

CARDONEX[®]

TERMS OF SERVICE

THESE TERMS OF SERVICE GOVERN CUSTOMER'S ACQUISITION AND USE OF CARDONEX INC.'S ("CARDONEX") SERVICES. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

CUSTOMER ACCEPTS THIS AGREEMENT BY EXECUTING A SALES ORDER THAT REFERENCES THIS AGREEMENT AND AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A SCHOOL DISTRICT OR OTHER ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

The Services may not be accessed for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

Cardonex's direct competitors are prohibited from accessing the Services, except with Cardonex's prior written consent.

This Agreement was last updated on May 7, 2024. It is effective between Customer and Cardonex as of the date of the Effective Date. Cardonex responsibilities

1.1 Provision of Services. In consideration for the payment by Customer to Cardonex of the Subscription Fees contained in the applicable Sales Order(s), Cardonex grants to Customer and their respective Users a non-exclusive, non-transferable limited right to access and use the Services pursuant to the terms set out in this Agreement. Customer's right to access the Services shall commence upon the Effective Date. In addition, Cardonex will (a) make the Services available to Customer pursuant to this Agreement, and the applicable Sales Order and Documentation, (b) provide applicable Cardonex standard support for the Services to Customer at no additional charge, (c) use commercially reasonable efforts to make the online Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which Cardonex shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond Cardonex's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Cardonex employees), Internet service provider failure or delay, Non-Cardonex applications, or denial of service attack, and (d) provide the Services in accordance with Laws and government regulations applicable to Cardonex's provision of its Services to its customers generally (i.e., without regard for Customer's particular use of the Services), and subject to Customer's and Users' use of the Services in accordance with this Agreement, the Documentation and the applicable Sales Order.

1.2 Protection of Customer Data. Cardonex will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Customer Data (other than by Customer or Users). The terms of the Student Data Privacy Agreement (DPA) found online at <https://www.cardonex.com/privacycenter> are hereby incorporated by reference. The DPA is based upon standard forms produced by the Student Data Privacy Consortium.

1.3 Cardonex Personnel. Cardonex will be responsible for the performance of its personnel (including its employees and contractors) and their compliance with Cardonex's obligations under this Agreement, except as otherwise specified in this Agreement.

1.4 Professional Services. Cardonex offers optional consulting, implementation and training services ("Professional Services") to be provided to Customer pursuant to the Professional Services Addendum found online at <https://www.cardonex.com/terms>. If the Customer or its Affiliates executes a Sales Order that includes any of the foregoing consulting, implementation and training services, the Professional Services Addendum, as incorporated by reference into this Agreement, shall apply to those services. Customer acknowledges that Cardonex has extensive experience helping Customers improve utilization and realization of benefits of the Service, and not engaging Cardonex

in the provision of Professional Services may substantially limit Customer's ability to utilize the Service to its full potential.

2. USE OF SERVICES AND CONTENT

2.1 Subscriptions. Unless otherwise provided in the applicable Sales Order or Documentation, (a) Services are purchased as subscriptions for the term stated in the applicable Sales Order(s), (b) subscriptions for Services may be added during a subscription term by executing a new Sales Order, which will contain all pricing and term-length information, and (c) any added subscriptions will co-terminate on the same date as the underlying subscriptions. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Cardonex regarding future functionality or features.

2.2 User Headcounts. Cardonex charges Customers based upon (i) the official student enrollment numbers for each Customer or (ii) the number of Users accessing the Services. In the case of student enrollment-based Services, Cardonex will annually obtain official enrollment numbers for Customers either through the National Center for Education Statistics (NCES) or through an official State Education Agency. The annualized headcount of students will be reflected on the pricing of each new Sales Order or quote related thereto.

2.3 Customer Responsibilities. Customer will (a) be responsible for Users' compliance with this Agreement, Documentation and Sales Order, (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Services, and the interoperation of any non-Cardonex applications with which Customer uses Services, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services, and notify Cardonex promptly of any such unauthorized access or use, (d) use Services only in accordance with this Agreement, Documentation, Sales Order and applicable laws and government regulations, and (e) comply with terms of service of any non-Cardonex applications with which Customer uses Services. Any use of the Services in breach of the foregoing by Customer or Users that in Cardonex's judgment threatens the security, integrity or availability of Cardonex's services, may result in Cardonex's immediate suspension of the Services, however Cardonex will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.

