

## PLATFORM SERVICES AGREEMENT

Customer Details	
Customer: Warren County School District	Contact: Misty Weber
Address: 6820 Market Street, Russell, PA 16345	Phone: 814-723-0574 x 1315
	E-Mail: webermd@wcsdpa.org
Initial Service Term and Service Start Date and Additional Terms	
"Initial Service Term": 1 year, commencing on the Service Start Date	
"Service Start Date": <span style="background-color: yellow;">insert date</span> 7/15/23	
<b>Additional Terms:</b> <ol style="list-style-type: none"> <li>Customer may add and unlimited number of teacher and student accounts</li> </ol>	
<b>Professional Services:</b> <ol style="list-style-type: none"> <li>Customer shall receive professional development in the form of four (4) one-hour sessions hosted by Company and held at times mutually agreed upon with Company/</li> <li>Company shall provide technical support and assistance as defined in Exhibit A.</li> </ol>	
Payment Terms	
<b>Annual Fee:</b> \$7,000 for 39,000 hours of video access ("Video Limit") and 39,000 hours of collaborative browser ("Co-Browser Limit") access (collectively the "Streaming Limit") and unlimited whiteboard access.	
<b>Usage Limit and Overcharge:</b> If Customer exceeds the Streaming Limit (and any applicable Rollover Streaming Hours), Customer shall be allocated and billed for an additional allocation of 1,000 Streaming Hours ("Rollover Streaming Hours") which will be applied to the number of hours that Customer exceeds the Streaming Limit during the Service Term, provided that any Rollover Streaming Hours must be applied within 12 months of issuance. The price for each Rollover Streaming Hours unit (1,000 Streaming Hours) is \$200 and due when issued.	
<b>Invoicing Terms:</b> Company shall invoice Customer in advance of Service Start Date. Customer shall pay the amounts due in advance in accordance with Section 3 below.	
<b>Calculation of Hours:</b> A Streaming Hour is any 60 minute segment of time in which a single user accesses either video calling or collaborative browser features as determined by Company in its sole discretion based on time clocks on its servers. Any fraction of a Space Hour shall be charged to the nearest minute rounded up. For example, 89.3 minutes of access will be charged as 1.5 Space Hours.	

7/15/23

THIS PLATFORM SERVICES AGREEMENT ("Agreement") is made and entered into as of insert effective date (the "Effective Date") by and between Pencil Learning Technologies, Inc. ("Company"), and the customer set forth above ("Customer") (each, a "Party", and together, the "Parties"). This Agreement consists of this page and the terms and conditions set forth below and attached hereto. This Agreement may be executed in two counterparts, each of which will be deemed an original and which together will constitute one instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

"Company"

Pencil Learning Technologies, Inc.

By: \_\_\_\_\_

"Customer"

insert customer legal name Warren County School District

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## TERMS AND CONDITIONS

### 1. ACCESS AND SERVICE

#### 1.1 Access to Service: Registration.

(a) “Service” means the Pencil digital workspace and platform for visual and other collaboration to be provided to Customer as specified in the Order Form.

(b) Subject to Customer’s (i) compliance with this Agreement, including, but not limited to, the restrictions and obligations set forth in Sections 1.3 and 2 and (ii) payment of the amounts due hereunder in accordance with Section 3, Company shall use commercially reasonable efforts to provide Customer with non-exclusive access to the Service during the Service Term commencing on the Service Start Date and in accordance with the Order Form. Company will provide Customer with access information and account credentials for Authorized Users of the Service. All such information and credentials shall be deemed Company’s Confidential Information. **“Professional Services”** means any implementation, customization, support, or other services to be provided to Customer in connection with the Service as specified in the Order Form.

(c) Order Form. The parties may enter an order form (**“Order Form”**) that specifies the modules in the Service to be provided, the fees to be charged (or whether access is free for a limited period of time) whether access is provided on an enterprise level or limited to a number of Authorized Users that can access the Service, any other applicable limitation or restrictions on access and use, and any Professional Services to be provided.

