Loop **courseflow**

SOFTWARE SUBSCRIPTION AND SERVICES AGREEMENT

This is a legally binding agreement. Please read these terms and conditions carefully. By accepting this agreement, you represent that you have the full legal authority to enter this agreement on behalf of the party identified in the online registration process or in the ordering document, and in that capacity, you acknowledge such party's agreement to be bound by the terms and conditions set forth or referenced below.

LAST UPDATED FEBRUARY 27, 2024

This agreement (the "**Agreement**") is made and entered into by and between Courseflow, Inc., a Delaware corporation ("**Courseflow**") d.b.a ("**Loop"**), and the entity ("**Customer**") indicated in the online process during which this Agreement initially is presented for acceptance or, as applicable, indicated in the ordering document executed by the parties or otherwise accepted by such entity in connection herewith (such process or ordering document and the information provided during such process or in such document regarding Customer, as amended from time through Customer's login to its account in the Platform or by the written agreement of the parties, the "**Order**", or the "**Quote**").

This Agreement is effective upon Customer's acceptance of the Order or the parties' execution of the Order (the "**Effective Date**"). The Order is incorporated herein and made a part of this Agreement.

1. **Certain Definitions.**

   "**Affiliate**" means, as to a party, any other entity that directly or indirectly controls, is under common control with, or is controlled by, such party, with "control" and its correlatives meaning possession, directly or indirectly, of power to direct the management or policies of an entity.

   "**Authorized User**" means an employee or individual independent contractor (or employee of a contractor) who has been duly authorized by Customer to use the Platform.

   "**Confidential Information**" means any information of any type in any form that (i) is disclosed to or observed or obtained by one party from the other party (or from a person the recipient knows or reasonably should assume has an obligation of confidence to the other party) in the course of, or by virtue of, this Agreement and (ii) either is designated as confidential or proprietary or is of a nature that the recipient knew or reasonably should have known, under the circumstances, would be regarded by the owner of the information as confidential or proprietary. Without limiting any other provisions of this Agreement, and whether or not otherwise meeting the criteria described herein, the Platform, Customer Data, and the content of this Agreement (other than the fact of its existence and the identities of the parties hereto) shall be deemed conclusively to be Confidential Information. For purposes of this Agreement, however, the term "Confidential Information" shall not include any portion of the foregoing that (i) was in the recipient's possession or knowledge at the time of disclosure and that was not acquired directly or indirectly from the other party, (ii) was disclosed to the recipient by a third party not having an obligation of confidence of the information to any person or body of which the recipient knew or that, under the circumstances, the recipient reasonably should have assumed to exist, or (iii) is or, other than by the act or omission of the recipient, becomes a part of the public domain not under seal by a court of competent jurisdiction. A selection or combination of information will not meet any of the foregoing exceptions solely because some

or all of its individual component parts are so excepted and will meet such exception(s) only if the selection or combination itself is so excepted. In the event of any ambiguity as to whether information is Confidential Information, the foregoing shall be interpreted strictly and there shall be a rebuttable presumption that such information is Confidential Information.

"**Customer Data**" means all data entered into the Platform by an Authorized User or uploaded to the Platform by or on behalf of Customer pursuant to a file transfer, system interface, or other electronic migration of data from another system utilizing a mechanism provided by or on behalf of Courseflow or approved in writing by Courseflow (including by Courseflow on Customer's behalf using access credentials to such other system provided by Customer), in each case as such data is maintained in the Platform from time to time.

"**Data Breach**" means any unauthorized use or disclosure of Student Information as to which Customer is obligated by applicable law to notify the subject thereof (or such person's parent or guardian) and/or any governmental authority.

"**Designated Support Contact**" means a duly qualified and knowledgeable Authorized User identified to Courseflow by Customer to serve as a liaison between Customer and Courseflow for Platform support purposes; provided, however, that any such person shall be trained or otherwise approved by Courseflow in its reasonable discretion; and provided, further, that no more than a reasonable number of such persons shall be designated at any given time.

"**Documentation**" means all documentation (whether printed or in an electronic format), including video content, supplied or made available to Customer by Courseflow for use with or in support of the Platform, including any and all revisions, modifications, and updates thereof as may be supplied or made available by Courseflow to Customer during the Term and all copies thereof made by or on behalf of Customer.

