

## STANDARD TERMS AND CONDITIONS HARDWARE, SOFTWARE AND SERVICES

**1. ORDERS.** These Standard Terms, together with any Schedules (collectively the "Agreement") form a legal agreement between Scantron Corporation ("Scantron") and the legal entity that orders Products and/or Services from a proposal, order form or other sales documentation ("Order") incorporating this Agreement ("Customer"). Products and Services may be set forth in a Purchase Order, but Purchase Order terms are not binding unless Scantron expressly assents to such terms in writing. This Agreement forms the complete contract for this transaction between Scantron and Customer.

**2. DEFINITIONS.**

"Custom Productions" means the reproduction by Scantron of materials provided by Customer, or the creation or printing by Scantron of Forms or other materials pursuant to Customer's directions or specifications.

"Customer Content" means all materials posted by Customer within Software or provided to Scantron for Customer's use with a Product, including but not limited to Customer's item bank of testing materials and item banks or other materials owned by third parties.

"Documentation" means any user manuals and/or other materials accompanying the applicable Product or Service that describe product features or functionality.

"Product" means any hardware, software, forms printed by Scantron (the "Forms"), third party products or other items provided by Scantron and/or its affiliates and subcontractors as described in the applicable Schedule or Documentation.

"Purchase Order" means any Customer-issued order form or other communication authorizing or memorializing the purchase of Products and/or Services.

"Schedule" means any Scantron Orders, attachments, statements of work, click-through license agreements, specification documents or other documents, either signed by the parties or incorporated by reference in another Schedule, that provide the terms applicable to specific Products or Services. In the event of an inconsistency, the specific terms of a Schedule govern over these Standard Terms.

"Service" means installation, training, consulting, implementation, support, hosting or other services provided by Scantron and/or its affiliates and subcontractors as described in the applicable Schedule or Documentation.

**3. TITLE; RISK OF LOSS; DELIVERY.** Scantron will use reasonable efforts to deliver the Products and Services to Customer on or before specified delivery dates. Delivery of Software occurs when it is shipped, made available for download, or otherwise provided to Customer. For Software hosted by Scantron, delivery occurs when the Software is first made available to Customer for use. If hardware Products are purchased by Customer under this Agreement, Scantron transfers title to Customer upon shipment of the hardware Products. However, Scantron retains a purchase money security interest in the hardware Products until paid in full by Customer. Customer agrees to execute appropriate documents to permit Scantron to perfect its purchase money security interest. Scantron bears the risk of loss for Products up to and including their date of shipment. Thereafter, Customer assumes all risk of loss. All Products will be shipped FOB Origin. If Customer is to lease any hardware Products, a separate leasing agreement must be executed. Customer will promptly inspect and accept or reject the Products and/or Services upon delivery. Absent Customer's earlier written acceptance, Products and Services are accepted 30 days following delivery.

**4. SOFTWARE LICENSE GRANT.** To the extent that software Products are acquired by Customer under this Agreement (the "Software"), Scantron grants a non-exclusive, non-transferable license to the Software (the "License Grant"). Documentation is included in and with the license for the Software. Each License Grant is only for the United States and Canada and provides Customer with the right to use the Software object code (not source code) for Customer's internal purposes only, to perform services in the normal course of Customer's business, and consistent with the applicable Documentation. A Schedule, including any click-through license agreement that accompanies the Software, may define additional or alternative terms and conditions. If you do not agree to any click-through license agreement that is not made available for review before placing your order, you must notify Scantron within 15 days of delivery of your rejection of such terms, and must promptly return the Product and accompanying items for a refund of the applicable fee. Scantron or its designated agents shall have the right to enter and inspect Customer's records and/or its computer systems for the purpose of auditing Customer's use of the Software. Access will be permitted with reasonable advance notice during business hours.

**5. SERVICES.** To the extent any Services are purchased by Customer under this Agreement, all technical information, custom software, know-how and other intellectual property supplied by Scantron to Customer in the course of performing any Services (the "Work Product") is licensed to Customer in accordance with the provisions of this Agreement. Upon delivery, Work Product shall be "Software" under the terms of the Agreement. Scantron may charge a reinstatement fee to support or service Products not continuously under warranty and then service, support and/or maintenance (as applicable). CUSTOMER ACKNOWLEDGES THAT AS PART OF ANY INSTALLATION SERVICES, SCANTRON MAY "ACCEPT" CLICK-THROUGH AGREEMENTS FOR THE PRODUCTS AND THIRD PARTY PRODUCTS ON BEHALF OF CUSTOMER. Hardcopies of such click-through agreements are available upon request.