(d) Authorized Users and Account Credentials. The Customer’s access and use of the Services (including the Platform and Mobile App) is limited to authorized employees and contractors of Customer (collectively, **“Authorized Users”**). Customer is responsible for designating Authorized Users and providing to Company contact information for each Authorized User so that Company can set up accounts for Authorized Users (**“Authorized User Accounts”**). All Authorized Users are subject to approval by Customer at its discretion. Prior to accessing and using the Service, each Authorized User shall register and create an account with Company and accept the Terms of Use to access the Service. Each Authorized User shall create a username and password and provide certain information about the Authorized User as prompted by the registration form, including Authorized User’s contact’s name and a valid email address. Customer shall be responsible for ensuring that all Authorized Users provide full, complete and accurate information when registering or creating an account, and update that information promptly if it should change. Each Authorized User will be assigned a unique login ID and password (**“User Credentials”**) to access and use the Service; User Credentials shall be treated as Confidential Information of Company and shall not be disclosed, transferred or shared with any other Authorized User or any third party without the prior written permission of Company. Customer is responsible for any acts or omissions of Authorized Users in connection with their use of the Services and any use of Authorized User

Accounts, whether authorized or not. Customer shall immediately notify Company if there is any unauthorized use of Customer’s account or any Authorized User Account.

1.2 License to Customer Content. Customer hereby grants Company a non-exclusive, royalty-free, fully paid-up, sublicensable (through one or more tiers of sublicensees), and transferable license to use, reproduce, create derivative works of, distribute, perform, and display Customer Content during the Service Term for the purpose of (i) providing the Service and (ii) developing, maintaining, supporting or improving the Service. Customer acknowledges and agrees that Company may collect technical information and data about Customer’s use of the Service. Customer shall not provide, disclose, or deliver any Customer Content to Company that Customer does not own or otherwise have a valid authorization or license to do so. **“Customer Content”** means any data, video, photographs, links, information, media, content, or materials provided, disclosed, posted, or delivered by Customer or any Authorized User via the Service.

#### 1.3 Restrictions.

(a) Customer may access and use the Service only for Customer’s internal business or educational purposes or if using the Service in an individual self-serve capacity for their personal, non-commercial use, subject to the Usage Limits and other restrictions in the Order Form. Customer shall not, and shall not permit any Customer employees or contractors to, share any account or access credentials for the Service with third parties, except for single sign-on versions of the Service for which Company does not provide account credentials (in such a case, Customer is responsible for assigning and managing account credentials to Authorized Users). Customer shall establish appropriate security measures, consistent with industry standards, to protect the Service from unauthorized use. Customer shall notify Company immediately of any actual or alleged unauthorized use of the Service.

(b) The Service may allow you to log in through an account (**“Social Media Accounts”**) with such third-party social media and other providers such as Google, Instagram, YouTube and Facebook (**“Third-Party Providers”**). You agree that we can collect and confirm your user credentials for such Third-Party Accounts to confirm your identity and right to access the Service. We may allow you to connect your Authorized User Account with your Social Media Account and to upload certain content to your Social Media Account; any such uploading must comply with the terms of services or terms of use of such Third-Party Provider. For example, if you connect Authorized User Account to YouTube, and allow uploading of space recordings to your personal YouTube channel, such use is subject to the [YouTube Terms of Service](#).

(c) Customer shall not (and not allow, permit, authorize, or assist any third party or Authorized User to): (i) modify, adapt, translate, create derivative works of, reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of, any part of the Service; (ii) use or integrate the Service, or any component thereof, with any

software, hardware, or system other than the Customer Systems (as defined below) without Company's express prior written agreement or except as provided by Company in its published APIs; (iii) sell, resell, license, sublicense, distribute, rent or lease any part of the Service or include any part of the Service in a service bureau or outsourcing offering, or encumber the Service with any lien or grant a security interest in the Service; (iv) publish or otherwise disclose to any third party any results of any benchmark or other performance tests of the Service; (v) remove, alter, or obscure any proprietary rights notices contained in or affixed to the Service; (vi) copy, frame, or mirror any part of the Service; (vii) access the Service for the purposes of monitoring its availability, performance, or functionality; (viii) access, or use any materials, content, technology, information, or data available via or forming a part of the Service in order to build a competitive product or service, or copy any features, functions, or graphics of the Service; (ix) attempt to disrupt, degrade, impair, or violate the integrity or security of the Service, including, without limitation, by executing any form of network monitoring; (x) use the Service to store or transmit any viruses, software routines, or other code designed to permit unauthorized access, to disable, erase or otherwise harm software, hardware or data, or to perform any other harmful actions; (xi) provide incomplete or inaccurate information when registering or creating an account; or (xii) take any action that imposes, or may impose, in Company's sole discretion, an unreasonable or disproportionately large load on Company's infrastructure.

(d)

1.4 **Customer Systems.** Customer is solely responsible for the operation and maintenance of the Customer Systems and for having and paying for all equipment, mobile devices, mobile or cellular services and internet access necessary to access and use the Service. Company disclaims all warranties, express or implied, and shall have no liabilities to Customer, arising from or related to the operation or maintenance of the Customer Systems or any incompatibilities, faults, defects, or damage attributable thereto. "**Customer Systems**" means any server systems, mobile devices, personal computers or other equipment owned, operated, or managed by Customer or any Authorized User on which the Service is accessed.

