that it will use commercially reasonable efforts to integrate Customer Data provided by Customer or its third party SIS vendor and provide the Data Services to Customer consistent with generally accepted industry standards, provided that: (i) Customer and all Customer Users have used equipment, settings and software that meet the System Requirements and have not otherwise used any equipment or software that adversely affects the Services; and (ii) Customer has paid all amounts due under the Agreement and is not in default of any provision of the Agreement. WITHOUT LIMITING THE GENERALITY OF THE DISCLAIMERS IN SECTION 12, ALL THIRD-PARTY ADD ONS AND ANY KELVIN DATA LICENSED FROM A THIRD PARTY IS PROVIDED “AS-IS,” AND KELVIN DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE SAME.
7. **Term.** The term of the Agreement begins on the Effective Date and will continue until the Order has expired or has been terminated.
8. **Fees, Payment & Taxes.**
 - 8.1. *Fees and Payment.* Customer agrees to pay all fees due for the Services according to the prices and terms listed on the Order. All invoices issued under the Agreement are due within thirty (30) days following the date of invoice, unless a different period is expressly provided on the Order. In the event any amount due from Customer becomes thirty (30) days or more past due, Kelvin reserves the right to suspend or terminate Customer’s access to the Services on not less than twenty (20) days’ notice. Kelvin may submit an invoice for Services provided on an annual basis at any time on or after the beginning of the applicable Service Period. All fees are non-refundable, except as otherwise explicitly stated in the Order or elsewhere in the Agreement. If the fees for a feature or functionality of the Service are based on usage of the Service, then Kelvin may access and use Customer Data as reasonably necessary to determine the fees for the applicable feature or functionality.
 - 8.2. *Taxes.* Where required by law, Kelvin will invoice Customer for any state or local sales tax, gross receipts tax or similar amounts that Kelvin is obligated to collect from Customer (“Taxes”). Customer is responsible for paying, and agrees to pay, all Taxes, excluding only taxes based on Kelvin’s net income. If Customer is exempt from any such Taxes, Customer will provide Kelvin with a valid tax exemption certificate authorized by the appropriate taxing authority to the extent such an exemption certificate is required or reasonably requested to establish such exemption.

9. Customer Data.

9.1. *License; Rights.* With respect to any Customer Data provided to Kelvin, Customer: (i) grants Kelvin the right to use, copy, modify, manipulate and create derivative works of the Customer Data as necessary in order for Kelvin to provide and perform the Services; (ii) agrees to secure rights in the Customer Data necessary for Kelvin to provide the Services without violating the rights of any third party, or otherwise obligating Kelvin to Customer or any third party (except as otherwise set out in the Agreement). Except as otherwise required by applicable law, Kelvin does not and will not accept any obligations in any separate license or other agreement that may apply to the Customer Data or use of the Services. Kelvin may transmit or disclose Customer Data to third parties in accordance with Customer's or its Customer User's directions (whether via the Services or otherwise).

9.2. *Treatment of Customer Data upon Termination.*

- a. In the event of expiration or termination of any Data Services, Kelvin: (i) will assist Customer in retrieving Customer Data from such Data Services, (ii) will remove, within a reasonable period of time, all Customer Data from such Data Services, except as otherwise set forth in Section 9.2(b), below; and (iii) may retain copies of the Customer Data in its offline data archives for backup, archive or legal recordkeeping purposes, and may subsequently destroy or erase such retained archive data, all in accordance with its data retention policies (provided, however, that the obligations of Section 9.3 shall survive for so long as Kelvin maintains any Customer Data). In the event that Customer requests that Kelvin destroy or securely erase any offline back-up copies of Customer Data maintained by Kelvin prior to the expiration of the retention period specified by Kelvin's policies, then Kelvin shall destroy or securely erase such offline back-up copies within a reasonable period of time of Customer's request therefor, subject to Customer's execution and delivery of a written release of any claim relating to the accuracy, timeliness or correctness of processing of the Customer Data or any other claim with respect to which the Customer Data would reasonably be expected to be relevant, in a form reasonably satisfactory to Kelvin.
- b. In the event that Customer requests, in writing within thirty (30) days after the termination or expiration of Data Services, that Kelvin provide Customer with continued limited access to its online account for the sole purpose of permitting Customer to continue to access and retrieve its Customer Data therefrom (as the same existed in such account at the time of termination or expiration), then Kelvin will provide such continued access for a period of up to ninety (90) days (the "Limited Data Access Period") only if: (i) Customer has paid all amounts due to Kelvin through the effective date of termination; and (ii) Customer pays Kelvin a continuing data access charge according to Kelvin's then-current fee schedule. Following the expiration or termination of the Limited Data Access Period, Kelvin will follow the procedures set forth in the first sentence of this Section 9.2 with respect to removal of Customer Data from the online Services and subsequent retention and destruction of offline archived data.
- c. Customer agrees that, other than as described in this Section 9.2 and notwithstanding any other term in the Agreement, Kelvin has no obligation to continue to hold or return any Customer Data. Customer also agrees that Kelvin has no liability for deletion of any Customer Data as described herein.

