ONLINE CLASSROOM END USER LICENSE

AGREEMENT

IMPORTANT - PLEASE READ THIS AGREEMENT CAREFULLY. BY CLICKING THE "ACCEPT" BUTTON AND/OR USING THE ONLINE CLASSROOM ("ACCEPTANCE"), YOU AGREE TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. ADDITIONALLY, YOU REPRESENT AND WARRANT THAT: (A) YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (B) IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

This Online Classroom End User License Agreement (this "Agreement") is entered into by and between Mandarin Matrix Inc. ("MMX") and the person or business indicated as the customer ("Customer") in the order form or purchase order ("Order Form") as of the date of Acceptance and describes the terms and conditions pursuant to which Customer may access and use MMX's Online Classroom. Customer and MMX shall be referred to individually as a "Party" and collectively as the "Parties."

1. Definitions.

1.1 "Affiliate" shall mean, with respect to a Party, any person or entity that controls, is controlled by, or is under common control with such Party, where "control" means the possession, directly or indirectly, through one or more intermediaries, of the power to direct or cause the direction of the management or policies of a person or entity, whether
through ownership of voting securities, controlling interests or similar arrangement.

1.2 "Authorized Users" shall mean (a) Customer’s administrators and teachers who are responsible for supervising and supporting students using the Online Classroom; (b) students for whom Customer has purchased licensees to access and use the Online Classroom; (c) the parents of such students; and (d) any other users that are mutually agreed upon by the Parties in writing.

1.3 "Confidential Information" means information in any form or medium (whether oral, written, electronic, or other) that each Party (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party") and that the Disclosing Party considers confidential or proprietary, including, but not limited to, information consisting of or relating to the Disclosing Party's: (a) patents, inventions, discoveries, processes, techniques, methods, formulae, technology, copyrights, trade secrets, ideas, and know-how; (b) managers, directors, officers, partners, equity holders, employees, agents, customers, suppliers, distributors, sales representatives, licensees, and Affiliates; (c) financial statements, audit reports, budgets, business plans or forecasts, and strategies; and (d) information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each of the foregoing (a) through (d) whether or not marked, designated or otherwise identified as "confidential."

1.4 "Controlled Technology" shall mean any software, documentation, technology or technical data, or any products that include or use any of the foregoing, the export, re-export or release of which to certain jurisdictions or countries is prohibited or requires an export license or other governmental approval, under any applicable law, including, without limitation, the US Export Administration Act and its associated
regulations and any similar or equivalent legislation applicable in
countries where this Agreement shall have effect.

1.5 "Customer Data" shall mean any and all personally identifiable
information provided, inputted, or uploaded to the Online Classroom by
or on behalf of Customer or any Authorized User, including, but not
limited to, User Data (as defined in Exhibit A).

1.6 "Derivative Work" shall mean any derivative work of, translation,
modification, adaption, enhancement, upgrade, addition, development
or improvement to an underlying intellectual property asset.

1.7 "Documentation" shall mean any user manuals and other
documentation that MMX makes generally available in connection with
the Online Classroom from time to time and as may be updated by
MMX from time to time.

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

1.9 "MMX Proprietary Information" means MMX's proprietary software,
methodologies, tools, specifications, drawings, sketches, models,
samples, records, documentation, works of authorship or creative
works, ideas, knowledge, data or other materials which have been
originated or developed by MMX or on MMX's behalf, or otherwise
purchased by, or licensed to, MMX, and used by MMX in the course of
performing any Support Services, and any Derivative Works of any of
the foregoing.
1.10 "Online Classroom" shall mean the web-based, guided and interactive reading platform designed to support students who are learning Mandarin as a foreign language, including, but not limited to: e-books, activities and games; a fully integrated teacher module; and reporting features to parents and teachers for monitoring students’ progress.

2. License and Use.

2.1 License Grant. Subject to the terms and conditions of this Agreement and payment of applicable fees, MMX hereby grants Customer a limited, terminable, non-sublicenseable, non-exclusive, and non-transferable right and license to allow Authorized Users to access and use the Online Classroom and Documentation, solely in and for Customer’s own internal, non-commercial educational purposes and in accordance with the terms and conditions herein (the “Approved Purpose”). MMX shall host and retain physical control over the Online Classroom, which will be made available only through the internet for Customer’s access and use by its Authorized Users. MMX shall have no obligation to deliver or otherwise make available to Customer any copies of computer programs or code, whether in object code or source code form.

2.2 Customer’s Obligations. Each Authorized User must receive a license to access the Services, and Customer must ensure that Authorized Users do not share individual licenses to access and use the Online Classroom. Customer shall ensure that any person or entity accessing the Online Classroom or Documentation through Customer’s systems, Customer’s account or by or on Customer’s behalf be bound by the terms of this Agreement; Customer shall be liable for any breach of this Agreement by such parties. All references herein to the use of the
Online Classroom and/or Documentation by Customer shall be deemed to include all uses by Authorized Users.

2.3 Restrictions. Customer shall not, and shall ensure that its Authorized Users do not, either directly or indirectly: (a) transfer, distribute, sell, lease, license, display, assign, disclose, permit time-sharing of (such as by allowing Authorized Users to share licenses), commercially exploit, or otherwise make any aspect or portion of the Online Classroom available to a third party (including, but not limited to, Customer's Affiliates); (b) reproduce, copy, translate, download, modify, adapt, decompile, disassemble, create Derivative Works of, or reverse engineer the object code version of, or otherwise attempt to secure the source code of all or any part of the Online Classroom or Documentation, or access the Online Classroom or Documentation to build a similar or competitive product or service, except, with respect to any of the foregoing, strictly as and to the extent expressly authorized by applicable law; (c) obfuscate, remove, or alter any of the logos, trademarks, internet links, patent or copyright notices, confidentiality or proprietary legends, or other notices or markings that are on or in the Online Classroom or Documentation; or (d) access or use the Online Classroom or Documentation in any way that is adverse to MMX's then-current Terms and Conditions, which are incorporated herein by this reference. In the event of any inconsistency or conflict between the terms of this Agreement and those in the Terms and Conditions, the terms of this Agreement shall govern.

