



Terms and Conditions of Purchase Agreement

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 Purchase Agreement or other mutually agreeable written document specifying the licenses and/or services being purchased.
 - b. **Customer** means the individual or entity who is the customer purchasing under the Order Document.
 - c. **SLC** means Scientific Learning Corporation.
 - d. **Products** means the software products specified as licensed in the Order Document. If SLC supplies Customer with any patches, bug fixes, updates or modifications to Products, this additional software is included in Products upon its delivery 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 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.
 - g. **Licensed Material** means, collectively, the Products, the Online Services Materials and the Support Material.
 - h. **Site(s)** means the physical location(s) specified in (or determined pursuant to) the Order Document.
 - i. **Use** means that the software product is being accessed or viewed in any way by a person, whether the software is actually installed on the computer being used by that person or the software is installed on a different computer and is being remotely accessed.

2. **Product Licenses.** If Customer purchases licenses to Products under the Order Document, then upon agreement to the Order Document by Customer and acceptance of the Order Document by SLC, SLC grants to Customer, and Customer accepts, a limited, non-exclusive, nontransferable license to use the Products (in object code only) solely for educational and related administrative purposes and subject to the terms of the Order Document and these terms and conditions. Conditions of the licenses include the following:
 - a. **All licenses**
 - i. **Site limitations:** Each Product may be installed and used only at the Site(s) which are specified for such Product and only by students who are regularly enrolled students at the Site(s), teachers and administrators for the Site(s), and children who are family members of those teachers and administrators. Sites may be changed only with SLC's prior written consent. Consent to a change will only be granted in accordance with SLC's policies as in effect from time to time and will require the payment of a fee. If a Site is stated as TBD (to be determined), the Site will be specified by written agreement of SLC and Customer. In addition, the Reading Assistant school-hosted software subject to a site license may be installed at a district location, for remote serving to the Site(s), provided that students may use the Reading Assistant software only at the Site(s).
 - ii. **Time limitations:** The exercises in the Products may be used only during the time period specified as the license term.
 - b. **Site license:** Products under a site license may be used on an unlimited number of computers at the Site(s). In addition, the Reading Assistant school-hosted software subject to a site license may be installed at a district location, for remote serving to the Site(s), provided that students may use the Reading Assistant software only at the Site(s).
 - c. **Workstation license:** Products under a workstation license may be installed and used only at the Site(s) on the number of workstations specified in the Order Document. This number is called the Workstation Limit.
 - i. Network configuration host computers (commonly called Data Managers) that may not be used by students are not counted towards the Workstation Limit. All computers used by students are counted towards the Workstation Limit.
 - ii. The Workstation Limit for Language series products is the maximum number of computers on which any or all of the Language products may be used. For example, five workstation licenses for three Language series products means that up to three Language products may be installed on up to five separate computers total.

- iii. The Workstation Limit for Reading series products is the maximum number of computers on which each Reading products may be used. For example, five workstation licenses for three Reading products means that each of the three Reading products may be installed on up to five different computers, equaling a possible total of fifteen computers with one Reading product installed on each computer.
- iv. The Workstation Limit for the Reading Assistant product is the maximum number of computers on which the Reading Assistant product may be used.
- d. **Disc license:** The number of simultaneous users of a Product under a disc license may not exceed the number of CDs containing the Product that have been provided by SLC under the applicable agreement. Each disc provided may be installed only on a single computer.
- e. **Single Use license:** The Customer may use a Product under a single use license with a maximum aggregate number of participants equal to the number of single use licenses purchased. Each time a Product is used by a different person counts as one participant, even if a given individual uses more than one Product. The license term for single use licenses is 12 months commencing on the invoice date for the license.
- f. **CDs:** SLC will provide its standard number of CDs for the Product licenses specified in the Order Document. Additional or replacement copies of CDs may be available for purchase. If additional or replacement CDs are provided, the Products on such CDs shall be subject to the same license terms as the original Products, and upon delivery shall be included within the term Products hereunder.