9.3. *Privacy and Security.* Kelvin acknowledges that Customer Data may include student-related information from Customer that contains personally identifiable information

about a student, and that such information is protected under the Family Educational Rights and Privacy Act (“FERPA”), and if applicable under corresponding state laws in Customer’s state. Kelvin’s access to any personally identifiable information in the Customer Data is authorized solely in connection with Kelvin’s provision of the Services pursuant to the Agreement and is governed by the Privacy Policy.

- 9.4. *Certain Reimbursements.* In the event (i) Kelvin is required to respond to any search warrant, court order, subpoena or other valid legal order relating to Customer or the Customer Data, or (ii) Customer requests material assistance from Kelvin in connection with Customer’s efforts to conduct any investigation, to cooperate with or respond to any investigation being conducted by a third party, or to pursue or respond to any matter or respond to any legal or administrative proceeding or similar matter, Customer will reimburse Kelvin for any cost that it incurs in so responding or assisting. Further, if Customer requests that Kelvin provide Customer with a copy (in a mutually agreeable format) of any Customer Data in Kelvin’s possession in connection with the Data Services that is not then-available to Customer via such Services, whether during the term of the Agreement or after its termination or expiration, Kelvin will comply with such requests, subject to Customer’s payment of a data retrieval fee (as applicable) determined according to Kelvin’s then-current fee schedule.
- 9.5. *System Metrics.* Kelvin may automatically collect usage and volume statistical information regarding Customer’s and its Customer User’s usage of the Services (collectively, the “System Metrics”). Kelvin uses the System Metrics internally to diagnose technical problems, administer the Services, and improve its offerings and marketing. The System Metrics do not include any personal information or data related to the user of the Services. Notwithstanding any term to the contrary set forth herein, Customer agrees and consents to Kelvin’s collection and use of the System Metrics as set forth herein, and Customer further agrees that the System Metrics are Kelvin’s sole and exclusive property.
10. **Customer Responsibilities.** In addition to any Customer obligations set out elsewhere in the Agreement, Customer will provide Kelvin, in a timely manner, with all data and information reasonably necessary for Kelvin to perform the Services (including Customer Data). If necessary to enable Kelvin to provide or perform the Services under the Agreement, Customer will provide and coordinate, in a timely manner, Kelvin’s onsite access to any Customer facilities or Customer network or system (the “Customer System”). Customer will inform Kelvin in writing and in advance of Services, of any security and access standards or requirements with respect to the Customer System.
11. **Termination.**
- 11.1. *By Kelvin.* In addition to any other termination rights described in the Agreement, Kelvin may terminate the Agreement immediately (or, in its sole discretion, suspend the provision of the Services) upon notice to Customer if Customer (i) breaches the Agreement and fails to cure such breach within thirty (30) days of written notice describing such breach, except in the case of failure to pay fees or other amounts due under the Agreement, which such breach must be cured within twenty (20) days after Kelvin’s notice of such delinquency; or (ii) breaches, or a Customer User, breaches any license, restriction on use or confidentiality terms of the Agreement.
- 11.2. *By Customer.* Customer may terminate the Agreement immediately upon written notice to Kelvin if Kelvin: (i) breaches the Agreement and fails to cure such breach within thirty (30) days of written notice describing such breach; or (ii) becomes the subject of any involuntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors and such proceeding

is not dismissed within sixty (60) days of its filing. In addition, Customer may terminate the Agreement prior to the expiration thereof, effective upon the end of the Customer's then current fiscal year, by giving Kelvin written notice at least thirty (30) days prior to the end of such Customer fiscal year.