1.5 **Feedback.** Customer may have the opportunity to present to Company recommendations or feedback for new features, functionality, or other improvements to the Service ("**Feedback**"), which Company will consider, at its sole discretion, implementing in future updates to the Service. The Parties agree that all Feedback is and shall be given voluntarily. Feedback, even if designated as confidential by Customer, shall not, absent a separate written agreement, create any confidentiality obligation for Company. Customer will not provide Company with any Feedback that Customer is not authorized or permitted to provide to Company. Company shall own and have the worldwide right to use, disclose, reproduce, license or otherwise distribute, and exploit the Feedback provided to it as it sees fit, entirely without obligation (including without limitation any payment obligation ) or restriction of any kind on account of intellectual property rights or otherwise.

1.6 **Changes to Service.** Customer understands and agrees that Company may change or discontinue the Service or change or remove functionality of the Service at any time in Company's sole discretion. Company will use commercially reasonable efforts to notify Customer of any material change to or discontinuation of the Service. If Company discontinues the Service or changes or removes the functionality of the Service in a manner that materially and adversely affects Customer's use thereof, Company will, upon request by Customer, refund to Customer any fees pre-paid by Customer for Customer's access to the Service following the date of such discontinuance or material and adverse change.

1.7 **Ownership.** Except for the rights expressly granted in this Agreement, Company retains all right, title, and interest, including all intellectual property rights, in and to the Service and its documentation. No implied license or right is granted by Company by estoppel, reliance, or otherwise.

1.8 **Marketing.** Customer hereby authorizes Company to include on Company's websites and in Company's marketing, promotional, and advertising materials the trademarks, logos, service marks, etc. identified by Customer and other general Customer contact information.

1.9 **Data Privacy and Security.**

(a) **Compliance.** Each Party shall comply with all applicable laws, rules, regulations, and orders relating to the privacy and security of any Personal Data collected, processed or used in connection with the Services, including but not limited to, the Federal Educational Rights and Privacy Act ("**FERPA**"), the Children's Online Privacy Protection Act ("**COPPA**"), state education privacy laws, and the California Consumer Privacy Act and implementing regulations ("**CCPA**") and the European Union Data Protection Regulation ("**GDPR**") (collectively, "**Data Protection Laws**"). "**Personal Data**" means any information that relates to or associated with an identifiable and identified person, including without limitation, any information that is protected personal data, personally identifiable information or personal information under applicable Data Protection Laws.

(b) **Notices.** Customer is responsible for providing all notices and obtaining all necessary consents and permissions to upload any Personal Data to the Services, including consents from parents or legal guardians required to transfer such Personal Data to Company, including any verifiable parental consent required under COPPA.

(c) **Security.** Each Party shall use commercially reasonable technical and organizational measures designed to prevent unauthorized access, use, alteration or disclosure of Personal Data or Customer Content, but not less than the security and standard of protection required under applicable Data Protection Laws. Each Party shall be responsible for ensuring that any employees or contractors of said Party that have access to Personal Data are under a duty of confidentiality and have been trained on privacy and security obligations and requirements under this Agreement and Data Protection Laws.

(d) Process, Use and Disclosure. Company shall only process, use or disclose Customer Content, including Personal Data for the purposes of fulfilling its obligations and providing the Service under this Agreement, for creating Resultant Data and as otherwise permitted by applicable Data Protection Laws or as required by law, legal process or an order of court. With respect Personal Data subject to the CCPA, Company shall not retain, use, or disclose Personal Data obtained in the course of providing the Service except (i) to process or maintain Personal Data on behalf of Customer and in compliance with this Agreement; (ii) to retain and employ another service provider as a subcontractor, where the subcontractor meets the requirements for a service provider under the CCPA; (iii) for internal use by Company to build or improve the quality of its services, provided that the use does not include building or modifying household or consumer profiles to use in providing services to another business, or correcting or augmenting data acquired from another source; (iv) to detect data security incidents, or protect against fraudulent or illegal activity; or (v) for the purposes enumerated in California Civil Code section 1798.145, subsections subdivision (a)(1) through (a)(4). The Company may share and disclose Personal Data to subprocessors retained by Company that agree to the limitations and restrictions in this Agreement, including those in this Section 1.9. The Parties agree that the transfer and disclosure of Personal Data to Company is not a sale as such term is defined in the CCPA and the Company is acting as a service provider to Customer under the CCPA. Company certifies that it understands and will comply with its obligations under this Section 1.9(d) with respect to Personal Data subject to the CCPA.

