



Terms and Conditions of Renewal Agreements and Support Agreements

These Terms and Conditions are incorporated by reference into, and form a part of all renewal agreements and support agreements with Scientific Learning Corporation (“SLC”), unless SLC and the individual or entity purchasing (“Customer”) have entered into an electronic or written signed agreement mutually agreed by both parties containing different terms. SLC hereby objects to any additional or different terms contained in Customer’s purchase order or other documents.

1. **Definitions.** The following definitions apply to these terms and conditions and to the agreements which are governed by these terms and conditions.
 - a. **Order Document** means the SLC Renewal Agreement, Reading Assistant Renewal Agreement, Reading Assistant Support Agreement or other mutually agreeable written document specifying the services or online services being purchased. Order Document does not include an agreement under which licenses are purchased; license Purchase Agreements are governed by the SLC Purchase Agreement Terms and Conditions.
 - b. **Customer** means the individual or entity who is the customer purchasing under the Order Document.
 - c. **SLC** means Scientific Learning Corporation.
 - d. **Support Releases** means technical updates and minor modifications to the Products that may be provided by SLC to Customer.
 - e. **Support Material** means the technical and instructional support, product manual, professional development and other product-related materials (written or electronic) provided to Customer in connection with the purchase under the Order Document.
 - f. **Online Services** means services specified in the Order Document that will be provided (in whole or in part) over the Web.
 - g. **Online Services Material** means the visual interfaces, graphics, design, compilation, information, computer code, products, software (including any downloadable software), services, and all other elements of the Online Services, but specifically excluding any materials uploaded by Customers.
2. **Support.** If under the Order Document Customer purchases support services:
 - a. Support for all Fast ForWord Products includes
 - i. Access to SLC’s service representatives by telephone, email or Web chat during SLC’s standard service days and hours; and
 - ii. Technical updates and minor modifications to the Products, as made available by SLC from time to time without further charge to customers with that level of support; and
 - iii. Access for Customer’s personnel to SLC’s support website, which includes, in electronic format, technical and instructional support materials, access to Product updates and modifications supplied under (ii) above, product manuals and guides, on-line training and educational opportunities, and other implementation resources, as such may be made available by SLC from time to time without further charge to customers with that level of support; and
 - iv. Progress Monitoring – remote checks of your Progress Tracker uploaded data and pro-active contacts from SLC staff to assist with your implementation; and
 - v. Access to SLC’s Gateway SIF agent for transferring student data
 - b. Reading Assistant support includes:
 - i. Access to SLC’s service representatives by telephone, email or Web chat during SLC’s standard service days and hours for Reading Assistant-related issues only. Full Reading Assistant support includes an unlimited number of contacts during the support period. Limited Reading Assistant Support includes only five contacts during the specified support period; and
 - ii. Technical updates and minor modifications to the Products, as made available by SLC from time to time without further charge to customers with that level of support; and
 - iii. Full Reading Assistant support also includes access for Customer’s personnel to SLC’s support website for Reading Assistant related materials, which includes, in electronic format, technical and instructional support materials, access to Product updates and modifications supplied under (ii) above, product manuals and guides, on-line training and educational opportunities, Virtual Academy learning blocks related to Reading Assistant and other implementation resources, as such may be made available by SLC from time to time without further charge to customers with that level of support.

- c. Standard service days and hours are stated on SLC's web site, and may be changed by SLC from time to time.
- d. Support does not include access to new products, new editions, new versions, or new releases (as such are specified by SLC) that may be made available by SLC from time to time.
- e. If Customer discontinues support and then renews support at a later date, SLC may require customer to pay for the period of support missed in order to receive access to the product updates described in (a)(ii) above.
- f. All Support Releases are subject to the license and other terms and conditions of the agreement under which the software to which Support Release relates was licensed.
- g. The Support Materials are owned by SLC. SLC authorizes Customer, and Customer agrees, to use the Support Materials only in connection with Customer's implementation of SLC products. Except as expressly permitted by SLC, Customer agrees not to sell, license, distribute, copy, modify, publicly perform or display, transmit, publish, edit, adapt, create derivative works from, or otherwise make unauthorized use of any Support Materials. Customer is permitted to make a reasonable number of copies of Support Material, for use only in connection with Customer's implementation of SLC products in compliance with its product licenses. Any permitted copy must fully preserve all proprietary, copyright and identification notices contained in the original Support Material.

