

## SOFTWARE SUPPORT AND HOSTING SERVICES TERMS

By ordering Software or Services incorporating these terms or otherwise accepting support services or paying an invoice for support services, such entity ("Customer") acknowledges that the individual purchasing support has authority to bind Customer to these terms, and agrees to be bound by these terms. These terms are in addition to Scantron's Standard Terms and Conditions, which are available at [www.scantron.com/legal/terms](http://www.scantron.com/legal/terms) (the "Standard Terms"), and any other Schedules. In the event of an inconsistency between these terms and the Standard Terms, these terms govern. Capitalized terms used but not defined herein have the meaning assigned in the Standard Terms. If these terms are incorporated by reference in an Order, the agreement between the parties includes these terms, the Order, and all other Schedules attached to the Order (together, the "Agreement").

### 1. DEFINITIONS.

"Error Corrections" mean corrections, workarounds, or the like as part of Support for the applicable Software.

"Updates" mean patches, new releases or other updates to the applicable Software that include Error Corrections, modifications, improvements or minor feature or functionality enhancements.

"Users" mean people who access the Software or Subscription Service, such as employees, students, parents, teachers and/or administrators

**2. SUPPORT SERVICES.** If Scantron agrees to provide support services for Software pursuant to a Schedule ("Support"), and except to the extent modified by a Schedule, Customer will receive the services described in this Section.

**A. SUPPORT AVAILABILITY.** Help desk assistance for the current version and the immediately preceding version of the Software is available during normal Scantron "Support Center" hours. Scantron "Support Center" telephone numbers and hours of operation vary by product and are available at <http://www.scantron.com/support/contact%20support>. Scantron Support Centers are closed during certain U.S. holidays. Contact Scantron for the current year's holiday schedule.

**B. SUPPORT PERIOD.** Unless otherwise described in a Schedule, the Support Period begins upon execution of an Order. Unless a longer initial term is provided in a Schedule, the initial term shall be one year. Support is provided on an annual basis and will be automatically extended for an additional year absent notice of non-renewal no less than ninety (90) days prior to the end of the current term.

### C. GENERAL SUPPORT POLICIES.

- I. **ERROR CORRECTIONS.** Scantron may provide Error Corrections. Scantron must be able to reproduce the error in the operating environment for which the Software is designed, and Customer must meet its responsibilities described in these terms or the Agreement. Scantron will provide Error Corrections only to the most current version of the Software.
- II. **UPDATES.** Scantron may release Updates. If Customer has purchased enhanced Maintenance that explicitly includes Updates or "Software Assurance", Customer is entitled to receive Updates for Software covered by these terms. Updates will be delivered with Documentation and installation instructions. Customer may purchase services for assistance with installing Updates or integrating Updates into Customer's version of the Software at Scantron's then-current rates, plus expenses. New software programs or functionality separately priced and marketed as such are not Updates even if the new software makes extensive use of functionality present in the Software.
- III. **SUPPORT FACILITIES.** Scantron provides Support Services remotely from Scantron's facilities.
- IV. **SUPPORT CONTACTS.** Scantron will provide Support Services to Customer's identified central points of contact for the receipt of Support Services ("System Administrator(s)"). Customer shall limit System Administrators for the Software to five or fewer employees.
- V. **PAYMENT.** Unless otherwise agreed by the parties, support services must be purchased and paid in advance. Termination of support services does not entitle Customer to a refund of any prepaid fees.
- VI. **DELIVERY.** For Software licensed by Customer and not hosted by Scantron, Error Corrections and Updates will be provided via media selected at Scantron's discretion (including download from Scantron websites). Scantron may notify its Customer base of Error Corrections and Updates through a variety of channels. It is, however, Customer's responsibility to obtain the most recent Error Corrections, Updates, Documentation and other current information concerning the Software.
- VII. **INTERFACE SUPPORT.** Scantron will provide modifications to Scantron-provided interfaces to ensure compatibility with Error Corrections and Updates to the Software. A substantial change to the third party software or service for which the interface was developed is not part of Support Services and may require payment of additional fees, charged at Scantron's then-current rates.
- VIII. **OPERATING SYSTEM SUPPORT.** Scantron may periodically discontinue support of Software on aged operating systems that the vendor has designated as "non-supported". For Software licensed to Customer, Customer is responsible at its own expense for any upgrades or modifications to Customer's operating environment to conform to Scantron's then-current minimum system requirements.
- IX. **USER SUPPORT.** Unless the applicable Order or Schedule specifically includes User or "Tier I" support, support does not include the provision of direct support to Users. If provided, such services are limited to enabling and disabling User accounts, and providing direct support to Users experiencing problems accessing the Software. Scantron accepts no liability to Users in conjunction with this service, and Customer agrees to indemnify, defend and hold Scantron harmless from any claims arising from services provided by Scantron to non-employee Users.