"**Environment Specifications**" means the specifications for supported internet browsers and other information technology for operating the Platform set forth in the Documentation or on Courseflow's website (https://www.mycourseflow.com/) from time to time.

"**Functional Specifications**" means the descriptions of features and functions of the Platform set forth in **Exhibit A** and as otherwise may be set forth expressly in the Order.

"**Go-Live Date**" means, unless otherwise set forth in the Order, the date Courseflow notifies Customer (which may be by email to the System Administrator) that the system interface and implementation services set forth in the Order have been completed and the Platform is ready for use by Authorized Users.

"**Idea**" has the meaning ascribed in Section 10(c).

"**Infringement Claim**" means a claim by a third-party other than an Affiliate of Customer, made during the Term, that use of the Licensed Materials in accordance with the terms of this Agreement infringes a United States patent practiced by such party or a United States copyright held by such party or misappropriates such party's trade secrets pursuant to laws of the United States or a state in the United States.

"**License Restrictions**" means, collectively, the limitations on use set forth in set forth in Section 3(b) and, with respect to a given Order, the maximum permitted usage capacity and any other limitations and prohibitions on uses of the Platform indicated in such Order (if any).

"**Licensed Materials**" means each Platform and the Documentation.

"**Losses**" means all losses, liabilities, damages, awards, settlements, claims, suits, proceedings, costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, expert witness fees, settlement, judgment, interest, and penalties).

"**Malfunction**" means a reproducible material failure of the Platform, when operated in accordance with the Documentation and in an information technology environment meeting the Environment Specifications, to provide the functionality described in the Functional Specifications or to perform in conformance with any standards and specifications expressly stated therein.

"**Message**" means an email message, text message, telephone voice message (whether or not send using an automated dialer), or other message transmitted by Courseflow, on behalf of Customer, to a person designated by an Authorized User through the Platform.

"**Order Date**" means the date set forth in the Order as the effective date of the Order.

"**Platform**" means the computer software application(s) identified in the Order, limited to the module(s) thereof specifically identified in the Order, if any, provided as a software-as-a-service (SaaS) platform and/or as a mobile device application (as applicable), along with any associated database structures and queries, user interfaces, system interfaces, tools, and the like, together with any and all revisions, modifications, and updates thereof, all as are made available to Customer by Courseflow from time to time pursuant to this Agreement.

"**Problem Report**" means a written report delivered to Courseflow by Customer as provided in this Agreement describing in reasonable detail a suspected Malfunction.

"**Professional Services**" has the meaning ascribed in Section 4(a)(i).

"**Reasonable Workaround**" means a procedure of which Courseflow has informed Customer that is reasonable under the circumstances and sufficient to alleviate any substantial adverse effect of a Malfunction on the utility of the Platform.

"**Student Information**" means Customer Data that is personally identifiable information (as defined under the Family Educational Rights and Privacy Act of 1974 and its implementing regulations, each as amended) received or accessed by Courseflow from or on behalf of Customer or created, transmitted, or maintained by Courseflow for or on behalf of Customer pursuant to this Agreement.

"**System Administrator**" means the individual(s) identified as such in the Order or such substitute(s) designated by Customer in accordance with Courseflow's then-current procedures therefor; provided, however, that no more than a reasonable number of such persons shall be designated at any given time.

"**Usage Data**" means statistical information regarding Authorized Users' use of the Platform to the extent such information reasonably cannot be used to identify Customer, any Authorized User, any client of Customer, or any other individual and makes no use of Student Information.

2. Term. The term of this Agreement (the "**Term**") shall commence upon the Order Date and, unless earlier terminated as provided in this Agreement or in the Order, shall expire upon the expiration of the Order as provided therein (or, if no such expiration is set forth, on the first anniversary of the Order Date).

3. License to Customer.

(a) Use of Platform by Authorized Users. Subject to terms and conditions of this Agreement, Courseflow grants to Customer a non-exclusive, non-transferable (except as otherwise provided herein) license during the Term as follows, in each case subject to the applicable License Restrictions:

(i) for Authorized Users to access and use the Platform solely for Customer's educational and related administrative purposes;

(ii) for Authorized Users to use the Platform in furtherance of system implementation, maintenance, and technical support thereof; and

(iii) for Authorized Users to copy and use the Documentation in furtherance of the use by such persons of the Platform pursuant to the license granted in this Agreement.