2.4 Reservation of Rights. Customer acknowledges and agrees that it does not acquire any ownership interest in any MMX Assets (as defined below) under this Agreement, or any other rights other than to use the Online Classroom and Documentation in accordance with the license granted hereunder, subject to all terms, conditions, and restrictions specified herein. MMX reserves and shall retain its entire right, title, and
interest in and to the MMX Assets and all Intellectual Property Rights arising out of or relating to the MMX Assets, subject to the licenses expressly granted herein. Additionally, MMX reserves the right to terminate Customer’s and any Authorized User’s access to or use of the Online Classroom and Documentation immediately and take any other legal action if Customer or any Authorized User violates these provisions. MMX may pursue any legal and/or technical remedies to prevent the violation of this Section and to enforce this Agreement.


3.1 Support and Maintenance Services. MMX shall offer (a) technical support through a customer service hotline, available during the applicable school’s normal hours of operation throughout the Term (as defined below) ("Technical Support"); and (b) three (3) hours of initial teacher training, at a time and location to be mutually agreed upon by the Parties ("Teacher Training") (collectively, the "Support Services"). After Customer has received the Teacher Training, Customer agrees to properly train all other Authorized Users on the proper access and use of the Online Classroom before allowing Authorized Users to use the Online Classroom.

3.2 Reporting of Errors. Customer shall report material problems or errors with the Online Classroom to MMX via e-mail at help@mandarinmatrix.com and/or by other means that may be specified by MMX from time to time.

3.3 Excluded Services. The following services are outside the scope of the Support Services: (a) service for the Online Classroom which has been subject to any changes, alterations, updates, modifications or enhancements not provided by MMX under this Agreement; (b) service for the Online Classroom that is not up-to-date with all maintenance
releases and updates due to Customer’s request or instruction that MMX not implement such required maintenance releases or updates; (c) implementation services or services performed at Customer’s site, unless the Parties agree otherwise in writing; and (d) service which becomes necessary due to (i) failure of, or issues arising from, Customer’s or any third party’s services, software or equipment, (ii) negligent or intentional misuse of the Online Classroom by Customer or any Authorized User, (iii) incorrect use, abuse or corruption of the Online Classroom or by use of the Online Classroom with other computer programs or on equipment which MMX has advised not to use with the Online Classroom, (iv) any inaccuracies, delays, interruptions or errors occurring as a result of incorrect data or data which does not conform to required input formats, or (v) use of the Online Classroom in a manner which does not conform with this Agreement or the Documentation (collectively, "Excluded Services").


4.1 MMX Assets. As between MMX and Customer, all trademarks, service marks, patents, copyrights, trade secrets and other proprietary and Intellectual Property Rights in or related to the Online Classroom, Documentation and MMX Proprietary Information, and any Derivative Works for any of the foregoing regardless of who created it, but excluding in any of the foregoing Customer Data (subject to the license granted in Section 4.3 below) (collectively, the "MMX Assets") are and shall remain the exclusive property of MMX, whether or not specifically recognized or perfected under applicable law. Customer shall not take any action that does or could jeopardize the MMX Assets. Without prejudice to any other right or remedy of MMX, Customer hereby irrevocably assigns, transfers and conveys to MMX without further consideration all of its right, title and interest (if any) in and to Derivative Works of the MMX Assets made by or for Customer. Upon MMX’s
reasonable request, Customer shall execute and deliver to MMX all instruments and other documents, and shall take such other actions reasonably requested by MMX, so that MMX may protect and defend its rights in and to the MMX Assets, including any Derivative Works thereof.

4.2 Feedback. All feedback and suggestions provided by Customer that are related to the MMX Assets, including, but not limited to, suggested features, upgrades, improvements or modifications to the MMX Assets (collectively, "Feedback"): (a) are deemed to be perpetually licensed to MMX on a royalty-free, fully paid-up, worldwide, irrevocable, "AS IS" basis; and (b) are deemed to be MMX's Confidential Information. MMX may use such Feedback for any purpose, including, but not limited to, improvement and modification of the MMX Assets, and MMX shall own all right, title, and interest in and to such improvements and modifications.

4.3 Customer Data.
(a) Ownership; License Grant. Subject to the terms and conditions herein, Customer and its Authorized Users shall retain and own all right, title and interest in and to Customer Data, as applicable. Customer hereby grants to MMX a non-exclusive, irrevocable, worldwide, perpetual, unlimited, assignable, sublicensable, fully paid-up and royalty-free right to copy, prepare Derivative Works of, improve, distribute, publish, remove, retain, add, process, analyze, use and commercialize, in any way now known or in the future discovered, any information or materials that Customer or its Authorized Users, as applicable, provide, directly or indirectly, in connection with the Online Classroom, including, but not limited to, de-identified, anonymised and aggregated Customer Data and any content, ideas, concepts, techniques and/or data that Customer or its Authorized Users generate, without any further consent, notice and/or compensation to Customer
or to any third parties. In addition, MMX may, directly or indirectly through the services of others, collect and store information regarding Customer’s use of the Online Classroom and about equipment on which Customer or its Authorized Users access and use the Online Classroom, by means of providing support services and through security measures included in the Online Classroom, as applicable, as further described in MMX’s Privacy Policy, which is currently available at http://mandarinmatrix.org/privacy-policy/. Customer agrees that MMX may use such information for any purpose related to any use of the Online Classroom, including but not limited to: (a) improving the performance of and/or developing updates for the Online Classroom; and (b) verifying compliance with the terms of this Agreement and enforcing MMX’s rights, including, but not limited to, all of its Intellectual Property Rights in and to the MMX Assets.