**D. PRODUCT-SPECIFIC SUPPORT POLICIES.** Specific Software may be governed by policies that differ from the above. These terms will govern Support for such products, but to the extent of any inconsistencies, the product-specific terms will govern.

**3. HOSTING SERVICES.** If Scantron agrees to install and maintain Software on Scantron systems pursuant to a Schedule (the "Subscription Service"), Scantron will install the Software in an environment for access by Customer. Scantron will provide Support as described above and apply Upgrades and Error Corrections. In addition, Scantron will provide system maintenance and related services as described in this Section during the Subscription Period. Unless otherwise described in a Schedule, the terms of this Section apply to Subscription Services.

**A. SUBSCRIPTION SERVICE.** Scantron grants to Customer a limited, non-exclusive, non-transferable license to use and access the Subscription Service in accordance with the applicable schedule and any Documentation, which may limit the Subscription Service to a maximum number of users, volume of images, or other measure. All other restrictions on use applicable to Software in the Standard Terms apply to Customer's access to Software through the Subscription Service.

**B. OPTIONAL MANAGED HOSTING SERVICE.** If a Schedule includes Managed Hosting, Scantron will provide the Subscription Service using a dedicated environment. To the extent practical, scheduling for system maintenance and Updates will be mutually agreed by the parties.

**C. SUBSCRIPTION PERIOD.** The Subscription Period begins when the Software is first made available to Customer. Unless a longer initial term is identified in a Schedule, the initial term shall be one year. The

Subscription Period automatically renews for an additional year absent notice of non-renewal no less than 90 days prior to the end of the current term.

**D. UPDATES.** The Subscription Services is a dynamic offering. In order to keep up-to-date with educational changes and provide high quality products and services, Scantron reserves the right to enhance, modify, update, make improvements to, add or withdraw features or functionality, replace an existing version with a new version, or otherwise change or revise the Software (collectively, the "Updates") at any time without prior notice. Updates may modify features, functionality, reporting, testing, curriculum alignment guides, scoring algorithms, terms of service or other aspects of the Software. Updates may be made for various reasons including, but not limited to, the following:

- Release of a new version
- Changes in underlying technology
- Changes to products or services supplied by a third party
- Security issues or misuse
- Applicable laws, regulations or court orders

Scantron will make available by electronic mail, posting on websites, or other means, information about Updates. Updates will be effective when made. Customer is responsible for regularly reviewing the terms of service and other Documentation made available in connection with any Update. Continued use of the Subscription Service after an Update shall constitute your assent thereto.

**E. AVAILABILITY.** Once the Subscription Service is made available to Customer, Scantron will use reasonable efforts to maintain Software online and available to Customer, but scheduled and emergency maintenance periods are necessary in order for Scantron to properly maintain the Internet data center that hosts the Software. Interruptions of availability due to routine scheduled maintenance, scheduled power outages, scheduled downtime, telecommunication line failures, acts of third parties, acts of God, acts of war (including terrorism) and other acts out of the reasonable commercial control of Scantron or its supplier are excluded from the above commitment. Scantron does not guarantee that access will be uninterrupted or error-free, and is not responsible for unavailability or errors caused by Customer or User equipment, telecommunications circuits or the Internet. Planned outages will be conducted during off-peak utilization times whenever feasible, and Customer will receive notice of such outages in advance. Scantron will use reasonable efforts to perform Upgrades, Error Corrections, system maintenance, and configuration changes during planned outages.