2.4 Usage Restrictions. Customer will not (a) make any Service available to anyone other than Customer or Users, or use any Service for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in an Sales Order or the Documentation, (b) sell, resell, license, sublicense, distribute, rent or lease any Service, or include any Service in a service bureau or outsourcing offering, (c) use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or its related systems or networks, (g) permit direct or indirect access to or use of any Services in a way that circumvents a contractual usage limit, or use any Services to access, copy or use any of Cardonex's intellectual property except as permitted under this Agreement, an Sales Order, or the Documentation, (h) modify, copy, or create derivative works of a Service or any part, feature, function or user interface thereof, (i) frame or mirror any part of any Service, other than framing on Customer's own intranets or otherwise for its own internal purposes or as permitted in the Documentation, or (j) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Service, or (4) determine whether the Services are within the scope of any patent. The Services may not be accessed for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes. Cardonex's direct competitors are prohibited from accessing the Services, except with Cardonex's prior written consent.

3. FEES AND PAYMENT; TERM AND TERMINATION

3.1 Fees. Customer shall pay all Fees specified on the applicable Sales Order with the payment terms on the Sales Order. Except as otherwise specified on the applicable Sales Order, (i) additional Users and other Service items procured during the Term will co-terminate with and be prorated through the then current Initial or Renewal Term; (ii) fees are based on Services subscriptions purchased and not actual usage; (iii) payment obligations are non-cancelable and fees paid are non-refundable; and (iv) quantities purchased cannot be decreased during the relevant subscription term. Initial or Renewal Term. Fees for the Service on all subsequent Sales Order Forms and renewals shall be set at then current Cardonex pricing, unless otherwise agreed to by the parties.

3.2 Invoicing and Payment. Cardonex will invoice Customer in advance and otherwise in accordance with the terms contained on the relevant Sales Order. Unless otherwise stated in the Sales Order, invoiced Fees are due and payable thirty (30) days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Cardonex and notifying Cardonex of any changes to such information.

3.3 Overdue Charges. If any invoiced amount is not received by Cardonex by the due date, then without limiting Cardonex's rights or remedies, (a) those charges may accrue late interest at a rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) Cardonex may condition future subscription renewals and Sales Orders on payment terms shorter than those specified in Section 3.2.

3.4 Suspension of Service and Acceleration. Cardonex will notify the Customer at regular intervals if any charge owing by Customer under this or any other agreement for Services is overdue. If any charge owing by Customer for Services is thirty (30) days or more overdue, Cardonex may, without limiting its other rights and remedies, accelerate Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full. Notwithstanding anything else to the contrary, if Cardonex should fail to pursue any rights or remedies under this Section 3.4, such action shall not be deemed a waiver of its rights hereunder.

3.5 Payment Disputes. Cardonex will not exercise its rights under Section 3.3 above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

3.6 Taxes. Cardonex's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Cardonex has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Cardonex will invoice Customer and Customer will pay that amount unless Customer provides Cardonex with a valid tax exemption certificate authorized by the appropriate taxing authority.

3.7 Term of Agreement. This Agreement shall commence from the Effective Date and shall continue for the period specified on the initial Sales Order (the "**Initial Term**") unless earlier terminated in accordance with the provisions of this Agreement. After the Initial Term expires this Agreement will automatically renew for additional one (1) year terms (each a "**Renewal Term**") at the then current price, unless (i) a Sales Order is executed for the Renewal Term specify alternative pricing and term; or (ii) either party provides the other with a written notice of termination thirty (30) days prior to the end of the Term. In the event the Sales Order provides for exclusion of an automatic renewal, this Agreement shall terminate at the end of the Initial Term. The Initial Term, together with any Renewal Term, is referred to as the "**Term**". Customer and its Affiliates' right to access and use the Service shall cease upon termination or expiration of this Agreement. Notwithstanding anything to the contrary in this Agreement, Cardonex may terminate this Agreement and any underlying Sales Order(s) upon thirty (30) day prior written notice and shall provide Customer a pro rata refund of Subscription Fees paid calculated from the termination date to the end of the then current Subscription Term specified on the Sales Order(s).