(b) Restrictions. Except as may be authorized expressly in this Agreement, Customer shall not do, nor shall it authorize any person to do, any of the following: (i) use the Licensed Materials for any purpose or in any manner not specifically authorized by this Agreement; (ii) make any copies or prints, or otherwise reproduce or print, any portion of the Licensed Materials, whether in printed or electronic format; (iii) distribute, republish, download, display, post, or transmit any portion of the Licensed Materials; (iv) create or recreate the source code for, or re-engineer, reverse engineer, decompile, or disassemble any Licensed Materials that is computer software; (v) modify, adapt, translate, or create derivative works from or based upon any part of the Licensed Materials, or combine or merge any part of the Licensed Materials with or into any other software, document, or work; (vi) refer to or otherwise use any part of the Licensed Materials as part of any effort to develop a product or service having any functional attributes, visual expressions, or other features or purposes similar to those of Licensed Materials; (vii) remove, erase, or tamper with any copyright, logo, or other proprietary or trademark notice printed or stamped on, affixed to, or encoded or recorded in the Licensed Materials, or use a proxy, reverse proxy, or any other such mechanism that is intended to, or has the effect of, obscuring any of the foregoing or confusing an Authorized User as to Courseflow's rights in the Platform, (viii) fail to preserve all copyright and other proprietary notices in any copy of any portion of the Licensed Materials made by or on behalf of Customer; (ix) sell, market, license, sublicense, distribute, rent, loan, or otherwise grant to any third party any right to possess or utilize any portion of the Licensed Materials without the express prior written consent of Courseflow (which may be withheld by Courseflow for any reason or conditioned upon execution by such party of a confidentiality and non-use agreement and/or other such other covenants and warranties as Courseflow in its sole discretion deems desirable); (x) use the Licensed Materials to gain or attempt to gain access to any software applications, computer systems, or data not expressly authorized under this Agreement; (xi) knowingly use the Platform to store, receive, or distribute any information that violates any applicable law; or (xii) attempt to do or assist any party in attempting to do any of the foregoing.

(c) Third-Party Components. Customer acknowledges that portions of the Platform may be licensed to Courseflow by third parties. The license granted to Customer under this Agreement is subject to the terms and conditions of Courseflow's agreements with such third parties, if any, set forth from time to time at https://www.mycourseflow.com/legal, which are incorporated herein and made a part of this Agreement.

(d) Emergency Suspension.   Any provision of this Agreement to the contrary notwithstanding, Courseflow may suspend or limit use of the Platform to the extent and for such time as Courseflow reasonably deems necessary or appropriate, without notice to Customer or any Authorized User (provided, however, that Courseflow shall use reasonable efforts to notify Customer thereof as soon as reasonably practicable) (i) to comply with applicable law, the order of a court or other governmental authority, the request of a law enforcement official or (ii) if Courseflow reasonably believes that (A) use of the Platform by any Authorized User will or could disrupt operation of the Platform, other customers' use of the Platform, or the infrastructure used to provide the Platform, (B) use of the Platform by any Authorized User will or could result in unauthorized access to the Platform or information stored or processed by or through the Platform or there exists a security threat or attack on the Platform or other event that may create a material risk of the foregoing, (C) Customer or an Authorized User is using the Platform for fraudulent or illegal activities, or (D) there exists any other bona fide emergency or

reasonable likelihood thereof. Courseflow shall have no liability for any Losses or any other consequences that Customer or any third party may incur solely as a result of any such suspension that is undertaken in good faith.

4. **Services.**

(a) <u>Services Provided</u>. Subject to terms and conditions of this Agreement and provided Customer is not in material breach of its obligations hereunder, Courseflow shall provide the following services during the Term:

(i) <u>Professional Services</u>. Subject to Customer's cooperation and assistance as reasonably requested by Courseflow, Courseflow shall provide the implementation, training, and/or other professional services, if any, described in the Order (the "**Professional Services**").

(ii) <u>Support</u>. During the Term, Courseflow shall use reasonable efforts to provide to Customer's Designated Support Contacts consultation and assistance with operational and technical support issues arising from use of the Platform by Authorized Users during Courseflow's business hours, pursuant to requests for support services submitted by telephone, e-mail, or to a web portal at such number, e-mail address, and/or URL as Courseflow provides to Customer from time to time. Courseflow shall provide such services as promptly as is reasonably practicable based on priority determined in good faith by Courseflow.