3. **Online Services.** If under the Order Document Customer purchases services that will be provided (in whole or in part) over the Web ("Online Services"):

- a. Online Services purchased on a per site basis may be used only by Customer staff in connection with students who are participating in SLC products at the specified site.
- b. If Online Services are purchased in modules or learning blocks, access to one module or learning block only gives customer access to the content in that module or learning block and does not give Customer access to content contained in other modules or learning blocks.
- c. Customer acknowledges that the Progress Tracker service does not provide access to information from all Products.
- d. Online Services are provided on SLC-maintained servers; access is provided to Customer only via the World Wide Web. SLC is not responsible, and has no liability, for any delays or interruptions experienced in communicating over the Web, or for any incompatibility between the Online Services and services provided by Customer's telecommunications, Internet or other service providers.
- e. Online Services are not available to persons under the age of 13. Customer agrees not to permit persons under the age of 13 to access online services.
- f. *Prohibited Conduct* – Customer understands and agrees that no person to whom it provides access to Online Services may:
 - i. Upload copyrighted material unless such person has the legal right to distribute that material to others online;
 - ii. Harass, threaten, or defraud other users of the services;
 - iii. Upload or send to other users of the services pornographic, threatening, embarrassing, hateful, racially or ethnically insulting, libelous, or otherwise inappropriate content;
 - iv. Make unsolicited offers, advertisements, or proposals, or send junk mail to other users;
 - v. Impersonate another person or access another user's account without that person's permission;
 - vi. Misrepresent the source, identity, or content of information transmitted via the services;
 - vii. Use the services for any illegal purpose;
 - viii. Use the Online Services in any manner that could damage, disable, overburden, or impair it or interfere with any other party's use and enjoyment of the services;
 - ix. Attempt to gain unauthorized access to the Online Services, or any part of them or content contained on them, other accounts, computer systems or networks connected to the Online Services, or any part of them, through hacking, password mining or any other means or interfere or attempt to interfere with the proper working of the Online Services or any activities conducted on the Online Services.
 - x. Use any robot, spider, scraper, or other automated means to access the Online Services for any purpose without our express written permission or bypass any robot exclusion headers or other measures SLC may use to prevent or restrict access to Online Services.
- g. Access to the Online Services from territories where its contents are illegal is prohibited. Online Services are designed for customers in the United States. Those who choose to access the Online Services from other locations do at their own initiative and are responsible for compliance with all local rules including, without limitation, rules about the internet, data, email, or privacy.
- h. The Online Services are owned and operated by SLC. SLC authorizes Customer, and Customer agrees, to use the Online Services and the Online Services Materials only in connection with its

implementation of the Products. Except as expressly permitted by SLC, Customer agrees not to sell, license, distribute, copy, modify, publicly perform or display, transmit, publish, edit, adapt, create derivative works from, or otherwise make unauthorized use of any Online Services Materials. Customer is permitted to make a reasonable number of print copies of documents downloaded from the Online Services, for use only in connection with Customer's implementation of SLC products in compliance with its product licenses. Any permitted copy must fully preserve all proprietary, copyright and identification notices contained in the original Online Services Material.

4. **All Services.** If under the Order Document Customer purchases any services:
 - a. Access to all services is limited to the Sites and time periods specified in the Order Document. All support and service availability, including any unused service days, expires at the end of the specified period. Unused services cannot be carried forward to future periods.
 - b. SLC may provide services through its own personnel or contractors.
 - c. SLC may, from time to time, in its sole discretion, add new content to or modify or discontinue content provided in connection with any services.
 - d. If Customer provides SLC with any comments, bug reports, feedback, or proposed modifications ("Feedback"), SLC shall have the right to use such Feedback at its discretion, including, but not limited to the incorporation of such suggested changes into SLC's products and/or services and the distribution, use or transfer of such Feedback. Customer hereby grants SLC a perpetual, irrevocable, nonexclusive license under all rights necessary to incorporate and use Customer's Feedback for any purpose.
 - e. To receive services, Customer agrees to (i) supply SLC with sufficient information and data to reproduce any problems reported by Customer; (ii) use the Products on computer and operating systems consistent with SLC's requirements; (iii) use a release of the Products then being supported by SLC; and (iv) maintain an operating environment free of any programs or modifications that might interfere with the Products.
 - f. Service days and web-delivered trainings and meetings will be scheduled by mutual agreement of Customer and SLC. SLC requires two business days' notice to reschedule. If Customer reschedules less than two business days prior to a scheduled service event, Customer may be charged for one service event.
 - g. If Customer requests services outside the scope of those specified in an Order Document, SLC may charge Customer for those services at SLC's then-current time and materials rates and may require payment and/or a purchase order prior to providing such services.
5. **Discontinued Products; Changes in Operating Systems.**
 - a. Once a new release, edition or version (collectively, a "version") of an SLC software product has been released and the prior version is no longer being sold, SLC may stop providing services (including Progress Tracker, support and other services) with respect to the discontinued version, or may provide lower levels of services for the discontinued version. SLC may, in its sole discretion, determine when services will be provided at a lower level or ended, provided that SLC will not reduce or discontinue services for a discontinued version until one year after the version has no longer been sold by SLC.
 - b. Customer acknowledges that operating systems change from time to time and that SLC has no control over such changes and that SLC is not required to provide updates or revisions that will make products compatible with the operating system that Customer may wish to use with the product.
6. **Using the Services.**
 - a. Customer agrees to keep confidential any activation, product, organization or other codes, passwords and identification numbers relating to the products or services that are issued to Customer by SLC or created by Customer and to use them only for purposes of using the products and services as permitted under the terms of the applicable agreements.
 - b. Customer is responsible for controlling and managing access to the SLC products and services and the data stored thereon, using user identifications provided by SLC and generated by Customer. Customer agrees that in using the products and services, Customer will comply with all applicable federal and state privacy and student records laws.
7. **No Warranties; Limitation of Liability; No Refunds.** To the maximum extent permitted by applicable law, SLC, on behalf of itself and its licensors, except as may be expressly provided by any written agreement signed by SLC, SLC disclaims all representations and warranties with respect to the items provided under any Order Document, either expressed, implied, statutory or otherwise, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, title and noninfringement. Regardless of the