3.8 Termination. A Party may terminate this Agreement for cause (i) upon thirty (30) days written notice to the other party of a material breach, including Customer's failure to pay any Fees when due, if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. If this Agreement is terminated as a result of Cardonex's material breach of this Agreement, Customer shall be entitled to a refund of the pro rata portion of any Fees paid by Customer to Cardonex under this Agreement for the terminated

portion of the Term. A party may terminate this Agreement without cause upon thirty (30) days written notice to the other party prior to auto-renewal as described in Section 3.7.

3.9 Refund or Payment upon Termination. Unless otherwise specified in this Agreement, in no event shall Customer be entitled to any refund of any Fees as a result of termination or expiration of this Agreement.

3.10 Surviving Provisions. Sections 3, 4, 5, 6, 7, 8 and 9, sub-sections 3.9, and this Section 3.10 will survive any termination or expiration of this Agreement, and Section 1.2 will survive any termination or expiration of this Agreement for so long as Cardonex retains possession of Customer Data.

4. INTELLECTUAL PROPERTY RIGHTS

4.1 Reservation of Rights. Subject to the limited rights expressly granted hereunder, Cardonex and Affiliates reserve all of their rights, title and interest in and to the Services, including all of their related Intellectual Property Rights. No rights are granted to Customer hereunder other than as expressly set forth herein. Customer may not remove, add to, or alter, any of the trademarks, trade names, logos, patent or copyright notices or proprietary markings displayed in connection with the Service. Customer may not adopt, use or register any trademark, trade name or other marketing name of Cardonex or its Affiliates and third-party suppliers, nor use any confusingly similar trademark, trade name or other marketing name.

4.2 Access to and Use of Services. Customer has the right to access and use applicable content of the Services subject to the terms of applicable Sales Order, this Agreement and the Documentation.

4.3 Ownership of Customer Feedback. Customer acknowledges that any and all products and services incorporating such new features, functionality, or performance shall be, and hereby is, the sole and exclusive property of Cardonex and all such recommendations shall be free from any confidentiality restrictions that might otherwise be imposed upon Cardonex pursuant to this Agreement or other agreement between the parties.

4.4 Ownership of Customer Data. All title and intellectual property rights in and to the Customer Data is owned exclusively by Customer.

5. CONFIDENTIALITY

5.1 Protection of Confidential Information. In connection with this Agreement, each Party may disclose or make available Confidential Information to the other Party. As a condition to being provided with any disclosure of or access to Confidential Information, the receiving party shall: (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement; (b) except as may be permitted pursuant to Section 5.2, not disclose or permit access to Confidential Information other than to its representatives who: (i) need to know such Confidential Information for purposes of the receiving party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the receiving party's obligations under this Article; and (iii) are bound by both written confidentiality and restricted use obligations that are at least as protective of the Confidential Information as the terms set forth in this Article; (c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its most sensitive information and in no event less than a reasonable degree of care; (d) promptly notify the disclosing party of any unauthorized use or disclosure of Confidential Information and use its best efforts to prevent further unauthorized use or disclosure; and (e) ensure its representatives' compliance with, and be responsible and liable for any of its representatives' non-compliance with, the terms of this Article. Notwithstanding any other provisions of this Agreement, the receiving party's obligations under this Section 5.1 with respect to any Confidential Information that constitutes a trade secret under any applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the receiving party or any of its representatives.

5.2 Compelled Disclosures. If the receiving party or any of its representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the receiving party will: (a) promptly, and prior to such disclosure, notify the disclosing party in writing of such requirement so that the disclosing

party can seek a protective order or other remedy; and (b) provide reasonable assistance to the disclosing party, at the disclosing party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the disclosing party waives compliance or, after providing the notice and assistance required under this Article, the receiving party remains required by Law to disclose any Confidential Information, the receiving party will disclose only that portion of the Confidential Information that, on the advice of the receiving party's outside legal counsel, the receiving party is legally required to disclose and, on the disclosing party's request, will use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

6. REPRESENTATIONS AND WARRANTIES

6.1 Representations. Each Party represents that it has validly entered into this Agreement and has the legal power to do so.