**6. COMPENSATION.** In addition to applicable Product and Service fees, Customer will reimburse Scantron's out-of-pocket costs including shipping and reasonable travel and living expenses. Invoices shall be paid within 30 days of receipt without deduction, withholding or offset. Scantron may suspend any License Grant and/or Services provided under this Agreement until payments are brought current. Amounts not paid when due are subject to finance charges of 1.5% per month or the highest rate permitted by law (whichever is lower). Customer will pay or reimburse Scantron for all duties, taxes (other than taxes on Scantron's income), fees or other similar amounts assessed or imposed by governmental authorities. Scantron may at any time change fees for Products, Services or other items respecting future orders. Fees for Services not scheduled within 9 months of invoice date will be forfeited unless extended in writing by Scantron.

**7. TERM; TERMINATION.** This Agreement remains in effect until Services are complete and all License Grants extended under this Agreement, if any, cease. Products or Services provided pursuant to a Schedule that defines a term may not be terminated during such term except as provided in such Schedule. Notwithstanding the foregoing, if a party fails to cure a default within 30 days after written notice explaining the default, the non-defaulting party may immediately terminate any License Grants, Services or other items to which the default relates. Termination of this Agreement terminates further performance by the non-terminating party. If the termination is based upon a default with respect to Software, Customer must immediately uninstall and stop using all copies of such Software, return to Scantron or destroy all copies of any Software and Documentation in Customer's possession or control within 20 days of termination, and certify the return or destruction of all Software and Documentation if requested by Scantron. Early termination does not relieve Customer of any payment obligations which arise prior to the effective date of such termination. Sections 6, 8, 9F, 10, 12B, 12D, together with any terms of the Agreement that can be reasonably interpreted to survive termination, shall survive.

**8. PROPRIETARY RIGHTS; CONFIDENTIALITY/PRIVACY/SECURITY.**

**A. PROPRIETARY RIGHTS.** The Products and Services (including any Work Product) are protected

by copyright, trade secret and other proprietary rights of Scantron and its suppliers. Software and Work Product are licensed, not sold, to Customer. Scantron reserves all rights in Products, Services and Documentation not expressly granted to Customer.

**B. LIMITATIONS ON USE.** Customer will not: reproduce Products or Services; sell or sublicense Products or Services; permit the use of Software, Services or Documentation by others or otherwise operate Software for third parties (e.g., as a service bureau or data processing service); modify or translate Software; disassemble, reverse engineer or decompile Software or otherwise attempt to discover trade secrets related to Software; use the Software in excess of the licenses granted and license fees paid.

**C. CONFIDENTIALITY.** Both parties may acquire certain information that is confidential, proprietary or trade secret information of the other party or a third party ("Confidential Information") in the performance of this Agreement. The party receiving Confidential Information will: use such information solely for performance under this Agreement; not disclose such information to any third party (excluding agents and, in the case of Scantron, its affiliated companies); and otherwise protect such information from any unauthorized use or disclosure. The receiving party shall bind its employees, agents and affiliates having access to Confidential Information to confidentiality obligations consistent with this provision. Neither party will be obligated to keep confidential any information that is: publicly available through no fault of such party; received by such party from a third party not under a confidentiality obligation regarding the information; independently developed by such party without referring to the Confidential Information; or required by applicable law to be disclosed by such party. Scantron may reflect the Customer's name in a customer list and the respective products involved.

**D. CUSTOMER CONTENT AND CUSTOM PRODUCTIONS.** No ownership interest in Customer Content or Custom Productions shall be transferred to Scantron, and Scantron will not use Customer Content or Custom Productions other than as contemplated by the Agreement. Customer warrants that any Customer Content and Custom Productions are either owned by Customer, or Customer has all rights required for Scantron to use or reproduce such Customer Content and/or Custom Productions in the manner intended pursuant to the Agreement. Customer will indemnify, defend and hold Scantron harmless from any claims, causes of action, costs (including, without limitation, reasonable attorneys' fees) and any other liabilities of any nature arising from or related to claims that Custom Productions and/or Customer Content violate the rights of any third party.