(b) No Obligation to Monitor Customer Data. Customer acknowledges and agrees that MMX shall have no: (i) obligation to monitor Customer Data; and (ii) liability (including, but not limited to, damages caused by viruses and other malicious code contained in Customer Data) to Customer or any third party for the content, use, accuracy or any other aspect of the Customer Data.

(c) Prohibited Acts. Customer shall ensure that the Customer Data does not: (i) violate any foreign, federal, state, or local law or regulation; (ii) infringe, misappropriate or otherwise violate any Intellectual Property Rights, privacy rights, rights of publicity, or any other right of any person or entity; (iii) contain any material which is unlawful, hateful, obscene, libelous, threatening or defamatory; or (iv) contain any virus or other malicious code (collectively, “Prohibited Acts”). If either Party becomes aware that any Customer Data does or may constitute a Prohibited Act, such Party shall notify the other, and both Parties shall work together promptly and in good faith to remedy any such Prohibited Act; provided, however, that MMX may remove such Customer Data or take other monitoring and enforcement actions, in accordance with Section
4.4 Third-Party Programs. The MMX Assets may include data, materials or software under license from third parties, including, without limitation, third party and open source components, and any such third-party software and related documentation is licensed to Customer subject to the terms and conditions of the corresponding third-party license(s). By entering into this Agreement, Customer agrees to accept the additional terms and conditions, if any, set forth therein.

5. Fees and Payment.

5.1 Fees. In exchange for the rights granted herein, Customer shall pay MMX the applicable fees specified on the Order Form (the "License Fees"), and the licenses specified in Section 2.1 shall be activated upon receipt of payment of License Fees.

5.2 Payment. Customer may purchase licenses for its Authorized Users for a single Term, or in multiples thereof, provided, that, Customer must pay MMX the applicable License Fees for each Term prior to the start of that Term, without deduction, set-off, defense or counterclaim for any reason. MMX may withhold or block Customer’s access to the Online Classroom if any amount required to be paid by Customer remains due and unpaid beyond the date when such amount is due. All License Fees are non-refundable, unless otherwise expressly set forth herein.

5.3 Taxes. Unless otherwise stated, the License Fees do not include any direct or indirect local, state, federal, or foreign taxes, levies, duties, or similar governmental assessments of any nature, including, without limitation, value-added, use and withholding taxes (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its
purchases hereunder, excluding taxes based on MMX’s net income or property. If MMX has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides MMX with a valid tax exemption certificate authorized by the appropriate taxing authority.

6. Indemnification.

6.1 Customer Indemnification. Customer shall defend, indemnify, and hold harmless MMX, its Affiliates, and their respective officers, directors, employees, agents, representatives, successors and assigns ("Indemnitees") from and against any and all claims, damages, obligations, losses, liabilities, allegations, demands, actions, suits, proceedings, litigation, settlements, costs and expenses (including reasonable attorneys’ fees) ("Costs") arising out of any third-party claim arising from or relating to: (a) any allegation that any applicable law, Intellectual Property Rights, or any other right of any third party is or will be infringed, misappropriated, or otherwise violated by any (i) use or combination of the Online Classroom by or on behalf of Customer or any of its Authorized Users with any hardware, software, system, network, service or other matter whatsoever that is neither provided by MMX nor authorized by MMX herein, in the Documentation, or otherwise in writing, or (ii) information, materials, technology, or any other matter whatsoever directly or indirectly provided by Customer or directed by Customer to be installed, combined, integrated or used with, as part of, or in connection with the Online Classroom or Documentation; (b) Customer Data, including damages caused by viruses and other malicious code contained in any Customer Data uploaded to the Online Classroom by Customer or any of its Authorized Users; (c) any allegation of or relating to use of the Online Classroom or Documentation by or on behalf of Customer or any of its Authorized
Users that is outside the purpose, scope or manner of use authorized by this Agreement or the Documentation, or in any manner contrary to MMX's instructions; or (d) Customer's breach of any term of this Agreement; provided, however, that MMX must give Customer prompt written notice of any such claim, and that MMX must reasonably cooperate with Customer in such defense.

6.2 MMX Indemnification. MMX shall defend, indemnify and hold harmless Customer and its Indemnitees from and against any and all Costs arising out of any third-party claim that a MMX Asset infringes a United States Intellectual Property Right; provided, however, that (a) Customer must give MMX prompt written notice of any such claim, (b) MMX shall have the right to control and direct the defense of such claim, and (c) Customer must fully cooperate with MMX in such defense.