(iii) <u>Maintenance</u>. In response to a Problem Report, Courseflow shall use reasonable efforts to correct a reported Malfunction or to provide a Reasonable Workaround provided that Customer assists Courseflow in its efforts by making available, as reasonably requested by Courseflow, information, documentation, access to personnel, and testing.

(iv) <u>Other Services</u>. Courseflow shall perform such other services related to the Platform as are set forth in the Order or pursuant to arrangements documented informally, such as by exchange of e-mails. Unless otherwise set forth in the Order, or such informal documentation, all such other services shall be billed at Courseflow's then-current rates therefor.

(b) <u>Supported Use and Environment</u>. Courseflow's support and maintenance obligations pursuant to this Agreement are conditioned upon access to and use of the Platform by Authorized Users in accordance with the Documentation and in an information technology environment meeting the Environment Specifications. Courseflow may revise the Documentation and the Environment Specifications from time to time; provided, however, that no such revision shall eliminate or materially diminish any feature or operational functionality of the Platform described therein as of the Effective Date without the written approval of Customer.

(c) <u>Enhancements</u>. From time to time at its discretion, Courseflow may implement releases of the Platform that contain changes, updates, patches, fixes, enhancements to functionality, and/or additional functionality. Courseflow in its sole discretion will determine whether to include in the Platform, as part of the maintenance services hereunder, features or functionality not originally specified for the Platform, and Courseflow shall have no obligation to disclose or offer to Customer any such features or functionality.

5. **Charges; Taxes.** Customer shall pay all amounts due to Courseflow pursuant to this Agreement that are not disputed in good faith by notice to Courseflow within the time for such payment (and Customer promptly shall pay all such disputed amounts as thereafter are agreed or determined to be owing to Courseflow) in accordance with the payment terms set forth in the Order (or, if no such terms are set forth, within 30 days after invoice dates thereof). Customer shall make remittances to Courseflow in U.S. Dollars in the manner set forth in the

Order or, if no such payment manner is set forth, by check, subject to collection, or by wire transfer, ACH, or other electronic funds transfer (initiated by Customer) to a bank account as designated by Courseflow on each invoice or by other notice to Customer, in accordance with Courseflow's then-current procedures therefor), in each of the foregoing cases drawn on a U.S. bank. Customer shall pay when due (and Courseflow at its discretion may collect and pay on Customer's behalf) all taxes, levies, or assessments based on or in any way measured by this Agreement, the Licensed Materials, and the services provided hereunder, excluding taxes based on Courseflow's net income; provided, however, that if Customer notifies Courseflow in writing that Customer is exempt from paying applicable state, county, city, or other local sales or use taxes and delivers to Courseflow a copy of Customer's tax exemption certificate or other evidence satisfactory to Courseflow demonstrating such exemption, Courseflow shall not collect and pay such taxes on Customer's behalf except pursuant to an order from a court of competent jurisdiction or notice from such taxing authority. If Customer has notified Courseflow of such a tax exemption, Customer shall notify Courseflow promptly of any change in the status of such exemption.

6. **Customer Responsibilities and Acknowledgments.**

(a) System Administrator. Customer acknowledges and agrees that the System Administrator, utilizing mechanisms provided therefor within the Platform, will have the sole responsibility for authenticating and provisioning access to the Platform for other Authorized Users and for disabling access to the Platform for Authorized Users. Customer shall cause the System Administrator to perform such authentication in accordance with generally-accepted information security standards and shall cause the System Administrator to disable such access immediately upon the termination of employment or engagement of any Authorized User or when an Authorized User otherwise no longer is eligible to use the Platform pursuant to this Agreement. Customer shall notify Courseflow immediately, by telephone and in writing, to disable access to the Platform for a System Administrator who is so terminated or otherwise no longer is eligible to use the Platform pursuant to this Agreement. The System Administrator also will have responsibility for providing and maintaining configurations and general information in the Platform regarding Customer.