- 11.3. *Termination of Service Agreement.* Kelvin's ability to provide the Services may be subject to various licenses or other agreements (each a "Service Agreement") between Kelvin and its third party suppliers. In the event of the expiration or termination of any applicable Service Agreement, Kelvin will use commercially reasonable efforts to obtain alternative suppliers in order to avoid suspension or disruption of the Services. If Kelvin is unable, for any reason, to obtain such an alternative or replacement Service Agreement, or if Kelvin reasonably determines that the provision of any Services would be a violation of any applicable law or regulation or any Kelvin license in any jurisdiction or is no longer permitted under any of the same, Kelvin may terminate all affected Services upon written notice to Customer without any liability to Customer. Kelvin will give Customer at least sixty (60) days prior written notice (or, if it is not possible to give 60 days' notice, as much notice as possible under the circumstances) of the termination or expiration of a Service Agreement governing Kelvin's ability to deliver the Services, or any other condition arising under such Service Agreement that is likely to adversely affect Customer's use of the Services. If Kelvin terminates any Services pursuant to this Section 11.3, and Customer has prepaid for such Services under the Agreement, then Kelvin will, after applying such prepayment to all fees and charges due under the Agreement, return the unused portion of such prepayment to Customer within forty-five (45) days after the date of termination.
- 11.4. *Procedure upon Termination.* Upon the effective date of termination of the Agreement, and in addition to any other post-termination obligations in the Agreement, Kelvin will cease providing the terminated Services to Customer and its Customer Users, Customer and its Customer Users will cease using the Services, and all Customer's payment obligations through the effective date of termination will immediately become due. In addition to the foregoing, promptly upon termination of the Agreement, each party will return all Confidential Information of the other party in its possession and will not make or retain any copies of such Confidential Information, except as otherwise expressly set forth in the Agreement or as required (and only to the extent necessary) to comply with any applicable legal, archival or accounting record keeping requirement; provided, however, that all such retained Confidential Information will remain subject to the provisions of Section 16 of these Standard Terms.
- 11.5. *Survival.* Except as otherwise set forth in a notice of termination, termination of any Service will not serve to terminate any other Service or the parties' respective obligations under the Agreement with respect to non-terminated Services. The Agreement will terminate automatically upon the termination or expiration of all Orders. The terms and conditions set forth in the General Terms of the Order, the definitions in the Agreement and the respective rights and obligations of the parties under Sections 2.2 (Customer Users), 3.3 (Restrictions on Use), 6 (Limited Warranty), 9.2 (Treatment of Customer Data upon Termination), 11 (Termination), 12 (Warranties; Disclaimer), 13 (Indemnification), 14 (Limitations of Liability), 15 (Confidential Information; Intellectual Proprietary Rights) and 16 (General Provisions), and any obligations of Customer to pay Annual Fees or any other fees or taxes that were earned or payable relating to the period prior to termination or expiration, as well as any other terms or conditions that by their nature would reasonably be expected to survive termination or expiration, will survive any termination or expiration of the Agreement.
12. **Warranties; Disclaimer.** Specific warranties applicable to each Service, to the extent given, will apply only during the applicable Service Term. EXCEPT FOR THE EXPRESS WARRANTIES