(e) Without Company's prior written consent, Customer shall not provide, disclose, or transfer to Company, or process via, or submit to, the Service any Customer Content that includes any: (i) "personal health information," as defined under and subject to HIPPA, (ii) government issued identification numbers, including Social Security numbers, driver's license numbers and other state or national issued identification numbers, (iii) financial account information, including bank account numbers, (iv) payment card data, including credit card or debit card numbers, (v) biometric information, such as fingerprints or voiceprints, or (vi) "sensitive" or special categories of Personal Data under Data Protection Laws, including racial or ethnic origin, political opinions, religious beliefs, trade union membership, physical or mental health or condition, sexual life, or the commission or alleged commission any crime or offense ("**Restricted Personal Data**").

(f) Acceptable Use. Customer will not, and will not permit its Authorized Users to:

(i) Post, upload, forward, or otherwise transmit any file or software code that contains, facilitates, or launches viruses, worms, trojan horses or any other contaminating or destructive features, or that otherwise interfere with the proper working of the Service; or

(ii) Attempt to access any other Company systems that are not part of the Service.

(iii) Use the Service to upload, post, process, distribute, link to, publish, reproduce, or transmit any of the following, including but not limited to: (a) illegal, fraudulent, libelous, defamatory, obscene, pornographic, profane, threatening, abusive, hateful, harassing, offensive, inappropriate or objectionable information or communications of any kind, including without limitation conduct that would encourage or constitute an attack or "flaming" others, or criminal or civil liability under any local, state, federal or foreign law; (b) Customer Content or data that would impersonate someone else or falsely represent an individual's identity or qualifications, or that constitutes a breach of any individual's privacy, including posting images about children or any third party without their consent (or a parent's consent in the case of a minor); or (c) any Customer Content or other information, software or content Customer does not have the legal right to process or transmit.

(g) To the extent required by Data Protection Laws, Customer Party will have the primary responsibility to provide data subjects the ability to obtain access to, a copy of, correct, modify, request information regarding, object to processing and request deletion of their Personal Data (collectively, "**Data Subject Requests**") ts. Each Party shall promptly notify the other Party of any Data Subject Requests it receives that requires action by the other Party and to the extent feasible, and not prohibited by Data Protection Laws, the Parties will coordinate responses to Data Subject Requests applicable to both Parties. Each Party shall comply with all Data Subject Requests to the extent required by Data Protections Laws.

(h) If a Party becomes aware of any unauthorized access, use or disclosure of Personal Data processed or provided under this Agreement or any security breach or other circumstances that would require notification to an individual or a governmental authority (collectively, a ("**Security Incident**"), it shall notify the other Party without undue delay of the Security Incident. The Party responsible for the Security Incident shall at its own cost promptly investigate and remediate the Security Incident and provide information reasonably requested by the other Party to enable that Party to meet any reporting or notification obligations under Data Protection Laws. Each Party shall be responsible for its own reporting and notification obligations under Data Protection Laws, provided that to the extent feasible and permitted by applicable law, it will coordinate such notifications with the other Party.



## 2. CONFIDENTIALITY

2.1 Confidential Information. The term “**Confidential Information**” means any information disclosed by one Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”), whether before or after the Effective Date, that: (i) is in written, graphic, machine readable or other tangible form and is marked “Confidential”, “Proprietary” or in some other manner to indicate its confidential nature; (ii) should be reasonably understood by Receiving Party to be the confidential or proprietary information of Disclosing Party; or (iii) that is oral information disclosed by Disclosing Party to Receiving Party, provided that such information is designated as confidential at the time of disclosure and is reduced to writing by Disclosing Party within a reasonable time after its oral disclosure, and such writing is marked in a manner to indicate its confidential nature and delivered to Receiving Party. The Service and its documentation shall be Company’s Confidential Information.

2.2 Confidentiality. Receiving Party shall treat as confidential all Confidential Information of Disclosing Party, shall not use such Confidential Information except to exercise its rights and perform its obligations under this Agreement herein, and shall not disclose such Confidential Information to any third party. Without limiting the foregoing, Receiving Party shall use at least the same degree of care it uses to prevent the disclosure of its own confidential information of like importance, to prevent the disclosure of Confidential Information of Disclosing Party. Receiving Party shall promptly notify Disclosing Party of any actual or suspected misuse or unauthorized disclosure of Disclosing Party’s Confidential Information.

2.3 Exceptions. Confidential Information excludes information that Receiving Party can show: (i) was in the public domain at the time it was disclosed or has become in the public domain through no act or omission of Receiving Party; (ii) was known to Receiving Party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (iii) was independently developed by Receiving Party without any use of Disclosing Party’s Confidential Information; or (iv) becomes known to Receiving Party, without restriction, from a source other than Disclosing Party without breach of an obligation to keep such information in confidence.