6.3 Intellectual Property Rights Exclusions. MMX shall have no obligations under Section 6.2 or any other liability for any claim of infringement or misappropriation resulting or alleged to result from: (a) any modification, alteration, or enhancement to the applicable MMX Asset by any person or entity other than MMX; (b) any use of such MMX Asset by Customer in any manner for which such MMX Asset was not designed or otherwise in a manner inconsistent with the Documentation, as applicable; (c) the combination, operation, or use of the applicable MMX Asset or any part thereof in combination with any equipment, software, data or documentation not approved by MMX in writing; (d) materials, items, resources, or services provided or performed by Customer (whether or not used in connection with or incorporated any MMX Asset); and (e) Customer’s continuing the allegedly infringing activity after being notified thereof or after being informed of and provided with modifications that would have avoided the alleged infringement.
6.4 Intellectual Property Rights Remedies. If an infringement or misappropriation claim as described in Section 6.2 arises, or if MMX reasonably believes that a claim is likely to be made, MMX shall have the right to: (a) modify or replace the applicable portion of the MMX Assets to become non-infringing but functionally equivalent; (b) obtain for Customer the right to use the applicable portion of the MMX Assets upon commercially reasonable terms; or (c) remove the infringing or violative aspect of the MMX Assets if it can be removed without material degradation of the applicable MMX Asset. THIS SECTION 6 SETS FORTH CUSTOMER’S SOLE AND EXCLUSIVE REMEDY AND MMX’S ENTIRE LIABILITY WITH RESPECT TO INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT OR MISAPPROPRIATION CLAIMS, INCLUDING, BUT NOT LIMITED TO, PATENT OR COPYRIGHT INFRINGEMENT CLAIMS AND TRADE SECRET MISAPPROPRIATION.

7. Representations, Warranties, and Covenants.

7.1 Mutual Representations, Warranties, and Covenants. Each Party represents, warrants, and covenants that: (a) it has full authority to enter into this Agreement; (b) it has not, nor will not, enter into any agreement with any third party that would prohibit or impair in any manner its ability to perform its obligations hereunder; and (c) it will perform its obligations hereunder in a professional manner and in compliance with applicable law.

7.2 Customer Representations, Warranties, and Covenants. Customer represents, warrants, and covenants that: (a) Customer holds all necessary right, title, and interest in and to its Customer Data to enter into this Agreement and grant the rights to MMX set forth herein; and (b) no notice or charge of non-compliance with any applicable law has been asserted or filed against it that may impair Customer’s ability to
perform hereunder.

7.3 MMX Representations, Warranties, and Covenants. MMX represents, warrants, and covenants that (a) the Online Classroom will conform to the corresponding Documentation in all material respects; (b) MMX holds all necessary right, title and interest in and to the Online Classroom to enter into this Agreement and grant the rights to Customer set forth herein; (c) the Online Classroom does not infringe upon any third-party Intellectual Property Rights when used in accordance with this Agreement and the Documentation; (d) the Online Classroom does not contain disabling code, worms, viruses, trap doors, spyware or other malware of any kind, the effect of which is to permit unauthorized access to, or to disable, erase, or otherwise harm, any computer, systems or software or to disable a computer program automatically with the passage of time or under the positive control of any person; and (e) MMX will comply with all Customer-specific data security and protection policies that MMX assents to in writing.

NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, IF THE ONLINE CLASSROOM FAILS TO CONFORM TO THE WARRANTY IN PART (A) ABOVE IN ANY MATERIAL RESPECT, CUSTOMER’S SOLE AND EXCLUSIVE REMEDY WILL BE FOR MMX, AT ITS EXPENSE, TO PROMPTLY USE COMMERCIALLY REASONABLE EFFORTS TO CURE OR CORRECT SUCH FAILURE. The representations, warranties, and covenants in part (a) above are expressly conditioned upon: (i) Customer providing MMX with prompt written notice of any claim thereunder no later than thirty (30) days after the first day on which Customer has access to the Online Classroom pursuant to this Agreement, which notice must identify with particularity the non-conformity; (ii) Customer’s full cooperation with MMX in all reasonable respects relating thereto; (iii) Customer performing its obligations hereunder; (iv) Customer utilizing correct data and procedures; and (v) the absence of any alteration or other modification of the Online
Classroom by any person or entity other than MMX.

7.4 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, MMX MAKES NO REPRESENTATIONS AND GIVES NO WARRANTIES, GUARANTEES, COVENANTS OR OTHER ASSURANCES OF ANY KIND, EITHER EXPRESS OR IMPLIED (IN LAW OR IN FACT), INCLUDING ANY WARRANTY OF MERCHANTABILITY, QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR NON-INFRINGEMENT OR ANY REPRESENTATION, WARRANTY, OR CONDITION FROM COURSE OF DEALING OR USAGE OF TRADE. MMX DOES NOT WARRANT THAT ANY SERVICES, THE MMX ASSETS, OR ANY OTHER INFORMATION OR MATERIALS PROVIDED TO CUSTOMER HEREUNDER WILL SATISFY CUSTOMER’S REQUIREMENTS, CONFORM TO ANY DESCRIPTION THEREOF, OR BE UNINTERRUPTED OR FREE OF OMISSIONS, ERRORS OR DEFECTS. MMX DOES NOT ASSUME ANY LIABILITY WHATSOEVER WITH RESPECT TO ANY THIRD-PARTY PRODUCTS OR SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY THIRD-PARTY WEB SITES OR CONTENT DIRECTLY OR INDIRECTLY ACCESSED THROUGH LINKS PROVIDED IN OR IN CONNECTION WITH THE ONLINE CLASSROOM.

8. Limitation of Liability.

8.1 Limitation on Types of Damages. SUBJECT TO SECTION 8.3, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE FOR ANY LOSS OF PROFIT, BUSINESS, REVENUE, USE, DATA, OPPORTUNITY, OR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SIMILAR DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, DOWNTIME COSTS, FAILURE TO REALIZE EXPECTED SAVINGS, LOSS OR UNAVAILABILITY OF OR DAMAGE TO DATA, OR SOFTWARE RESTORATION, ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WHETHER UNDER CONTRACT, WARRANTY, STRICT LIABILITY, OR IN TORT (INCLUDING NEGLIGENCE) OR
Otherwise, even if such damage may have been foreseeable or such party may have been previously advised of the possibility of such damage.