**F. DATA MANAGEMENT.** Scantron will use reasonable efforts to restrict unauthorized access to the Software, and will comply with all applicable data privacy laws and regulations. Both parties acknowledge that (a) the availability, performance, reliability, legality and appropriateness of resources accessed through the Internet are beyond the control of Scantron, and (b) there can be no assurance of privacy with respect to data sent or received across the Internet. Customer accepts all risk of data interception or loss during transmission, and is solely responsible for: (a) Assuring that the Software is not used for any unlawful or prohibited purpose; (b) complying with all applicable federal, state and local laws, rules, regulations and/or orders of any court or governmental authority, including, but not limited to, those related to user privacy; (c) ensuring that the Software is not used in a way that may libel, defame, invade the privacy of or otherwise violate the rights of any person or entity. Customer is responsible for distributing credentials to Users, ensuring that Users manage credentials in a way that prevents unauthorized access, and all acts and omissions of Users or any other individuals that access the Software hosted for Customer, except to the extent directly caused by Scantron's breach of these terms. Scantron accepts no responsibility for the security of Customer or User system resources. Customer agrees to notify Scantron of any formal Customer security policies which may reasonably impact Scantron's performance of the Services. Scantron will maintain backups of critical systems, and will maintain policies and procedures intended to ensure data integrity and timely restoration in the event of a disaster. However, unless specifically described in a Schedule, the service shall not act as Customer's data storage. Scantron must maintain data storage practices for certain Services, and strongly recommends that Customer regularly download data it desires to archive. Customer should contact Scantron with questions about Scantron's data storage policy for the specific Service. In no event shall Scantron be liable for data loss as a result of deletion in accordance with Scantron policies.

**G. DATA STORAGE.** Scantron may establish general practices and limits concerning use of the Subscription Service, including without limitation the maximum disk space that will be allotted on Scantron's servers on your behalf and the maximum number of questions, passages, images and other uploaded Customer data that will be retained within the Subscription Service. Any assessment data (e.g., test results), will be maintained for the duration of the school year in which the subscription begins or for the duration of the subscription, whichever is shorter. Annual download and archiving of Customer data is Customer's responsibility. Scantron reserves the right to modify these general practices and limits at its discretion.

**H. SUBSCRIPTION SERVICE PROPRIETARY RIGHTS.** The Subscription Service includes all content, features, functionality and services whether made available by Scantron to Users by way of the websites, the Internet or local deployment, and specifically includes: software applications; administrative and management programs; instructional and curriculum materials; other content software applications, administrative and management system programs; Documentation; features; functionality; data; Updates; derivative works; and associated Work Product. The Subscription Service is protected by copyright and trade secret laws and other proprietary rights of Scantron and its suppliers, and is licensed, not sold, to you. Scantron reserves all rights in the Subscription Service not expressly granted to you. Any use of the Subscription Service in violation of this Agreement is expressly prohibited by law, and may result in severe civil and criminal penalties. Violators will be prosecuted to the maximum extent possible.

**4. CUSTOMER RESPONSIBILITIES.** In addition to payment of applicable Support or Subscription fees and its obligations described elsewhere in these terms, Customer must adhere to the following with respect to the Support or Subscription Services:

**A. SYSTEM ADMINISTRATORS.** Unless otherwise agreed in a Schedule, Customer must appoint at least one, but no more than five, system administrators. System administrators must possess sufficient technical and operational knowledge to interface effectively with Scantron support personnel, and must attend applicable Software operational training classes necessary to fulfill its role as the first tier of support for Users. If Customer's designated system administrator(s) are not able or willing to act as an effective liaison with Scantron support, Scantron may request a new system administrator(s) be appointed, and Customer shall use reasonable efforts to accommodate such a request.

**B. SUPPORT REQUEST DUTIES.** Customer will use the Software consistent with its Documentation. Prior to requesting Support, Customer will endeavor to identify the cause of and correct the Software inoperability, and will inform Scantron of its endeavors to identify or correct such errors. In receiving Support, Customer will provide, as applicable and at its expense, such reasonable assistance as Scantron requests, including without limitation: (i) adequate staff, equipment, office facilities, and remote access to the Software; (ii) usable and relevant test and conversion data, and other information; and (iii) access to any third-party services or networks required for the complete functioning of the Software. Customer is responsible for backing up its data and any Software not hosted by Scantron, and will promptly implement all Error Corrections or Updates made available by Scantron.

**C. RELOCATION/REINSTALLATION.** Customer will comply with all applicable export laws, restrictions and regulations and agrees that it will not export, or allow the export or re-export of any Software in violation of any such laws, restrictions or regulations. Once relocated, Scantron shall support the

Software at its option and subject to these terms. Relocation/reinstallation assistance is not included in Support and, if provided, is purchased at Scantron's then-current fees for such services.

**D. SECURITY.** For Software installed in Customer's environment, Customer is solely responsible for providing firewalls and other security measures, and for otherwise installing and maintaining the Software in a manner that protects against unauthorized access to the Software and/or Customer's data. Support does not include services related to the security of Software in Customer's environment.

Even if Scantron provides security or implementation recommendations, Scantron shall have no liability to Customer or any third party for claims arising from or related to security breaches or unauthorized access to the Software.