SET FORTH IN THE AGREEMENT, THE SERVICES ARE PROVIDED EXCLUSIVELY ON AN “AS IS” BASIS, AND KELVIN DISCLAIMS ANY AND ALL OTHER EXPRESS, IMPLIED AND STATUTORY WARRANTIES WITH RESPECT TO THE SERVICES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. KELVIN DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. KELVIN AND CUSTOMER ACKNOWLEDGE THAT THE SERVICES ARE NOT AND CANNOT BE MADE TO BE 100% ACCURATE, AND THAT ANY ERRORS OR FAILURE TO PERFORM SHALL NOT BE DEEMED A BREACH OF ANY APPLICABLE SPECIFIC WARRANTY UNLESS THEY ARE SIGNIFICANT AND NOT TO BE EXPECTED IN LIGHT OF THE LIMITATIONS OF SERVICES OF THIS TYPE. KELVIN DOES NOT WARRANT OR GUARANTEE ANY SPECIFIC RESULTS FROM CUSTOMER’S OR ITS CUSTOMER USERS’ USE OF THE SERVICES. AS BETWEEN THE PARTIES, CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR ENSURING THE ACCURACY OF ALL CUSTOMER DATA PROVIDED BY CUSTOMER IN CONNECTION WITH THE SERVICES.

13. **Indemnification.** Kelvin agrees to defend, indemnify and hold harmless Customer and its directors, officers, employees, and agents from and against all damages, costs (including reasonable attorneys’ fees), judgments and other expenses arising out of or on account of any third party claim: (i) alleging that Customer’s use of the Services infringes or misappropriates the proprietary or intellectual property rights of any third party, except to the extent that such infringement results from Customer’s or Customer Users’ misuse of or modifications to the Services; (ii) to the extent resulting from the gross negligence or intentional misconduct of Kelvin or its employees or agents; or (iii) to the extent resulting from any material breach of any of the representations, warranties or covenants of Kelvin contained in the Agreement. Kelvin’s obligation to defend, indemnify and hold harmless is subject to the conditions that it is given prompt notice of any such claims and is given primary control of and all reasonably requested assistance for the defense of such claims (with counsel reasonably satisfactory to the party being indemnified) (“Indemnified Party”), provided that any delay in notification shall not relieve Kelvin of its obligations hereunder except to the extent that Kelvin is materially prejudiced thereby. Without limiting the foregoing, the Indemnified Party may participate in the defense at its own expense and with its own counsel; provided that if the Indemnified Party reasonably concludes that Kelvin has conflicting interests or different defenses available with respect to such claim, the reasonable fees and expenses of one counsel to the Indemnified Party shall be borne by Kelvin. Kelvin shall not enter into or acquiesce to any settlement containing any admission of or stipulation to any guilt, fault, liability or wrongdoing on the part of the Indemnified Party or which would otherwise adversely affect the Indemnified Party without the Indemnified Party’s prior written consent (which shall not be unreasonably withheld). Kelvin shall keep the Indemnified Party advised of the status of the claims and the defense thereof and shall consider in good faith the recommendations made by the Indemnified Party with respect thereto.
14. **Insurance.** Kelvin agrees to carry a comprehensive general and, if Kelvin has any company-owned or company-leased vehicles, automobile liability (including cyber) insurance with limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury and property damage in a form mutually acceptable to both parties to protect Kelvin and Customer against liability or claims of liability which may arise out of the Agreement. Kelvin agrees to maintain workers’ compensation insurance as required under applicable law.
15. **Limitations of Liability.**
 - 15.1. *Exclusion of Damages.* TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THE AGREEMENT OR ITS SUBJECT MATTER TO ANYONE FOR LOST PROFITS

OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES WERE OTHERWISE FORESEEABLE AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE, ARISING UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE.