6.2 Cardonex Warranties. Cardonex warrants that: (i) the Service will achieve in all material respects the functionality described in the Documentation applicable to the Service procured by Customer, and (ii) such functionality of the Service will not be materially decreased during the Term. Customer's sole and exclusive remedy for Cardonex's breach of this warranty shall be that Cardonex shall use commercially reasonable efforts to modify the Service to correct the deficiency causing the breach in the foregoing warranty. If Cardonex is unable to correct the deficiency, Cardonex may, in its sole discretion terminate the Agreement and provide Customer a pro-rata refund of the Subscription Fees paid by Customer, for the terminated portion of the Term. Cardonex shall have no obligation with respect to a warranty claim unless notified of such claim within thirty (30) days of the first instance of either (i) or (ii) above, and such notice must be sent to Cardonex's address noted on the Sales Order. The warranties set forth in this 6.2 are made to and for the benefit of Customer and its Affiliates only. Such warranties shall only apply if the applicable Service has been utilized in accordance with the Documentation, this Agreement and applicable law.

6.3 DISCLAIMERS. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTION, SERVICES ARE PROVIDED "AS IS," AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

7. INDEMNIFICATION

7.1 Indemnification by Cardonex. Subject to the terms and conditions set forth in this Section 7, Cardonex shall, at its own expense, defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that any Service, as used in accordance with this Agreement, infringes or misappropriates such third party's Intellectual Property Rights (a "**Claim Against Customer**"), and shall hold Customer harmless from and against liability, damages, and costs and reasonable attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by Cardonex in writing of, a Claim Against Customer, provided Customer (a) promptly gives Cardonex written notice of the Claim Against Customer, (b) gives Cardonex sole control of the defense and settlement of the Claim Against Customer (except that Cardonex may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) gives Cardonex all reasonable assistance, at Cardonex's expense. If Cardonex receives information about an infringement or misappropriation claim related to a Service, Cardonex may in its discretion and at no cost to Customer (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching Cardonex's warranties under Section 6.2 above, (ii) obtain a license for Customer's continued use of that Service in accordance with this Agreement, or (iii) terminate the Agreement for that Service upon thirty (30) days' written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply if (I) the allegation does not state with specificity that the Services are the basis of the Claim Against Customer; (II) a Claim Against Customer arises from the use or combination of the Services or any part thereof with software, hardware, data, or processes not provided by Cardonex, if the Services or use thereof would not infringe without such combination; (III) a Claim Against Customer arises from Services under an Sales Order for which there is no charge; or (IV) a Claim against Customer arises from Customer's breach of this Agreement, the Documentation or applicable Sales Order.

7.2 Indemnification by Customer. To the extent permitted by applicable state law, Customer will defend Cardonex and its Affiliates against any claim, demand, suit or proceeding made or brought against Cardonex by a third party (a) alleging that the combination of a non-Cardonex application or configuration provided by Customer and used with the Services, infringes or misappropriates such third party's Intellectual Property Rights, or (b) arising from (i) Customer's use of the Services in an unlawful manner or in violation of the Agreement, the Documentation, or Sales Order, (ii) any Customer Data or Customer's use of Customer Data with the Services, or (iii) a non-Cardonex application provided by Customer (each a "**Claim Against Cardonex**"), and will indemnify Cardonex from any damages, attorney fees and costs finally awarded against Cardonex as a result of, or for any amounts paid by Cardonex under a settlement approved by Customer in writing of, a Claim Against Cardonex, provided Cardonex (a) promptly gives Customer written notice of the Claim Against Cardonex, (b) gives Customer sole control of the defense and settlement of the Claim Against Cardonex (except that Customer may not settle any Claim Against Cardonex unless it unconditionally releases Cardonex of all liability), and (c) gives Customer all reasonable assistance, at Customer's expense. The above defense and indemnification obligations do not apply if a Claim Against Cardonex arises from Cardonex's breach of this Agreement, the Documentation or applicable Sales Order.