2.4 Compelled Disclosure. If the Confidential Information of Disclosing Party must be disclosed by Receiving Party pursuant to the order or requirement of a court, administrative agency, or other governmental body, Receiving Party shall: (i) provide prompt notice thereof to Disclosing Party; (ii) use its commercially reasonable efforts to cooperate with Disclosing Party to obtain a protective order or otherwise prevent public disclosure of such information; and (iii) limit the disclosure to the particular Confidential Information (or portion thereof) required to be disclosed.

2.5 Confidentiality of Agreement. Receiving Party agrees that the terms and conditions, but not the existence, of this Agreement shall be treated as Disclosing Party’s Confidential Information and that no reference to the terms and conditions of this Agreement or to activities pertaining thereto can be made in any form without the prior written consent of Disclosing Party; provided, however, that

Receiving Party may disclose the terms and conditions of this Agreement: (i) as required by any court or other governmental body; (ii) as otherwise required by law; (iii) to legal counsel of Receiving Party; (iv) in connection with the requirements of an initial public offering or securities filing; (v) in confidence, to accountants, banks, and financing sources and their advisors; (vi) in confidence, in connection with the enforcement of this Agreement or rights under this Agreement; or (vii) in confidence, in connection with a merger or acquisition or proposed merger or acquisition, or the like.

2.6 Return of Confidential Information. Upon expiration or termination of this Agreement for any reason, Receiving Party shall deliver to Disclosing Party all of Disclosing Party’s Confidential Information that Receiving Party may have in its possession or control or, at Disclosing Party’s option, shall destroy all such Confidential Information and certify such destruction in a writing signed by an authorized officer of Receiving Party.

2.7 Resultant Data. Notwithstanding anything to the contrary in this Agreement, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Service and related systems and technologies (including, without limitation, information developed or derived through artificial intelligence and machine learning from use of the Services and Customer Content and data derived therefrom) (collectively, “**Resultant Data**”). Company shall own all Resultant Data and shall be free (during and after the term of this Agreement) to (i) use such Resultant Data to improve and enhance the Service and for other development, diagnostic and corrective purposes in connection with the Service and other Company offerings, and (ii) disclose such Resultant Data solely in aggregated or other de-identified form.

## 3. PAYMENT

3.1 Payment. Customer shall pay Company the applicable fees in US Dollars set forth on the cover page attached hereto in advance of the applicable Service Term. For example, in a monthly plan, a payment for May is due by April 30th. Except as expressly set forth in Section 1.6, all payments made hereunder are non-refundable. Customer shall be responsible for all taxes associated with the Service except for taxes based on Company’s net income. If any sum payable under this Agreement is not paid when due then, without prejudice to Company’s other rights under this Agreement, that sum will bear interest from the due date until the date when payment is received by Company at the rate of 1.5% per month, or if lower, the maximum rate allowed by applicable law and Customer shall reimburse Company for all reasonable expenses of collection. Upon expiration of the Initial Service Term or any Renewal Service Term, Company may modify the applicable fees charged to Customer hereunder, provided that Company shall provide Customer with written notice of any such modified fees.

3.2 Audit. In order to confirm compliance with this Agreement, Company may, at its expense and not more frequently than annually, audit Customer’s records relating to Customer’s use of the Service, and Customer agrees to reasonably cooperate with respect to any such audit. Any such audit shall be conducted with at least 30

days' notice, during regular business hours online or at Customer's facilities and shall not unreasonably interfere with Customer's business. If the audit indicates a discrepancy in the fees payable to Company greater than 5% of the amount paid by Customer for the period audited, Customer shall pay Company's reasonable expenses of the audit in addition to any additional fees due.

#### **4. REPRESENTATIONS AND WARRANTIES; DISCLAIMER**

4.1 Organization; Authority. Each Party represents and warrants to the other Party that such Party has all necessary corporate power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement, and to consummate the transactions contemplated hereby.

4.2 Customer Warranties. Customer hereby represents and warrants to Company that: (i) Company's use, reproduction, modification, distribution, performance, and display of the Customer Content will not infringe, violate, or misappropriate any intellectual property rights of a third party; (ii) Customer exclusively owns or has a valid and written license agreement to all Customer Content provided to Company via the Service or otherwise and has all rights necessary to grant to Company the rights and licenses contained in this Agreement; (iii) Customer's providing, disclosing, and delivering of Customer Content will not violate any applicable laws, regulations, contractual commitments or privacy commitments; and (iv) the Customer Content does not include any viruses, trap doors, time bombs, Trojan horses or other malicious code.