- 15.2. *Limitations on Liability.* IN NO EVENT WILL THE MAXIMUM LIABILITY OF EITHER PARTY ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR ITS SUBJECT MATTER OR ANY LICENSE, USE OR OTHER EMPLOYMENT OF ANY SERVICE, ARISING UNDER ANY THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EXCEED AN AMOUNT EQUAL TO TWELVE (12) MONTHS OF FEES APPLICABLE TO THE AFFECTED SERVICE(S) AT THE TIME OF THE EVENT OR \$1,000, WHICHEVER IS GREATER. NOTWITHSTANDING THE PREVIOUS SENTENCE, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY TO THE EXTENT SUCH LIABILITY WOULD NOT HAVE OCCURRED BUT FOR THE OTHER PARTY'S OWN FAILURE TO COMPLY WITH THE TERMS OF THE AGREEMENT. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. The limitations set forth in this Section 15.2 will not apply to any fees or reimbursable expenses due to Kelvin under the Agreement.
- 15.3. *Force Majeure.* Neither party will be liable for any loss or delay (including failure to maintain any given service level) resulting from any event beyond the affected party's reasonable control, including, fire, natural disaster, labor stoppage, internet service provider failures or delays, terrorism, civil unrest, war or military hostilities, criminal acts of third parties, national or regional emergency, passage of law or any action taken by a governmental or public authority or national or regional shortage of adequate power or telecommunications, and any payment date or delivery of service date will be extended to the extent of any delay resulting from any force majeure event.
- 15.4. *Acknowledgement; Exceptions.* Both parties acknowledge that the fees payable under the Agreement reflect the allocation of risk set forth in the Agreement and that the parties would not enter into the Agreement without the limitations in this Section 15.

16. **Confidential Information; Intellectual Property Rights.**

- 16.1. *Nondisclosure.* Each party acknowledges that it will have access to certain non-public and confidential information (collectively, "Confidential Information"). Kelvin's Confidential Information expressly includes information Kelvin creates or otherwise owns or licenses from a third party and related to the Services, including, without limitation, Kelvin Technology, together with any processing, storage and transmission information that may be necessary for Kelvin to perform its obligations under the Agreement, but excluding Customer Data. Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or to the extent required to achieve the purposes of, the Agreement, nor disclose to any third party (except as required by law or to such party's subcontractors, employees, attorneys, accountants and other advisors as reasonably necessary and, in the case of Customer, to Customer Users and as directed by Customer or Customer Users), any Confidential Information of the other party. Each party will protect the confidentiality of the Confidential Information of the other party by employing the same measures (but in

no event less than reasonable measures) as it takes to protect its own Confidential Information.

- 16.2. *Legal Disclosure.* The receiving party may disclose Confidential Information pursuant to the requirements of a validly issued subpoena, governmental agency or by operation of law, provided that it gives the disclosing party, when practical and permitted, reasonable prior written notice sufficient to permit the disclosing party to contest such disclosure. If Customer is a governmental entity, the terms of this Section 16 are subject to the requirements of applicable trade secret, public records and similar laws. Kelvin regards the Kelvin Technology as its trade secret and requires that Customer treat it as such with respect to any public records requests with respect to the Kelvin Technology, in accordance with applicable law.
- 16.3. *Proprietary Rights.* Exclusive of Customer Data, Kelvin and its licensors will retain all right, title, and interest (including copyright and other intellectual property rights or informational rights) in and to the Services and all legally protectable elements or derivative works of the foregoing, including, without limitation, the Kelvin Technology. Kelvin may place copyright and/or other proprietary notices, including hypertext links, within the Services, and neither Customer nor any of its Customer Users will remove such notices without Kelvin's written permission. Notwithstanding anything to the contrary in the Agreement, Kelvin will not be prohibited or enjoined at any time by Customer from utilizing any skills, knowledge or information of a general nature acquired during the course of providing the Services, including, without limitation, knowledge or information publicly known or available or that could reasonably be acquired in similar work performed for another customer of Kelvin.
- 16.4. *Remedies.* In the event of a violation or threat of violation by a party, directly or indirectly, of the terms of this Section 16 the party who would be harmed by such violation, will have the right, in addition to all other remedies available to it at law, in equity or under the Agreement, to affirmative or negative injunctive relief from a court of competent jurisdiction. Each party acknowledges that a violation of this section would cause irreparable harm and that all other remedies are inadequate.