7.3 Exclusive Remedy. This Section 7 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third-party claim described in this section.

8. LIMITATIONS OF LIABILITY

8.1 Limitation of Liability. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER SECTION 3 ABOVE.

8.2 Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

9. MISCELLANEOUS

9.1 Further Assurances. Upon a Party's reasonable request, the other Party shall, at the requesting Party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to this Agreement.

9.2 Public Announcements. Either Party may issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or, unless expressly excluded under this Agreement, otherwise use the other Party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association or sponsorship, in each case, upon the prior consent of the other Party.

9.3 Notices. Any notice, request, consent, claim, demand, waiver, or other communication under this Agreement have legal effect only if in writing and addressed to a Party as set forth on such Customer's Sales Order (or to such other address or such other person that such addressee Party may designate from time to time in accordance with this Section). Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by email, (with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the 3rd day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

9.4 Entire Agreement and Sales Order of Precedence. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. The Parties agree that this Agreement preempts all signed documents between the Parties, including any data privacy agreements signed after entering into the Sales Order. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Sales Order, (2) this Agreement, (3) the Documentation, and (4) any other documents entered into by the Parties. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.

9.5 Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement, in each case whether voluntarily, involuntarily, by contract, upon change of control, by merger, by operation of Law or otherwise, without Cardonex's prior written consent, which may be given or withheld in Cardonex's sole discretion; provided, however Customer may assign its rights hereunder to an Affiliate of Customer. No assignment, delegation, or transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section is void.

9.6 Compliance with Laws. Cardonex certifies that it is in compliance with the laws regarding the provision of goods and services to government entities as set forth in State-specific documents found at <https://www.cardonex.com/privacycenter>.

9.7 US Government Rights. Each of the Documentation and the software components that constitute the Services is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Services and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government Customers and their contractors.

9.8 Export Compliance. The Services and other Cardonex technology, and derivatives thereof, may be subject to export laws and regulations of the United States and other jurisdictions. Cardonex and Customer each represent that it is not on any U.S. government denied-party list. Customer will not permit any User to access or use any Service in a U.S.-embargoed country or region or in violation of any U.S. export law or regulation. Customer acknowledges that Cardonex may cease to provide the Service if Cardonex determines that Customer has violated any of the representations in this Section 9.8 and Customer agrees to notify Cardonex immediately in writing if Customer status under any of these representations changes.

9.9 Force Majeure. In no event will Cardonex be liable or responsible to Customer, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by any circumstances beyond Cardonex's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, tornado, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the Effective Date, national or regional emergency, epidemics or quarantines, strikes, labor stoppages or slowdowns or other industrial disturbances, malicious damage, interruption of utilities or internet access, passage of Law or any action taken by a governmental or public authority, including imposing an export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either Party may terminate this Agreement if a Force Majeure Event continues substantially uninterrupted for a period of 90 days or more. In the event of any failure or delay caused by a Force Majeure Event, Cardonex will give prompt written notice to Customer stating the period of time the occurrence is expected to continue and use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

9.10 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

9.11 Amendment and Modification; Waiver. Except for occasional updates made to this Agreement, no amendment to or modification of this Agreement is effective unless it is in writing and signed by each Party. No waiver by any Party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

9.12 Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

9.13 Governing Law; Submission to Jurisdiction. This Agreement is to be governed by Delaware law, without conflicts of law rules, and to the exclusive jurisdiction of the applicable courts of the capital city of whichever State Customer is domiciled in; provided that, if a Customer is not domiciled in the United States, then the exclusive jurisdiction of the applicable courts shall be in Dallas County, Texas.

9.14 Waiver of Jury Trial. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

9.15 Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 2.3 and Sections 4, 5, or Section 6 of this Agreement would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy. In the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including in a restraining order, an injunction, specific performance, and any other relief that may be available from any court of competent jurisdiction, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at Law, in equity, or otherwise.

9.16 Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either Party against the other Party arising out of or related to this Agreement, the prevailing Party is entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing Party.