8.2 Limitation on Amount of Damages. Subject to Section 8.3, in no event shall MMX’s liability arising under or out of this agreement exceed, in the aggregate, the total license fees paid hereunder in the twelve (12) month period prior to the cause of the claim. The limitations specified in this section 8.2 shall survive and apply even if any limited remedy specified in this agreement is found to have failed in its essential purpose. The parties hereby acknowledge and agree that the limitations of liability and restrictions set forth herein are reasonable in the circumstances.

8.3 Exceptions to Limitations of Liability. The exclusions and limitations in Sections 8.1 and 8.2 do not apply to: (A) either party’s obligations under section 6 (Indemnification); (B) liability resulting from either party’s gross negligence, recklessness, or wilful misconduct; or (C) in the case of customer, any infringement, misappropriation or other violation of MMX’s intellectual property rights by customer, its agents, or its authorized users, including, but not limited to, any unauthorized use of any MMX asset.

9. Confidential Information.

9.1 Confidentiality Obligations. During and after the Term, the Receiving Party shall: (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement; (b) except as may be permitted by Section 9.3, not disclose or permit access to Confidential Information
other than to its Affiliates, employees, officers, directors, and agents ("Representatives") who (i) need to know such Confidential Information for purposes of the Receiving Party’s exercise of its rights or performance of its obligations under and in accordance with this Agreement, (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party’s obligations under this Section 9.1, and (iii) are bound by written confidentiality obligations at least as protective of the Confidential Information as the terms set forth herein; (c) safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its own similarly sensitive information, but in no event less than a reasonable degree of care; and (d) ensure its Representatives’ compliance with, and be liable for any of its Representatives’ noncompliance with, the terms of this Section 9. In addition, the Receiving Party shall promptly notify the Disclosing Party of any facts known to Receiving Party regarding any suspected or actual unauthorized disclosure or use of the Confidential Information. Each Party acknowledges and agrees that its breach of the obligations set forth in this Section 9 may cause irreparable harm for which the other Party shall be entitled to seek injunctive or other equitable relief.

9.2 Exclusions. The confidentiality and non-disclosure obligations set forth herein shall not apply to information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information’s being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party’s or any of its Representatives’ non-compliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently
developed by the Receiving Party without reference to or use of any Confidential Information.

9.3 Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable law to disclose any Confidential Information, then, to the extent permitted by applicable law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing so that the Disclosing Party can seek a protective order or other remedy, or waive its rights under Section 9.1; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party’s sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 9.3, the Receiving Party remains required by law to disclose any Confidential Information, then the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

9.4 Return or Destruction of Confidential Information. Upon termination of this Agreement for any reason or upon the Disclosing Party’s written request, the Receiving Party promptly shall: (a) return to the Disclosing Party all documents and tangible materials containing, reflecting, incorporating or based on the Disclosing Party’s Confidential Information; (b) permanently erase the Disclosing Party’s Confidential Information from its computer systems, except, in each case, to the extent that the Receiving Party requires or will require such Confidential Information to (i) exercise any of its surviving rights, (ii) perform any of its surviving obligations hereunder, or (iii) as required by applicable law; and (c) certify in writing to the Disclosing Party that it has complied with the requirements of this Section 9.4.
10. Term and Termination.

10.1 Term. This Agreement is effective as of the date of Customer's Acceptance and, unless earlier terminated in accordance with the terms herein, shall expire one (1) year thereafter ("Initial Term"), provided, however, that this Agreement may automatically renew for additional one (1) year periods (each, a "Renewal Term") to the extent that Customer purchases licenses for multiple, consecutive Terms. "Term" means, collectively, the Initial Term and any Renewal Terms.

10.2 Termination for Cause. Either Party (the "Non-breaching Party") may, without prejudice to any other right or remedy, terminate this Agreement upon written notice to the other Party if any of the following events occur by or with respect to such other Party (the "Breaching Party"): (a) the Breaching Party commits a material breach of any of its obligations hereunder and fails to cure such breach within thirty (30) days after receipt of notice or fails to reach an agreement with the Non-breaching Party regarding the cure thereof; or (b) any insolvency of the Breaching Party, any filing of a petition in bankruptcy by or against the Breaching Party, any appointment of a receiver for the Breaching Party, or any assignment for the benefit of the Breaching Party's creditors.

10.3 Effect of Termination. Upon termination or expiration of this Agreement: (a) all rights granted to Customer and its Authorized Users hereunder shall cease; (b) Customer shall immediately cease, and ensure that all Authorized Users cease, any and all access to and use of any MMX Assets; (c) each Party shall return to the other any Confidential Information that is in tangible form, in accordance with the terms of Section 9.4; and (d) upon written request, either Party shall deliver to the other an affidavit from an appropriate officer that certifies compliance with these termination obligations.
11. Monitoring and Enforcement; Records and Audits.

(a) MMX's Ability to Monitor; Waiver. MMX shall have the right to monitor Customer's use of the Online Classroom to verify and enforce Customer’s compliance with the terms of this Agreement, including, but not limited to (i) removing or refusing to use any Customer Data in MMX’s reasonable discretion; (ii) taking any action with respect to any Customer Data that MMX deems necessary or appropriate in MMX’s reasonable discretion, such as if MMX believes that such Customer Data violates this Agreement, infringes any Intellectual Property Right or other right of any person or entity, threatens the personal safety of users of the Services or the public, or could create liability for MMX; (iii) taking appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the Services; and (iv) terminating or suspending Customer’s and/or any of its Authorized User’s access to all or part of the Services. Without limiting the foregoing, MMX has the right to disclose Customer Data and any other information collected through the Services to comply with any court order, law, or legal process, including, but not limited to, to respond to any government, regulatory or law enforcement request, in accordance with Section 9. CUSTOMER HEREBY WAIVES AND HOLDS HARMLESS MMX AND ITS AFFILIATES, LICENSEES, AND SERVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY ANY OF THE FOREGOING PARTIES DURING, OR TAKEN AS A CONSEQUENCE OF, SUCH A DISCLOSURE, INCLUDING, BUT NOT LIMITED TO, INVESTIGATIONS BY SUCH PARTIES OR LAW ENFORCEMENT AUTHORITIES. MMX does not undertake to review material before it is posted on the Services and cannot ensure prompt removal of objectionable or inaccurate material after it has been submitted. Accordingly, MMX assumes no liability for any action or inaction regarding transmissions, communications, or content provided by any
Authorized User or any third party.