4.3 Disclaimer. THE SERVICE IS PROVIDED BY COMPANY "AS IS," AND NEITHER COMPANY NOR ITS LICENSORS MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, BY STATUTE, USAGE, TRADE CUSTOM, OR OTHERWISE, AND COMPANY HEREBY DISCLAIMS ANY AND ALL WARRANTIES, REPRESENTATIONS, OR CONDITIONS, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE. COMPANY DOES NOT GUARANTEE OR WARRANT THAT THE SERVICE WILL BE FREE OF DEFECTS, RUN ERROR-FREE OR UNINTERRUPTED, MEET CUSTOMER'S REQUIREMENTS, OR BE SECURE.

#### **5. INDEMNIFICATION**

5.1 Customer Indemnity. Customer, at its expense, shall defend, or at Customer's option, settle, any third-party claim, demand, suit, action, or proceeding made or brought against Company alleging (i) facts, that if true, would constitute a breach of Customer's representations, warranties, and covenants under this Agreement or (ii) Company's using, reproducing, modifying, distributing, performing, or displaying of the Customer Content infringes, violates, or misappropriates any intellectual property right of any third party (each a "**Claim Against Company**"), and shall indemnify and hold harmless Company from and against any and all costs, damages, liabilities, losses, judgments, and expenses (including reasonable attorneys' fees) set forth in

any final judgment or settlement agreement entered into in connection with a Claim Against Company. Company shall: (i) notify Customer promptly in writing of a Claim Against Company, (ii) provide reasonable assistance in connection with the defense and settlement thereof, and (iii) permit Customer to control the defense and settlement thereof. Customer shall not settle any Claim Against Company without Company's prior written consent, not to be unreasonably withheld. Company may, at its expense, participate in the defense of any Claim Against Company with counsel of its choice.

5.2 Company Indemnity. Company, at its expense, shall defend, or at Company's option, settle, any third-party claim, demand, suit, action, or proceeding made or brought against Customer alleging (i) facts, that if true, would constitute a breach of Company's representations, warranties, and covenants under this Agreement or (ii) Customer's use of the Service in accordance with this Agreement, violates, or misappropriates any intellectual property right (each a "**Claim Against Customer**"), and shall indemnify and hold harmless Customer from and against any and all costs, damages, liabilities, losses, judgments, and expenses (including reasonable attorneys' fees) set forth in any final judgment or settlement agreement entered into in connection with a Claim Against Customer. Customer shall: (i) notify Company promptly in writing of a Claim Against Customer, (ii) provide reasonable assistance in connection with the defense and settlement thereof, and (iii) permit Company to control the defense and settlement thereof. Company shall not settle any Claim Against Customer without Company's prior written consent, not to be unreasonably withheld. Customer may, at its expense, participate in the defense of any Claim Against Customer with counsel of its choice. Company shall not have any indemnification obligation pursuant to this Agreement to the extent a Claim against Customer is based on: use of any version of the Service other than the then-current, unaltered version, if infringement would have been avoided by use of a current, unaltered version thereof that has been made available to Customer; use of the Service in violation of this Agreement; modifications to the Service made by Customer; where Customer continues to use the Service after being notified of allegedly infringing activity or being informed of modifications that would have avoided the alleged infringement; or a third party service or Customer Data.

#### **6. LIMITATION OF LIABILITY**

6.1 EXCEPT FOR CUSTOMER'S INDEMNIFICATION OBLIGATIONS, A PARTY'S BREACH OF ITS OBLIGATIONS UNDER SECTION 2, OR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL A PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OF USE, LOSS OF REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. COMPANY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT

SHALL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER TO COMPANY HEREUNDER IN THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO A CLAIM HEREUNDER. THE DISCLAIMERS AND LIMITATIONS IN SECTION 4 AND THIS SECTION 6 WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.

## **7. TERM AND TERMINATION**

7.1 **Term.** The term of this Agreement shall commence on the Effective Date and continue until the expiration of the Initial Service Term or as earlier terminated in connection with this Section 7. Following expiration of the Initial Service Term or any Renewal Service Term, the term of this Agreement will automatically renew for an equivalent period (each, a “**Renewal Service Term**” and together with the Initial Service Term, the “**Service Term**”) unless a Party provides written notice of non-renewal not less than 30 days prior to the expiration of the Initial Service Term or then-current Renewal Service Term.

7.2 **Termination for Breach.** A Party may terminate this Agreement upon written notice to the other Party in the event that the other Party materially breaches this Agreement and fails to cure such breach within 30 days of receipt of notice of such breach from such Party.