**E. PRIVACY/SECURITY.** Scantron will maintain and monitor policies and procedures to meet the data privacy and security objectives of the Family Educational Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Gramm-Leach-Bliley Act ("GLBA"), the Fair and Accurate Credit Transactions Act ("FACTA"), the Fair Credit Reporting Act ("FCRA"), and other related laws and regulations (collectively, the "Privacy Laws"), by addressing administrative, technical and physical safeguards designed to (i) ensure the security and confidentiality of nonpublic personal information relating to students, patients or other consumers; (ii) protect against any anticipated threats or hazards to the security or integrity of such information; and (iii) protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to Customer. Unless otherwise specifically agreed in a Schedule, Customer shall be solely responsible for responding to third party requests to disclose or change any such information. With reasonable advance notice, Scantron will permit a review during regular business hours to assess whether appropriate controls are in place, or will provide documentation to verify compliance with its obligations under this paragraph. If Customer is a "covered entity" under HIPAA, Scantron will execute a business associate agreement ("BAA") upon the reasonable request of Customer and to the extent required by law. Upon execution by both parties, such BAA shall be incorporated herein by this reference. To the extent of an inconsistency the terms of such BAA shall govern.

**9. WARRANTIES.**

**A. FORMS.** Upon delivery, Scantron warrants the Forms against material defects in materials and workmanship when used normally in accordance with the applicable Documentation. If a problem occurs with the Forms caused by an error in Scantron's manufacturing process, Scantron will replace any defective Forms. Scantron reserves the right to examine all Forms claimed to be defective. If Scantron determines the Forms to be defective, Scantron will take the necessary steps to correct the problem by reprinting or using alternative data capture methods.

**B. HARDWARE PRODUCTS.** For a period of 30 days (or such other period as agreed in a Schedule, hereinafter the "Hardware Warranty Period") following the delivery, Scantron warrants hardware Products against material defects in materials and workmanship when used normally in accordance with the Documentation. A Schedule for hardware Products may include one of the following specific warranties:

**DEPOT WARRANTY.** During the Hardware Warranty Period, Customer shall ship, at its own expense, defective hardware Products to the Scantron Depot Service Center for repair. The cost of return shipping shall be paid by Scantron.

**CENTRAL EXCHANGE WARRANTY.** During the Hardware Warranty Period, Customer shall promptly call Scantron's Call Center for diagnosis and consultation. Upon Scantron's diagnosis that the hardware is defective, Scantron will ship a replacement for the hardware Product. Customer shall install the replacement per Scantron's specifications. Within 5 business days of receipt of the replacement, Customer shall return the original defective Product to Scantron via the enclosed shipping label. If Customer fails to return the Product within 10 business days, Customer shall be charged the full retail value of the Product.

**ON-SITE WARRANTY.** During the Hardware Warranty Period, Scantron shall provide repair services at Customer's premises (during Scantron's regular business hours).

Scantron will use reasonable efforts to correct any hardware Product (by either repair or replacement, at Scantron's sole discretion) that fail to comply with the applicable warranty. Customer must give Scantron prompt written notice of failure during the applicable warranty period, and Scantron must be able to reproduce the noncompliance. Unless otherwise specified in a schedule, the terms of the Depot Warranty apply to Scantron hardware Products. Even if delivered as an inseparable part of a hardware Product, Software is covered exclusively by the Software Warranty. Customer will provide reasonable assistance to Scantron in reproducing the failure.

**C. SOFTWARE.** For a period of 90 days following the delivery of the Software (or such other period as agreed in a Schedule, hereinafter the "Software Warranty Period"), Scantron warrants the CD, DVD downloaded files or other media against defects in materials or manufacture. If Customer notifies Scantron during the Software Warranty Period, Scantron will, at its expense, replace any defective media returned to Scantron and will use reasonable efforts to correct material failures of the Software to function in accordance with applicable Documentation. If Scantron is unable to comply with the foregoing limited warranty, Customer's sole and exclusive remedy shall be to terminate the License Grant by returning the Software for a refund of the Software fees. Scantron's sole obligation, and Customer's sole remedy, is to correct such errors, which may include reasonable "work-around" solutions. If the failure reported is attributable to user error, to Customer's failure to provide an acceptable operating environment, or to any other non-warranted

cause, then Customer will be obligated to pay Scantron for its time and expenses incurred in diagnosing the cause, at Scantron's then-standard rates.