(b) Customer Cooperation and Notice of Infringement. During the Term, Customer shall: (i) take all commercially reasonable measures to safeguard the MMX Assets from infringement, misappropriation, theft, misuse or unauthorized access; (ii) promptly notify MMX in writing if Customer becomes aware of any actual or suspected infringement, misappropriation or other violation of the MMX Assets; and (iii) at MMX’s sole expense, reasonably cooperate with and assist MMX in the conduct of any claim, suit, action or proceeding by MMX to prevent or abate any actual or threatened infringement, misappropriation or other violation of MMX’s rights in, and to attempt to resolve any claims relating to, the MMX Assets.

(c) Maintenance of Books and Records. Customer shall at all times maintain complete and accurate books and records relating to its activities and performance under this Agreement (“Records”). Without limiting the foregoing, such Records shall include a complete and current list of its Authorized Users. Customer shall maintain sufficient Records to: (i) demonstrate Customer’s compliance with the terms and conditions herein; and (ii) verify all past and present Authorized Users of the Online Classroom.

(d) Audit Rights. During the Term and for a period of two (2) years thereafter, Customer shall make its Records available to MMX (or its designated auditors) upon MMX’s reasonable request for the purposes of verifying Customer’s compliance with this Agreement. MMX shall have the right to conduct such an audit upon five (5) days’ advance written notice. Such audit shall be conducted during Customer’s normal school hours. Customer shall fully cooperate with MMX with respect to any audit hereunder.
12. Mutual Non-Solicitation.

Neither Party shall solicit for employment or hire any current or former employee of the other Party without such Party’s prior written consent for a period of twelve (12) months after the end of the Term or, with respect to any employee whose employment is terminated prior to the end of the Term, for a period of twelve (12) months after the end of such employee’s employment with the other Party. Nothing contained herein shall prohibit the hiring of any person who responds to a job posting advertised in publications of general circulation.


Customer shall not itself, or permit any third party to, export, re-export or release, directly or indirectly, any Controlled Technology to any country, jurisdiction, person or entity to which the export, re-export or release of Controlled Technology is prohibited by applicable law or without first completing all required undertakings (including, but not limited to, obtaining any necessary export license or other governmental approval).


14.1 No Third-Party Beneficiaries. The Parties acknowledge and agree that this Agreement is entered into by and between, and for the sole benefit of, MMX, its Affiliates, and Customer, and that there are no third-party beneficiaries of this Agreement.

14.2 Assignment. This Agreement shall be binding on the Parties and their successors and permitted assigns. Neither Party shall assign, transfer or delegate any of its rights, duties or obligations under this Agreement, or any part thereof, whether by operation of law or
otherwise, without the prior written consent of the other Party; provided, that, MMX may assign its rights and obligations hereunder to any of its Affiliates or in the context of a merger or acquisition of a Party without the prior written consent of Customer. Any assignment of this Agreement will not relieve the assigning Party of its obligations hereunder, and the assuming party must agree in writing to be bound by all of the terms and conditions applicable to the assigning Party under this Agreement. Any attempted assignment in violation of this Section shall be void.

14.3 Relationship. The Parties shall at all times be independent contractors with respect to each other in carrying out this Agreement, and nothing herein renders them partners, joint venturers, agents, or employer and employee.

14.4 Notices. Unless otherwise set forth herein, all notices required or permitted under this Agreement shall be in writing, and shall be delivered personally, by mail or via express courier service, return receipt requested. Notices shall be directed to the addresses set forth below and shall be deemed effective upon receipt. Either Party may change its address for notices from time to time by providing written notice of such change to the other Party.

If to MMX:
Mandarin Matrix Inc.
Attn: Legal Department
Mandarin Matrix Inc.
845 W Center St.
North Salt Lake, UT 84054
USA

E-mail: enquiries@mandarinmatrix.com
If to Customer: MMX may give notice applicable to MMX’s general customer base by means of a general notice on the Online Classroom, and notices specific to Customer’s address listed on the Order Form.

14.5 Publicity; Press Releases. Neither Party shall, without the prior written consent of the other Party in each instance, issue any press releases or make any public statements concerning the existence of or activities under this Agreement, except that MMX may identify Customer (i.e., Customer’s district and/or school site, as applicable, but not its specific Authorized Users) as a user of the Online Classroom and may use Customer’s name, trademark(s), service mark(s), and/or logo(s) in sales presentations, marketing materials, press releases, and similar promotional events.

14.6 Waiver. No delay or omission by either Party to exercise any right occurring upon any non-compliance or default of the other Party with respect to any of the terms herein shall impair any such right or be construed to be a waiver thereof.

14.7 Severability. If any provision herein is determined by a court of competent jurisdiction to be invalid or unenforceable under applicable law, such provision shall be amended and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions of this Agreement shall continue in full force and effect.