7.3 **Suspension and Termination.** Notwithstanding anything to the contrary in this Agreement, if Customer violates the restrictions set forth in Section 1.3, Section 2, or fails to pay Company amounts due hereunder by applicable due date, Company may immediately upon written notice to Customer, suspend or terminate Customer’s access to the Service.

7.4 **Termination Fee.** If Customer terminates this Agreement prior to the end of the Service Term, except for a termination for breach under Section 7.2, then Customer shall pay to Company all fees for the remainder of the Service Term as an early termination fee, due within ten (10) days of termination.

7.5 **Effect of Termination; Survival.** Upon expiration or termination of this Agreement, all rights granted to Customer hereunder shall terminate and Customer shall not, and shall not attempt to, access or use the Service. Any claim for payments due and the provisions of Sections 1.2 (License to Customer Content) through 1.9 (Data Privacy and Security), and 2 (Confidentiality) through 8 (General Provisions) shall survive any expiration or termination of this Agreement.

## **8. GENERAL PROVISIONS**

8.1 **Force Majeure.** Except for Customer’s payment obligations, notwithstanding anything else in this Agreement, no default, delay, or failure to perform on the part of either Party will be considered a breach of this Agreement if such default, delay, or failure to perform is shown to be due to causes beyond reasonable control of the Party charged with a default, including, but not limited to, causes such as strikes, lockouts or other labor disputes, riots, civil disturbances, actions or inactions of governmental authorities or suppliers,

epidemics, war, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy, nuclear disasters, or default of a common carrier.

8.2 **Governing Law and Jurisdiction.** This Agreement will be governed by and construed and enforced in accordance with the laws of the State of California, excluding (i) the application of its conflicts of law rules; (ii) the United Nations Convention on Contracts for the International Sale of Goods; (iii) the 1974 Convention on the Limitation Period in the International Sale of Goods (the “1974 Convention”); (iv) the Protocol amending the 1974 Convention, done at Vienna April 11, 1980; and (v) the Uniform Computer Information Transactions Act (and all successor or amended acts that are or may be adopted in any jurisdiction). Each Party hereby irrevocably submits to the jurisdiction of the state and federal courts in the State of California with regard to any dispute arising out of or relating to this Agreement.

8.3 **Injunctive Relief.** Customer acknowledges and agrees that any breach of its obligations with respect to Confidential Information and intellectual property rights may cause substantial harm to Company, which could not be remedied by payment of damages alone. Accordingly, Customer hereby agrees that Company will be entitled to seek preliminary and permanent injunctive relief in any jurisdiction where damage may occur without a requirement to post a bond, in addition to all other remedies available to it for any such breach.

8.4 **Independent Contractors.** The relationship of the Parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement will be construed to (i) give either Party the power to direct and control the day-to-day activities of the other; (ii) constitute the Parties as partners, joint venturers, co-owners, or otherwise as participants in a joint or common undertaking; or (iii) allow either Party to create or assume any obligation on behalf of the other Party for any purpose whatsoever.

8.5 **Binding Effect.** This Agreement will be binding upon and inure to the benefit of the Parties hereto, their successors, and permitted assigns.

8.6 **Amendments.** No modification of, or amendment to, this Agreement will be effective unless in writing signed by an authorized representative of each Party.

8.7 **Partial Invalidity.** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions will, nevertheless, remain in full force and effect, and such provision will be reformed in a manner to effectuate the original intent of the Parties as closely as possible and remain enforceable. If such reformation is not possible in a manner that is enforceable, then such term will be severed from the remaining terms, and the remaining terms will remain in effect.

8.8 **No Waiver.** No waiver of any term or condition of this Agreement will be valid or binding on either Party unless the same will have been mutually assented to in writing by an officer of both Parties. The failure of either Party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other Party of



any of the provisions of this Agreement, will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of either Party to enforce each and every such provision thereafter.

8.9 Construction. The titles and section headings used in this Agreement are for ease of reference only and shall not be used in the interpretation or construction of this Agreement. No rule of construction resolving any ambiguity in favor of the non-drafting Party shall be applied hereto. The word “including”, when used herein, is illustrative rather than exclusive and means “including, without limitation.”

8.10 Entire Agreement. This Agreement sets forth the entire agreement and understanding of the Parties relating to the subject matter herein and supersedes all prior and contemporaneous communications, representations, discussions, and agreements between the Parties with respect to such subject matter.

8.11 Assignment. Customer shall not assign or delegate this Agreement or any of its licenses, rights, or duties under this Agreement (whether by merger, sale of assets, sale of equity, or otherwise) without the prior written consent of Company, and any purported assignment shall be void and of no force or effect. Company may freely assign or delegate this Agreement or any of its licenses, rights, or duties hereunder in Company’s sole discretion.