**E. COMPLIANCE WITH LAWS, REGULATIONS, AND TERMS.** Customer represents and warrants that it will comply with, and will cause its employees, agents, representatives and Users, to comply with: All applicable Federal, state and local laws and regulations applicable to its business operations; these terms, including all attachments and amendments thereto; and all of the rules, policies, procedures and guidelines to be followed when accessing the Software, which rules, policies, procedures and guidelines may be changed by Scantron from time to time. Customer shall be responsible for any non-compliance and will indemnify and hold Scantron harmless from any claims arising from or related to such non-compliance.

**F. ACCESS TO SYSTEM.** Unless Hosting Services are provided by Scantron, Customer will provide Scantron with access (subject to Customer's security procedures) to the Product and the hardware on which it resides for purposes of providing Support. If required by Scantron, a complete description of the configuration of Customer's third-party hardware and software will be provided to Scantron for purposes of ongoing Support. The configuration will include exact models of hardware and the required releases of all software (including operating system, communications, LAN, etc.) that are installed in Customer's location.

**G. SUBSCRIPTION ACCESS SYSTEM REQUIREMENTS.** Scantron makes Subscription Services available over the Internet. To use Subscription Services, Customer and its Users must have (a) a suitable Internet connection, and (b) access to a computer that meets the minimum hardware and software requirements specified by Scantron from time to time ("System Requirements"). Users who are students or school staff using Subscription Services are required to have system capabilities outlined in these terms or the Documentation, subject to upgraded requirements as notified by Scantron on no less than ninety (90) days' notice. Customer, and not Scantron, is responsible for User support with respect to the User's Internet connection, computer hardware, computer software or personal email accounts.

**H. SUBSCRIPTION PASSWORD MANAGEMENT.** Users obtain access to the Subscription Service through the use of passwords. Customer will control and manage access to the Service and all administrative, student, teacher and other related data, content and information belonging to Customer that is stored within the Subscription Service ("Customer Data"). Customer is solely responsible for maintaining the confidentiality of the User ID, passwords and site IDs at and under the top-level site of your organization. Customer is responsible for all activities that occur under its top-level site by its authorized Users. Customer will advise Users as to the importance of maintaining the confidentiality of passwords and User IDs. Customer's control over administrator access is crucial to protecting the data submitted through, generated by and maintained within the Subscription Service. Scantron recommends that Customer limit administrative access to as few authorized Users as possible. The Subscription Service uses student User IDs as unique student identifiers within the system. Student IDs may have varying maximum lengths depending on the chosen delivery method(s). Scantron strongly discourages the use of other personally identifiable information such as: student or family member name; student or family member address; social security number; personal characteristics or other information that would make a student's identity easily traceable. The security of Customer Data may be compromised if Users do not follow all applicable security policies and procedures and take other appropriate steps to maintain the security of the Subscription Service, including, without limitation, maintaining the confidentiality of User names and passwords, frequent changing of passwords, exiting from your account at the end of each session, and maintaining appropriate internal controls to monitor access to and use of the Service. Customer will immediately notify Scantron of any unauthorized

activity under its top-level site or any other security concerns so Scantron can take steps to eliminate or restrict data access. Scantron shall not be liable for any loss or damage arising from a User's failure to comply with these provisions and Customer will indemnify Scantron for any loss or damage caused by such failure. Customer must comply with Scantron's policies and procedures, as communicated from time to time to Customer, relating to the issuance, protection and administration of such passwords.

**I. SUBSCRIPTION SERVICE USER ACCESS.** Customer, and not Scantron, is responsible for obtaining any and all necessary parental consent for all student Users' access to and use of Subscription Services. Customer represents and warrants that all Users who use the Service (i) will be authorized to do so and (ii) will use the Subscription Service in the manner intended. Scantron reserves the right to suspend or discontinue a User from accessing Subscription Services at any time if Scantron reasonably believes a User is using the Subscription Service inappropriately.

**5. SUPPORT LIMITATIONS.** Scantron provides Support Services only for the production instance of the Product. Scantron is not responsible for providing Support Services on Software that has been (i) misused by Customer or operated or maintained by Customer in a manner inconsistent with the requirements set forth in the Documentation or elsewhere in the Agreement, (ii) modified by any party other than Scantron, (iii) damaged in any manner by any cause other than an act or omission by Scantron, (iv) subjected to a power surge or electromagnetic field, or (v) used with third-party software or hardware not specified by Scantron. Customer requests for assistance concerning problems with the operation of third-party hardware or software, or for modification, tailoring or customization to Software are not included in Support and may be quoted by Scantron upon request.

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