14.8 Governing Law; Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to the principles of conflicts of law that would apply the substantive laws of another jurisdiction. Each Party hereby submits to the exclusive jurisdiction and venue of the state and
federal courts located in Delaware, over any dispute arising out of or relating to this Agreement and waives the right to object to such venue or make a claim of forum non conveniens.

14.9 Injunctive Relief. Notwithstanding anything herein to the contrary, each Party shall be entitled to seek injunctive or equitable relief whenever the circumstances permit such Party to seek such equitable relief in a court of competent jurisdiction. Customer acknowledges and agrees that the copying, disclosure, use or modification of any MMX Asset in any manner that is inconsistent with any terms or conditions herein shall cause irreparable injury to MMX for which MMX will not have an adequate remedy at law. Accordingly, MMX shall be entitled to equitable relief in court, including, but not limited to, temporary restraining orders, preliminary injunctions and permanent injunctions.

14.10 Attorneys' Fees. In the event of an alleged breach of this Agreement, the prevailing Party shall be entitled to reimbursement of all of its costs and reasonable attorneys' fees incurred in connection with such dispute or litigation, including any appeal therefrom. The prevailing Party shall be determined by the court that resolves such dispute or litigation.

14.11 Survival. Upon any expiration or termination of this Agreement, Sections 2.3, 2.4, 4, 5, 6, 7.4, 8, 9, 10.3, 11, 12, 13, and 14 hereof shall survive the termination or expiration of this Agreement, as well as any other provisions herein which by their terms or by implication are to have continuing effect after the termination or expiration of this Agreement.

14.12 Force Majeure. Except for Customer's payment obligations hereunder, neither Party shall be liable for any failure or delay in the performance of its obligations hereunder if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or
telecommunication outage that is not caused by the obligated Party; government restrictions (including, but not limited to, the denial or cancellation of any export or other license); or any other event outside the reasonable control of the obligated Party (each a "Force Majeure Event"). Both Parties will use reasonable efforts to mitigate the effect of a Force Majeure Event. This Section does not excuse either Party’s obligation to take reasonable steps to follow its normal disaster recovery procedures.

14.13 Headings; Interpretation. The headings of the various sections herein are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The Parties drafted this Agreement without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted.

14.14 Modifications. The Agreement may be modified only pursuant to a writing executed by authorized representatives of both Parties. The Parties expressly disclaim the right to claim the enforceability of any oral modifications to this Agreement or any amendments based on course of dealing, waiver, reliance, estoppel or other similar legal theory.

14.15 Entire Agreement. This Agreement, including the information which is incorporated into the Agreement by written reference (including the Order Form and any reference to information contained in a referenced policy) and Exhibit A attached hereto, sets forth the entire and exclusive agreement between the Parties as to the subject matter hereof and supersedes all prior and contemporaneous understandings, negotiations and agreements, whether written or oral, between the Parties. In the event of any conflict or inconsistency between the terms of the Agreement and the terms of an Order Form,
the Agreement shall take precedence.

14.16 Counterparts. This Agreement may be executed in counterparts, including by e-mail (i.e., exchanged PDF files), each of which will be deemed an original, and all of which taken together shall constitute one single agreement between the Parties with the same effect as if all the signatures were upon the same instrument. An electronic signature shall be as legally effective as an original signature.

EXHIBIT A - AUTHORIZED USER TERMS OF USE

These Mandarin Matrix Online Classroom Terms of Use ("Terms of Use") govern your ("you" or "your," where such references include both you and your child) use of the Mandarin Matrix Online Classroom (the "Online Classroom"), as well as any other activities or services that Mandarin Matrix Inc. ("MMX") provides to you, including, but not limited to, materials provided or made available online by MMX as part of the services it offers (the "Documentation") (collectively, the "Services"). for use pursuant to an Online Classroom End User License Agreement between MMX and your school or district, as applicable (your "School") (collectively, the "Agreement").

IMPORTANT - READ THIS AGREEMENT CAREFULLY. BY CLICKING THE "ACCEPT" BUTTON AND/OR USING THE SERVICES, YOU: (A) REPRESENT THAT YOU ARE DULY AUTHORIZED BY YOUR SCHOOL TO ACCESS AND USE THE SERVICES; AND (B) ACCEPT THESE TERMS OF USE AND AGREE THAT YOU ARE LEGALLY BOUND BY THEM. IF YOU DO NOT AGREE TO THESE TERMS OF USE, DO NOT CLICK THE "ACCEPT" BUTTON; IN THAT EVENT YOU WILL HAVE NO LICENSE TO, AND MUST NOT ACCESS OR USE, THE SERVICES.
1. Establishing an Account

1.1. Passwords. Each individual user of the Services must first receive a license to access the Services. When your School obtains a license for you, MMX will provide you with a username (formatted as an e-mail address) and password (collectively, the “Password”) that you can use to access your account. You are responsible for all use of the Services by and through such Password. You warrant that you shall treat the Password as confidential and shall not disclose it to any other person or entity. You agree to notify MMX immediately of any unauthorized access to or use of the Password, loss of the Password, or any other potential breach of security or access protocols involving the Services. To the extent applicable, you shall exit from your account at the end of each session to ensure the Services are securely accessed and used.

2. User Data.

2.1. Collected User Data. Your account with MMX will store certain personal information that you may be asked to provide to MMX, such as your full name, or that you provide in the course of using the Services, such as your assessment, progress, and other usage data gathered from your use of the Services (“User Data”). You may access your account settings to edit certain User Data contained on and in relation to the Services. Except to the extent required by applicable law, MMX is not responsible for another user’s misuse, impermissible use, or disclosure of any User Data through the Services.