8.12 Notices. Any notice or other communication required or permitted to be delivered hereunder must be in writing and sent by reasonable means to the address of each Party set forth above. Such notice will be deemed to have been given when delivered, or, if delivery is not accomplished as a result of some action or inaction by the recipient, when tendered.

## EXHIBIT A: Customer Support

### 1. Contact Information.

1.1 Company, as well as Company's employees, subcontractors and customers shall have access to publicly available support resources and documentation including but not limited to the Pencil Spaces Youtube Channel, Knowledge Base and 24/7 chat support.

### 1.2 Notification of Error

Each party's contact information for providing and receiving technical support pursuant to the Support Framework is below. Only Notifications of Error submitted by Customer's listed contracts to Company's listed contacts shall be deemed valid.

Company Email Address:

- [support@pencilspaces.com](mailto:support@pencilspaces.com)

Customer Email Address:

- [CUSTOMER EMAIL] webermd@wcsdpa.org

### 2. Maintenance.

2.1. System Maintenance Notice. Scheduled System maintenance in any given calendar month will typically be performed on Fridays or Wednesdays from 12:01 am to 2:00 am (MT). Company will provide Customer with notice of any alternative scheduled System maintenance.

2.2. Emergency System Maintenance. Company may conduct unscheduled emergency System maintenance or updates to the System on an as-needed basis; provided that Company must notify Customer of the emergency System maintenance as soon as reasonably practicable in the circumstances.

3. Response Times, Workaround Requirements and Resolution Requirements. If Customer notifies Company of an Error in accordance with Section 2, Company shall respond, provide a Workaround, and resolve such Error within the applicable timeframes indicated in the chart below, starting from the time Company receives written notification of the Error from Customer. Company shall work to resolve Errors in a timely fashion to the best of its ability.

Severity level	Response Time	Workaround Time (as possible)
1	Within 24 hours	Within 36 hours
2	Within 48 hours	Within 5 business days
3	Within 5 business days	Within 10 business days
4	Within 10 business days	As determined by Company

Where an Error results from one or more Third-Party Errors, Integration Issues, or Force Majeure Events, Company will, if applicable and practical based on the issue, contact the responsible party to begin working toward resolution of the Error and use

commercially reasonable efforts to achieve resolution of the Error. Customer will provide reasonable assistance to help Company achieve resolution of such Error. In such instances, the Workaround Times above will act as guidelines. Severity Levels are determined by Company in good faith based on the facts and circumstances.

## 10. Definitions.

10.1. “Force Majeure Event” means any failure or delay caused by or which is the result of causes beyond the reasonable control of a party that could not have been avoided or corrected through the exercise of reasonable diligence, including, but not limited to, acts of God, fire, flood, hurricane or other natural catastrophe, terrorist actions, epidemics or pandemics, any failure of telecommunications equipment, network failures or delays, or any laws, regulations, orders, directions, or actions of governmental authorities.

10.2. “Integration Issue” means an issue not caused by Company that prevents Company from programmatically communicating or integrating with a third party (e.g., a bank or Biller) or that otherwise blocks Company from offering the Company Services.

10.3. “System Maintenance” means time in minutes that the Company Services are not actually accessible to Customer users due to: (A) scheduled maintenance for maintenance and upgrading of the software or hardware used by Company to provide the Company Services; or (B) unscheduled emergency maintenance, including due to a Force Majeure Event or Third-Party Error.

10.4. “Third-Party Error” means an Error caused by a subcontractor or by third-party software or hardware, including open source software.

10.5. “Workaround” means a method for overcoming an Error in the Company Services that allows for continued [insert] without significant delay.

10.6. “Severity Level 1” is an emergency condition which makes the use or continued use of the Company Services impossible or significantly or materially impaired such that End Users cannot access the Company Services via the Customer UX.

10.7. “Severity Level 2” is, other than any Severity Level 1 Error, any condition which makes the use or continued use of the Company Services difficult and which Company or Customer cannot reasonably circumvent or avoid on a temporary basis without the expenditure of significant time, expense or effort.

10.8. “Severity Level 3” is, other than any Severity Level 1 or Severity Level 2 Error, any limited problem condition which is not critical and which Company or Customer can reasonably circumvent or avoid on a temporary basis without the expenditure of significant time, expense or effort.

10.9. “Severity Level 4” is, other than any Severity Level 1, Severity Level 2 or Severity Level 3 Error, a minor problem condition or documentation error which Company or Customer can easily circumvent or avoid. Additional requests for new feature suggestions are classified as Severity Level 4.