success or effectiveness of other remedies, in no event will SLC or its licensors be liable for any special, incidental, indirect, consequential or exemplary damages whatsoever arising out of any Order Document or these terms and conditions or the use of or inability to use any product or service provided hereunder (including, without limitation, damages for lost information, lost revenues or profits or business interruption), however arising and under any theory of liability including, without limitation, breach of contract, breach of warranty, or tort (including negligence and strict liability) even if SLC or its licensors have been advised of or should have known of the possibility of such damages. In no event will SLC or its licensors be liable in damages or otherwise in excess of the amount paid to SLC for the software or service on which the claim is based. Customer acknowledges and agrees that the disclaimer of warranties, limitations on liability and limited remedies contained in these terms are fundamental parts of the basis of SLC's bargain hereunder. Some jurisdictions do not permit the exclusion of certain types of damages or the disclaimer of certain implied warranties, so some of the foregoing may not be applicable. To the extent that SLC may not disclaim any warranty, the scope and duration of such warranty shall be the minimum permitted under applicable law. SLC shall have no obligation to refund any fees paid under any Order Document

8. **General**

- a. **Firm Orders.** When an Order Document is agreed to by Customer and accepted by SLC, the purchase commitment in the Order Document becomes firm and cannot be canceled by Customer.
- b. **Use of Data.** Customer agrees that SLC may use any data or information transmitted or otherwise provided to SLC that relates to SLC products or services or Customer's use of those products or services, including results on tests and other assessments, for the purpose of providing services and licenses to Customer and for research, norming, marketing and other purposes, provided that Customer and participants may only be publicly identified as the source of any particular information where required by law or with the prior consent of the person whose identity would be disclosed. Customer acknowledges that the use of the Reading Progress Indicator component of the Progress Tracker Online Service requires SLC to deliver the assessment information gathered in that product to a third party (together with related identification information) in order to permit Customer to access certain reports with respect to that data. Customer consents to the transmission of that data.
- c. **Taxes.** Customer agrees to pay SLC all applicable sales, use or other taxes related to the Order Document and these terms and conditions, however designated, except for taxes based on SLC's income. If Customer claims tax exempt status, Customer agrees to provide SLC with evidence of such tax exemption upon SLC's request.
- d. **Breach; Termination.** SLC may charge a late fee of 1% per month (or if less, the maximum amount permitted by law) on any amount not paid within 60 days of its due date. If Customer fails to pay any amount due under any Order Document for more than 60 days past its due date, then SLC may also, without notice to Customer, suspend Customer's licenses and the performance of any services until the past due amount (and any applicable late fee) is paid. In addition, either party may terminate any licenses and any obligations to perform services in whole or in part upon at least 30 days written notice to the other party, in the event the other party materially breaches its obligations under the Order Document or these terms and conditions (including failure to pay) and fails to correct such breach within such 30-day period. Upon any such termination, all related licenses and all obligations to perform services terminate and Customer shall return all copies of any SLC materials under its control to SLC.
- e. **Inquiries by SLC Auditors.** From time to time, SLC may request customers to provide written confirmations of order terms to its auditors. Customer agrees to respond promptly to such requests.
- f. **Entire Agreement.** The Order Document and these terms and conditions constitute the entire agreement between SLC and Customer relating to the subjects hereof and supersedes any prior understandings between the parties with respect thereto. Customer has not relied on the availability of any future versions or future products in executing the Order Document. The agreement formed by the Order Document and these terms and conditions may not be changed except by a writing executed by both parties. No terms of any purchase order, invoice or other document submitted by either party shall modify or supersede this agreement unless signed by both parties. The waiver or failure of SLC to exercise any rights hereunder will not be deemed a waiver of any further right hereunder.
- g. **Severability.** If any term of the Order Document or these terms and conditions is declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms will be unimpaired, and the invalid term will be replaced by such valid term as comes closest to the intention underlying the invalid term.
- h. **Force Majeure.** Neither party shall be liable for failure to perform due to causes beyond its reasonable control.

- i. **International.** The parties hereby confirm their request that this agreement and all documents related directly or indirectly thereto be drafted in the English language. Les parties aux présentes reconnaissent avoir requis que la présente convention ainsi que tous les documents qui s'y rattachent directement ou indirectement soient rédigés en langue anglaise. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to any of the transactions, which are contemplated by this agreement.
- j. **US Government End Users.** If Customer is a branch or agency of the US government: The Licensed Materials are composed of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 CFR 12.212 (SEPT. 1995) and are provided to the Government (a) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 CFR 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense consistent with the policies set forth in 48CFR 227.7202-1 (Jun 1995) and 227.7202-3 (Jun 1995).