2.2. Your License Grant. You hereby grant MMX a non-exclusive, irrevocable, worldwide, perpetual, unlimited, assignable, sublicenseable, fully paid-up and royalty-free right to copy, prepare derivative works of, improve, distribute, publish, remove, retain, add, process, analyze, use and commercialize, in any way now known or in the future discovered,
any information or materials that you provide, directly or indirectly in connection with the Services, including, but not limited to, de-identified, anonymised and aggregated User Data, and any content, ideas, concepts, techniques and/or data that you generate, without any further consent, notice and/or compensation to you or to any third parties. In addition, MMX may, directly or indirectly through the services of others, collect and store information regarding your use of the Services and about equipment on which you access and use the Services, by means of providing support services and through security measures included in the Services, as applicable, as further described in MMX’s Privacy Policy, which is currently available at http://mandarinmatrix.org/privacy-policy. You agree that MMX may use such information for any purpose related to any use of the Services by you, including but not limited to: (a) improving the performance of or developing updates for the Services; and (b) verifying compliance with the terms of this Agreement and enforcing MMX’s rights, including, but not limited to, all of its intellectual property rights in and to the Services.

2.3. User Data Representations, Warranties, and Covenants. You represent, warrant and covenant that all User Data and any other information or material submitted by you to MMX: (a) is and shall remain accurate and correct at all times; (b) does and shall comply with this Agreement; and (c) is owned or controlled by you, and you have the right to grant the license granted above. For the avoidance of doubt, you understand and agree that you may have to update User Data through the Services from time to time in order to comply with this Section 2.3.

2.4. MMX’s Monitoring and Enforcement. MMX may: (a) remove or refuse to use any User Data in MMX’s reasonable discretion; (b) take any action with respect to any User Data that MMX deems
necessary or appropriate in MMX’s reasonable discretion, including, but not limited to, if MMX believes that such User Data violates this Agreement, infringes any intellectual property right or any other right of any person or entity, threatens the personal safety of users of the Services or the public, or could create liability for MMX;
(c) take appropriate legal action, including without limitation, referral to law enforcement, for any illegal or unauthorized use of the Services; and
(d) terminate or suspend your access to all or part of the Services, including without limitation, for any violation of this Agreement.
Without limiting the foregoing, MMX has the right to disclose User Data and any other information collected through the Services to comply with any court order, law, or legal process, including to respond to any government, regulatory or law enforcement request. YOU WAIVE AND HOLD HARMLESS MMX AND ITS AFFILIATES, LICENSEES, AND SERVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY ANY OF THE FOREGOING PARTIES DURING, OR TAKEN AS A CONSEQUENCE OF, SUCH A DISCLOSURE, INCLUDING, BUT NOT LIMITED TO, INVESTIGATIONS BY SUCH PARTIES OR LAW ENFORCEMENT AUTHORITIES. Please be aware that MMX does not undertake to review material before it is posted on the Services and cannot ensure prompt removal of objectionable or inaccurate material after it has been submitted. Accordingly, MMX assumes no liability for any action or inaction regarding transmissions, communications, or content provided by any user of the Services or third party.

3. License and Use.

3.1. MMX’s License Grant. Subject to the terms and conditions herein, MMX hereby grants you a limited, terminable, non-sublicensable, non-exclusive, and non-transferable right and license to access and use the Services during the term of the license purchased for you by your
School, solely in and for your School's own internal, non-commercial educational purposes and in accordance with the terms and conditions herein (the "Approved Purpose"). MMX shall host and retain physical control over the Online Classroom, which will be made available only through the internet for your access and use. MMX shall have no obligation to deliver or otherwise make available to you any copies of computer programs or code, whether in object code or source code form.

3.2. Restrictions. You may access the Online Classroom only from a single device per session. You shall not, either directly or indirectly: (a) transfer, distribute, sell, lease, license, display, assign, disclose, permit time-sharing of (such as by sharing your license with another individual), commercially exploit, or otherwise make any aspect or portion of the Services available to a third party; (b) reproduce, copy, translate, download, modify, adapt, decompile, disassemble, create derivative works or reverse engineer (except as allowed under applicable law) the object code version of or otherwise attempt to secure the source code of all or any part of the Services or access the Services to build a similar or competitive product or service, except strictly as and to the extent expressly authorized by applicable law; (c) obfuscate, remove or alter any of the logos, trademarks, internet links, patent or copyright notices, confidentiality or proprietary legends or other notices or markings that are on or in the Services; or (d) access or use the Services in any way that is adverse to MMX's then-current Terms and Conditions, which are incorporated herein by this reference. In the event of any inconsistency or conflict between the terms of the Agreement and those in the Terms and Conditions, the terms of the Agreement shall govern.

3.3. Reservation of Rights. You understand and acknowledge that you do not acquire any ownership interest in the Services under this
Agreement, or any other rights to the Services other than to use the Services in accordance with the license granted hereunder, subject to all terms, conditions, and restrictions set forth herein. MMX reserves and shall retain its entire right, title, and interest in and to the Services and all intellectual property rights arising out of or relating to the Services, subject to the licenses expressly granted herein. Additionally, MMX reserves the right to terminate your access to or use of the Services immediately and take any other legal action if you, or anyone using your account, violates these provisions. MMX may pursue any legal and/or technical remedies to prevent the violation of this Section and to enforce this Agreement.


This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to the principles of conflicts of law that would apply the substantive laws of another jurisdiction. Each Party hereby submits to the exclusive jurisdiction and venue of the state and federal courts located in Delaware, over any dispute arising out of or relating to this Agreement and waives the right to object to such venue or make a claim of forum non conveniens. Notwithstanding anything herein to the contrary, each Party shall be entitled to seek injunctive or equitable relief whenever the circumstances permit such Party to seek such equitable relief in a court of competent jurisdiction.