3. **License Restrictions.** The Licensed Material is protected by United States copyright, trade dress, patent, and trademark laws, international conventions, and all other relevant intellectual property and proprietary rights, and applicable laws. The Licensed Material is licensed, not sold. All rights to the Licensed Material that are not expressly granted hereunder are reserved to SLC and/or its third-party licensors. Customer agrees not to, and agrees to cause all persons to whom it makes Licensed Material available not to:

- a. Use, copy, rent, lease, lend, license, sublicense, sell, export, assign, transfer, redistribute or in any other way disseminate the Licensed Material, except as expressly permitted by the Order Document or these terms and conditions. Customer is permitted to (1) copy certain files from the Products onto the hard drive of the computer on which that Product is being used in order to optimize the performance of the Product, provided that the copied files may only be used subject to the restrictions of the applicable license, as outlined herein; (2) copy the Products (or the Product files from an installed machine) onto a backup computer of the Customer, provided that such copy may only be used to re-install the Products in the event of a malfunction, for use in accordance with all applicable terms of the license; and (3) copy Support Material, for use only in connection with use of the Products under Customer's license. Any permitted copy must fully preserve all proprietary, copyright and identification notices contained in the original Licensed Material.
- b. Reverse engineer, decompile, disassemble or otherwise attempt to derive the source code for the Products or for any software included in the Licensed Material.
- c. Modify, translate or create derivative works or adaptations from the Licensed Material.
- d. Use any portion of the Products other than as a part of the Product.
- e. Use any Licensed Material that is not Products other than in connection with and to facilitate the use of the Products.
- f. Modify or attempt to modify any license terms encoded in the Products or modify any settings on a computer for the purpose of circumventing the limitations of the license.

Failure to comply with these restrictions will constitute a material breach of the parties' agreement and a violation of the law, and will give SLC the right to immediately terminate this agreement and all rights granted hereby. All rights not expressly granted by the Order Document and these terms and conditions are reserved by SLC.

4. **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 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. For example, Progress Tracker does not presently receive or display information from use of the Reading Assistant product.

- 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, 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 your implementation of the Products. Except as expressly permitted by SLC, you agree 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.
5. **Support.** If under the Order Document Customer purchases support services:
- a. Support for all Products includes
 - i. Access to SLC's service representatives by telephone, email or Web chat during SLC's standard service days and hours. Premier Support permits access by any personnel of Customer. Centralized Support permits access only by a limited number of specified personnel of Customer, all of whom have been trained by SLC. Standard service days and hours are stated on SLC's web site, and may be changed by SLC from time to time.
 - 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. Such updates and modifications are typically made available through automatic downloads of updated software. SLC strongly recommends that, to protect against local malfunctions, Customer back up the Software and related data regularly and frequently in the manner permitted by Section 3.
 - 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.
 - b. For Fast ForWord products, support also includes:
 - i. Progress Monitoring – remote checks of your Progress Tracker uploaded data and pro-active contacts from SLC staff to assist with your implementation; and
 - ii. Access to SLC's Gateway SIF agent for transferring student data

- c. Reading Assistant support provides access to SLC's service representatives and technical updates/modifications (as provided in (a) (i) and (a) (ii) above) only with respect to Reading Assistant products, and not with respect to any Fast ForWord products.
 - 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. Any updates or modifications supplied shall be subject to the same license terms as the Products to which they relate and upon delivery shall be included in the term Products.
 - 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.
6. **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 you provide 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. You hereby grant SLC a perpetual, irrevocable, nonexclusive license under all rights necessary to incorporate and use your 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 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 day, Customer may be charged for one service day.
 - 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.
7. **Discontinued Products; Changes in Operating Systems.**
- a. Once a new release, edition or version (collectively, a "version") of a 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.
8. **Using the Products and Services.**
- a. Customer is solely responsible for selecting appropriate participants to use the Products.
 - b. Except as otherwise may be agreed in writing, installation of all Products is the responsibility of Customer, and Customer is solely responsible for providing the computer equipment, other software, headphones, telecommunications links, and/or Internet access required to use the Products and services in accordance with the system requirements provided by SLC. Customer is solely responsible for all expenses incurred by it in using the Products.
 - c. 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 Order Document and these terms and conditions.
 - d. Customer is responsible for controlling and managing access to the Products and services and the data stored on those Products, 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.

9. **Limited Warranties; No Refunds**

- a. SLC warrants to Customer that the Products will have substantially the functionality described in the manuals that accompany the Products for a period of 90 days from the applicable invoice date. The limited warranty applies only if the Product is used in accordance with its published instructions, and will not apply if the failure resulted from (1) accident, abuse, negligence, or misuse; (2) use or interfacing with software or other products not provided by SLC; (3) unauthorized modification or repair; (4) improper or inadequate maintenance or site preparation; or (5) loss or damage in transit. SLC does not warrant that the Products will operate or be accessible without interruption, be error or bug-free, or be compatible with particular computer equipment or other software.
- b. To make a claim under these limited warranties, Customer must provide written notice of the claim to SLC within the 90 day warranty period. The exclusive remedy for any breach of these warranties is, at SLC's option, the repair or replacement of the affected Product or (upon return of the affected Products and related documents and the termination of the license with respect to such Products) the refund of all or a pro rata portion of the fee paid for the applicable license. Except as explicitly provided above, SLC shall have no obligation to refund any fees paid under any Order Document.
- c. SLC makes no warranty with respect to any services or any headsets, hardware or other equipment that may be provided hereunder.