**D. SERVICES.** For a period of 30 days following completion Services (or during such other period as agreed in a Schedule, hereinafter the "Services Warranty Period"), Scantron warrants that the Services will be provided in a professional and workmanlike manner consistent with the definition of the Services to be performed, and that Work Product, if any, will substantially meet the specifications stated in a Schedule when delivered by Scantron for installation. Provided that Customer gives Scantron written notice of a failure to meet the foregoing warranty within the Services Warranty Period, Scantron will use reasonable efforts to correct any Services that fail to comply with the foregoing warranty. There is no assurance that Work Product will be error-free, but Scantron will undertake to identify and correct material, reproducible Work Product and/or Documentation errors that Customer timely brings to Scantron's attention. If Scantron is unable to correct or re-perform the Services, Customer's sole and exclusive remedy shall be a refund of the reasonable portion of the fees paid with respect to such Services.

**E. THIRD PARTY PRODUCTS.** Some Products and Services may include or operate in conjunction with computer programs, data or hardware supplied by a third party. Other than third party programs or data that are embedded in, and delivered as, an inseparable part of the Product or Services, all third party computer programs, data and hardware ("Independent Third Party Products") are supplied "AS IS" by Scantron. If Independent Third Party Products are supplied with separate warranty and support terms that can be passed through to Customer, the third party that supplies such programs and data is responsible for fulfilling such warranty and support terms, and Scantron makes no warranty and assumes no obligation with respect to such items.

**F. EXCLUSIVE WARRANTIES AND REMEDIES.** Scantron does not warrant that the Products are free from all bugs, errors or omissions, or that Services will be uninterrupted or error-free. The foregoing warranties do not extend to any failure of the Products or Services caused by: modification or change not made by Scantron; noncompliance because of use of the Products or Services in combination with items furnished by anyone other than Scantron or not approved in writing for use with the Products or Services by Scantron; or use of the Products in an operating environment other than as specified in writing by Scantron; damage caused by accident, abuse, misuse, liquid contact, power surge, fire, earthquake or other external cause. THE WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND ARE IN SUBSTITUTION FOR ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES OF SCANTRON, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

**11. LIMITATIONS OF LIABILITY.** SCANTRON'S ENTIRE LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY CLAIM ARISING FROM OR RELATED TO THIS AGREEMENT OR ANY PRODUCTS, SERVICES, DELIVERABLES OR OTHER ITEMS FURNISHED OR TO BE FURNISHED UNDER THIS AGREEMENT, WILL IN NO EVENT EXCEED THE FEES PAID TO SCANTRON BY CUSTOMER FOR THE APPLICABLE ITEM WHICH IS THE BASIS FOR THE CLAIM DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CAUSE OF ACTION, NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. NO ACTION RELATED TO THIS AGREEMENT MAY BE BROUGHT MORE THAN 2 YEARS AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CAUSE OF ACTION. IN NO EVENT WILL SCANTRON BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR LOST DATA, LOST PROFITS, INTEREST OR COST OF MONEY; OR FOR COVER; OR FOR ANY PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF SCANTRON'S PERFORMANCE OR NONPERFORMANCE OR THE USE OF, INABILITY TO USE OR RESULTS OF USE OF ANY PRODUCTS, SERVICES, DELIVERABLES, OR OTHER ITEMS.