10. DEFINITIONS

"Affiliate" means any corporation, firm, partnership, or other entity, including schools within a relevant school district, that controls, is controlled by, or is under common control with, that entity, where "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by trust, management agreement, contract or otherwise; provided, however, that beneficial ownership of 25% or more of the voting stock of an entity will be deemed to be control. Notwithstanding the foregoing, the term Affiliate shall not include any corporation, firm, partnership, or other entity that controls, is controlled by, or is under common control with, Cardonex, for purposes of making any representation herein.

"Agreement" means these Terms and Conditions of Service.

"Claim Against Customer" has the meaning set forth in Section 7.1.

"Claim Against Cardonex" has the meaning set forth in Section 7.2.

"Confidential Information" means any and all information (oral, written, visual or otherwise) disclosed by the disclosing party to the receiving party, including, but not limited to: (a) technical or non-technical data, formulas, patterns, compilations, ideas, concepts, plans, designs, improvements, policies, programs, processes, procedures,

methods, know-how, patents, process patents, copyrights and other intellectual property, and other information regarding the disclosing party's products, services and business processes; (b) information concerning its business, operations, affairs and financial condition; (c) trade secrets, computer systems, management information systems, customized computer software, source codes, object codes, digital media, optical media, flow charts, drawings, diagrams, bills of material, equipment, prototypes, models, other tangible or intangible manifestations, data bases, inventions, know-how, scientific or technical information, designs, processes, procedures, data, formulas, improvements, concepts, reports, and specifications; or (d) clients lists, client information, client profiles, client lists, and client prospects, in each case, of the disclosing party, whether or not any of the foregoing information is actually novel or unique, patentable, or copyrightable, and whether or not marked, designated or otherwise identified as "confidential." Without limiting the foregoing: the Services and Documentation are the Confidential Information of Cardonex, and the terms of this Agreement are the Confidential Information of each of the Parties. The term "Confidential Information" does not include information that: (i) was or becomes generally known by the public other than by the receiving party's or its Representatives' noncompliance with this Agreement; (ii) was or is received by the receiving party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (iii) was or is independently developed by the receiving party without reference to or use of any Confidential Information.

"Customer" means the school district, charter school, private school, or other legal entity for which a duly authorized individual is accepting this Agreement, and the Affiliates of the Customer or entity (for so long as they remain Affiliates) which have entered into a Sales Order.

"Customer Data" means electronic data and information submitted by or for Customer to the Services.

"Documentation" means Cardonex's user manuals, handbooks, videos, marketing collateral, and installation guides relating to the Services that Cardonex provides or makes available to Customer which describe the functionality, components, features, or requirements of the Services, including any aspect of the installation, configuration, integration, operation, or use of the Services.

"Cardonex" means Cardonex, Inc.

"Effective Date" means the date specified on the Sales Order that indicates the date upon which the parties agree to be bound by the terms and conditions of this Agreement.

"Fees" means all amounts to be paid by Customer as specific on a Sales Order.

"Force Majeure Event" has the meaning set forth in Section 9.8.

"Initial Term" has the meaning set forth in Section 3.7.

"Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights Laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"Law" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

"Malicious Code" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

"Party" or **"Parties"** means either Cardonex or a Customer or its Affiliates, respectively.

"Person" means an individual, school Customer, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

"Renewal Term" has the meaning set forth in Section 3.7.

“Representatives” means, with respect to a Party, that Party’s and its Affiliates’ employees, officers, managers, directors, consultants, agents, independent contractors, service providers, subcontractors, and legal advisors.

“Sales Order” means an ordering document specifying the Services to be provided hereunder that is entered into between Customer and Cardonex.

“Services” means the products and services that are ordered by Customer under a Sales Order and made available online by Cardonex.

“Subscription Fees” means the Fees specified on the Sales Order for use of the Services, including User based fees.

“Taxes” has the meaning set forth in Section 3.6.

“User” means an individual who is authorized by Customer to use a Service, for whom Customer has purchased a subscription, and to whom Customer (or, when applicable, Cardonex at Customer’s request) has supplied a user identification and password (for Services utilizing authentication). Users may include, for example, employees, faculty, students, consultants contractors and agents of Customer.

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