10. **No Other Warranties; Limitation of Liability.** To the maximum extent permitted by applicable law, SLC, on behalf of itself and its licensors, disclaims all other representations and warranties with respect to the Products, services and other 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. SLC makes no warranty with respect to the efficacy of any Products, including but not limited to its efficacy in dealing with any learning problem or other condition. 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.

11. **General**

- a. **Shipping and Delivery.** The prices stated in the Order Document include the price of shipping the Product discs to the specified location. Shipments are made EXW (Ex Works) SLC's or its fulfillment agent's facility. Rights and responsibilities under the licenses begin upon delivery to the carrier, unless the Order Document specifies a later date. Risk of loss for and title to the physical items shipped passes to the Customer on delivery to the carrier. Product discs lost in shipment may be replaced on payment of a replacement fee.
- b. **Use of Data.** Customer agrees that SLC may use any data or information transmitted or otherwise provided to SLC that relates to the Products or Customer's use of the Products, 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 Product 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 Product 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 Licensed Material under its control to SLC.
- e. **Audit of Customer.** Customer agrees, at SLC's request, to give SLC reasonable access to Customer's premises and records and to all computers on which Products have been used or accessed for the purpose of auditing Customer's compliance with its obligations. If SLC's audit finds that Customer has used Products in a manner not permitted by the applicable Order Document and terms and conditions, Customer will pay SLC any additional fees due under SLC's standard pricing schedule.
- f. **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.
- g. **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.
- h. **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.
- i. **Force Majeure.** Neither party shall be liable for failure to perform due to causes beyond its reasonable control.
- j. **Export Controls.** The Licensed Material and the underlying information and technology may not be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) Cuba, Iraq, Libya, North Korea, Iran, Syria or any other country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. Customer represents and warrants that it is not located in, under the control of, or a national or resident of any such country or on any such list.
- k. **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.
- l. **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).

12. Third Party Software

- a. **BSD Licenses.** The Reading Assistant Product includes Sphinx2 ©1999-2001 Carnegie Mellon University. Other Products may contain the Jaxen library © 2003-2006 The Werken Company All rights reserved. Redistribution and use of these particular files (but not any other portion of the Products) in source and binary forms, with or without modification, are permitted provided that the following conditions are met: 1. Redistributions of source code must retain the above copyright notice, this list of conditions and the following disclaimer. 2. Redistributions in binary form must reproduce the

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- b. **Reading Assistant.** The Reading Assistant Product may include portions developed using a voice recording database ©2002 Carnegie Speech Company, Inc. and may include MySQL Classic(TM), the copyright to which is owned by and licensed from MySQL AB.
- c. **Adobe Flash Player.** The Products may contain Adobe® Flash® Player software, © 1996-2006 Adobe Systems Incorporated. All rights reserved. Adobe and Flash are either trademarks or registered trademarks in the United States and/or other countries. The terms and conditions of the Adobe End User License Agreement located at <http://www.adobe.com/products/eulas/players> shall apply to the Adobe Flash player software and, with respect thereto, are made a part of and incorporated by reference into these terms.
- d. **Apache software.** The Products may contain software licensed from The Apache Software Foundation. You may not use these software files except in compliance with the Apache license. You may obtain a copy of the Apache license at <http://www.apache.org/licenses/LICENSE-2.0>. See the Apache license for the specific language governing permissions and limitations thereunder.
- e. ALL THIRD PARTY SOFTWARE PROVIDED AS PART OF THE PRODUCTS IS PROVIDED BY ITS COPYRIGHT OWNERS ``AS IS" AND ANY EXPRESSED OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE DISCLAIMED. IN NO EVENT SHALL THE COPYRIGHT OWNERS, THEIR EMPLOYEES NOR ANY AUTHORS OR CONTRIBUTORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. The third parties from whom SLC has licensed software are third party beneficiaries of the agreement formed by the Order Document and these terms and conditions, only to the extent needed to enforce those third parties' rights with respect to their software and to benefit from disclaimers of warranty or liability.