**11. DEFENSE OF INFRINGEMENT CLAIMS.** Scantron will defend Customer against any claim based upon infringement of any U.S. patent, copyright or trademark by the Products (not including the Independent Third Party Products), provided that: Customer promptly notifies Scantron of such proceeding; Scantron has exclusive control over the defense and settlement of the proceeding; Customer provides reasonably requested assistance in the defense and settlement of the proceeding; and Customer complies with any settlement or court order made in connection with such proceeding. Scantron will: indemnify Customer against any and all damages, costs and attorneys' fees finally awarded against Customer in any such proceeding; reimburse Customer's reasonable, out-of-pocket expenses incurred in providing assistance requested by Scantron; pay any amounts agreed by Scantron in settlement of any claims of infringement. Scantron's obligations under this Section will not apply to any infringement arising out of: use or combination of the Products with products, goods, services or other items not furnished for use with the Products and/or Services by Scantron; modification or change not made by Scantron; use of an infringing version of the Products when a comparable noninfringing version has been made available to Customer; or Products developed to specifications which Customer has supplied or required of Scantron. In the event that Scantron reasonably believes it will be required to discontinue offering the Products, Scantron will, at its option, do one of the following: obtain for Customer the right to continue use of the Products; modify the Products to make them noninfringing; or if Scantron is not reasonably able to accomplish the foregoing, terminate Customer's right to use the infringing Products and refund to Customer a pro-rata portion of the fees Customer paid to Scantron for such Products, amortized on a three-year straight line basis from the date of delivery. THIS SECTION STATES THE ENTIRE LIABILITY OF SCANTRON WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT BY ANY PRODUCTS, SERVICES, WORK PRODUCT OR OTHER ITEMS FURNISHED UNDER THIS AGREEMENT.

## 12. MISCELLANEOUS.

**A. NO WAIVER.** The failure of either party to enforce any rights under this Agreement or to take action against the other party will not be deemed a waiver by that party as to subsequent enforcement of rights.

**B. ASSIGNMENT.** This Agreement may not be assigned or transferred in any way by Customer without Scantron's prior written consent. Attempted assignments without Scantron consent are void.

**C. NOTICES.** Notices shall be in writing and delivered by hand, mail or courier and will be deemed delivered only upon receipt.

**D. DISPUTES; APPLICABLE LAW AND VENUE.** This Agreement will be interpreted, construed and enforced in all respects in accordance with the local laws of the State of Minnesota, USA, or the laws of such other state as identified in a Schedule, without reference to its choice of laws principles. Customer and Scantron each waive application of the 1980 UN Convention on Contracts for the International Sale of Goods. In the event of a dispute, the parties will first attempt to resolve the matter informally through good faith negotiations involving executives from each party. Failing resolution, the parties agree to mediation administered by the American Arbitration Association. The costs of mediation shall be shared equally by the parties. All disputes shall be brought in the federal or state court with jurisdiction over residents of Dakota County, Minnesota, or such other venue as is specified in a Schedule, and each party consents to the exclusive jurisdiction of such courts.

**E. EQUAL EMPLOYMENT OPPORTUNITY; AFFIRMATIVE ACTION.** In connection with Scantron's performance under this Agreement, unless exempt, the Equal Opportunity Clauses as set forth in Section 202 of Executive Order 11246, as amended, 41 C.F.R. § 1.4(a), Section 402 of the Vietnam Era Veterans Readjustment Act of 1974, as amended, 41 C.F.R. § 250.5(a), Section 503 of the Rehabilitation Act of 1973, as amended, and 41 C.F.R. § 741.5(a) are incorporated by reference. Scantron has developed and maintains an affirmative action program.

**F. INSURANCE.** Scantron shall carry and maintain commercial general liability insurance in an amount not less than \$1 million per occurrence with a \$2 million aggregate covering claims for bodily injury, death, personal injury or property damage.

**G. RESTRICTED RIGHTS.** If Customer is the United States Government or any agency or instrumentality thereof, the Software and Documentation are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the United States Government is subject to restriction as set forth in (i) subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFAR 252.227-7013 (October 1988), if Customer is subject to Department of Defense Federal Acquisition Regulations; or (ii) FAR 52.227-19 (June 1987), if Customer is not subject to the DFAR, but is the United States Government or any agency or instrumentality thereof. The "manufacturer" or "contractor", for purposes of such provisions, is Scantron Corporation, 1313 Lone Oak Road, Eagan, MN 55121-1334. The Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101 (Oct 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227-7202-1 through 227-7202-4 (June 1995), all U.S. Government End Users acquire the Software and Documentation with only those rights set forth herein.

**H. COMPLIANCE WITH LAWS.** Customer shall, at all times, use the Products and Services in compliance with all applicable laws, including observing the terms and conditions of its own privacy policies and applicable copyright laws when requesting the design and printing of forms.

**I. ENTIRE AGREEMENT.** This Agreement in conjunction with the applicable purchase order and Schedules supersedes any and all prior agreements among the parties related to the Products, the Services and any other items provided hereunder. No modification of any of the provisions of this Agreement will be valid unless set forth in a written instrument signed by both parties.

- END -