17. **General.**

- 17.1. *Independent Contractors.* The parties and their respective employees are and will be independent contractors and neither party by virtue of the Agreement will have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party.
- 17.2. *Notices.* Customer's address for communication and notice purposes relating to the Agreement is set forth on the Order (or such replacement address as Customer may designate in accordance with this section from time to time). Customer agrees to accept emails from Kelvin at the e-mail address specified. Kelvin may provide any and all notices, statements and other communications to Customer through either e-mail or by mail or express delivery service, and all notices directed to Customer as described in this section will be deemed delivered upon transmission or within one (1) business day after deposit with the U.S. Postal Service or express delivery service, as applicable. General information regarding the Service (such as scheduled maintenance information) may also be provided by posting on the Service only. Kelvin recommends that the main contact and billing contact email addresses be group addresses (such as billing@customer.com) so that notices are reviewed promptly and not delayed due to the absence of one individual. In addition, Kelvin may rely and act on all information, authorizations and instructions provided to Kelvin from the above-specified e-mail address and Customer administrators. Any notices to Kelvin must be in writing and addressed to Kelvin at the

address set forth on the Order (or such replacement address as Kelvin may designate in accordance with this section from time to time).

- 17.3. *Governing Law.* The Agreement will be interpreted in accordance with the laws of the State in which the Customer is primarily located and any controlling U.S. federal law (but excluding the Uniform Computer Information Transactions Act (UCITA), whether or not adopted in a given state). Each party will bear its own costs in connection with any legal proceeding arising under the Agreement.
- 17.4. *Waiver; Amendment.* No waiver of any provision of the Agreement or of any right or remedy under the Agreement will be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. Neither any delay in exercising, nor any course of dealing with respect to, nor any partial exercise of any right or remedy under the Agreement will constitute a waiver of any other right or remedy, or of any future exercise of that right or remedy. The Agreement may not be modified, altered or amended except by a written instrument duly executed by both parties. The Agreement may not be modified or amended, except as expressly set forth in the Agreement, or in writing and signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted.
- 17.5. *Severability; Interpretation.* If any provision is held by a court to be contrary to law, such provision will be eliminated or modified to the minimum extent necessary so that the Agreement will otherwise remain in full force and effect. The headings in the Agreement are provided for convenience only and will not affect its construction or interpretation. As used in the Agreement, the term “Including” means “including, without limitation.”
- 17.6. *Beneficiaries; Successors and Assigns.* Except for the indemnification rights of directors, officers, employees and agents specifically set forth in Section 13 hereof, there are no third party beneficiaries to the Agreement. The Agreement will inure to benefit and bind Customer and Kelvin and their successors and assigns. Neither party may assign the Agreement without the prior written consent of the other party, except that Kelvin may assign the Agreement in connection with a sale of all or substantially all of its outstanding equity or assets without the consent of Customer. Kelvin reserves the right to name Customer as a user of the Service.
- 17.7. *Improper Payments.* Kelvin represents and warrants that it has not directly or indirectly offered or given, and will not directly or indirectly offer or give, to any employee, agent or representative of Customer any cash or noncash gratuity or payment with a view toward securing any business from Customer or influencing such person with respect to the conditions, or performance of any contracts with or orders from Customer, including without limitation the Agreement.
- 17.8. *Limitation on Actions.* No action arising out of the Agreement, regardless of the form, may be brought by either party more than two (2) years after the cause of action has arisen, or the date of last payment made by Customer, whichever is later.
- 17.9. *Governmental Users.* This Section 17.9 applies to all use of the Kelvin Technology by or for the U.S. government or by any prime contractor or subcontractor under any contract, grant or other activity with the U.S. government. The Kelvin Technology provided to Customer under the Agreement are “commercial items” as that term is defined at 48 CFR 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 CFR 12.212 and other applicable acquisition regulations and are provided to Customer only as a commercial item. Consistent with 48 CFR 12.212, 48 CFR 227.7102, and 48 CFR 227.7202, all U.S. Government Customer Users, if any, acquire the Kelvin Technology with only those

rights and subject to the restrictions set forth in the Agreement. Notwithstanding the foregoing, the Kelvin Technology may not be acquired by the U.S. Government pursuant to a contract incorporating clauses prescribed by 48 CFR 27.4, 48 CFR 227.71 or 48 CFR 227.72. Contractor/manufacturer is Kelvin Education, Inc., 15642 Sand Canyon Ave. #51392, Irvine, CA 92619.