(b) Account Passwords and Access Controls. Customer shall assign a distinct user ID to each Authorized User. Customer shall maintain and cause to be maintained the confidentiality of all Authorized User IDs and all Authorized Users' passwords, including implementing and enforcing policies and procedures as reasonable and appropriate thereto, and Customer at all times shall maintain adequate technical, physical, and administrative safeguards, including access controls and system security requirements and devices, to ensure that access to the Platform by or through Customer is limited to Authorized Users. Customer shall cause its personnel not to share user IDs or passwords. Customer shall be solely responsible for all use or misuse of the user IDs of Authorized Users, and except as otherwise required by applicable law, Courseflow shall have no obligation to monitor for or report any use or attempted use of the user IDs of Authorized Users. All such user IDs and passwords are deemed to be Confidential Information of both Customer and Courseflow.

(c) Customer Connection to Platform. Customer shall be responsible for selecting, obtaining, and maintaining any equipment and ancillary services needed to access and use the Platform, in each case meeting the Environment Specifications.

(d) Customer System Interfaces and Data Feeds. Customer shall cooperate as reasonably requested by Courseflow with the implementation of, and Customer shall maintain during the Term, such system interfaces and data feeds for the exchange of data between the Platform and third-party systems as are set forth in such Order.

7. **Messaging Consent and Compliance**

(a) Authorization to Send Text Messages. The Customer hereby authorizes Courseflow to allow Authorized Users to send SMS text messages for communication and reporting purposes to the stakeholders of the Customer ("Recipients").

(b) Obtaining Consent: The Customer agrees that it is solely responsible for obtaining the necessary opt-in consents from all Recipients to receive text messages from Courseflow on behalf of the Authorized Users. The Customer must secure express written consent that complies with all applicable laws and regulations.

(c) Evidence of Consent: The Customer shall maintain records of all consents obtained and shall provide such evidence of consents to Courseflow upon request. The Customer assures that the consents obtained shall clearly authorize Courseflow to deliver text messages to Recipients on behalf of the Authorized Users.

(d) Revocation of Consent: Courseflow will provide an easy and accessible way for Recipients to revoke their consent to receive text messages at any time. The Customer is responsible for informing Recipients of this process and for notifying Courseflow in a timely manner of any revocations of consent received.

(e) Compliance: The Customer represents and warrants that it will comply with all federal, state, and local laws and regulations governing the sending of text messages, including but not limited to the TCPA, COPPA, and any applicable data privacy laws.

8. **Security of Student Information.** In addition to any other restrictions or obligations imposed at law or provided under this Agreement, Courseflow shall comply with the requirements regarding the safeguarding of Security Information set forth in **Exhibit B**.

9. **Confidentiality.**

(a) Security of Confidential Information. Without limiting Courseflow's obligation set forth in Section 7, each party possessing Confidential Information of the other party will maintain all such Confidential Information under secure conditions, using the same security procedures used by such party for the protection of its own Confidential Information of a similar kind and in any event not less than reasonable security measures.

(b) Non-Disclosure Obligation. Except as otherwise may be permitted by this Agreement, neither party shall disclose any Confidential Information of the other party to any person without the express prior written consent of the other party; provided, however, that either party may disclose appropriate portions of Confidential Information of the other party to those of its employees, contractors, agents, and professional advisors having a substantial need to know the specific information in question in connection with such party's exercise of rights or performance of obligations under this Agreement provided that all such persons (i) have been instructed that such Confidential Information is subject to the obligation of confidence set forth by this Agreement and (ii) are bound by contract, employment policies, or fiduciary or professional ethical obligation to maintain such information in confidence.

(c) Compelled Disclosure. If either party is ordered by a court, administrative agency, or other governmental body of competent jurisdiction to disclose Confidential Information, or if it is served with or otherwise becomes aware of a motion or similar request that such an order be issued, then such party will not be liable to the other party for disclosure of Confidential Information required by such order if such party complies with the following requirements: (i) if an already-issued order calls for immediate disclosure, then such party immediately shall move for or otherwise request a stay of such order to permit the other party to respond as set forth in this paragraph; (ii) such party immediately shall notify the other party of the motion or order

by the most expeditious possible means; (iii) such party shall not oppose a motion or similar request by the other party for an order protecting the confidentiality of the Confidential Information, including not opposing a motion for leave to intervene by the other party; and (iv) such party shall exercise its best efforts to obtain reasonable assurance that confidential treatment will be accorded the Confidential Information so disclosed.

(d) <u>Non-Use Obligation</u>. Except as expressly authorized in this Agreement, during the Term and forever thereafter (or for such shorter period as may be imposed by applicable law), neither party shall use any Confidential Information of the other party, except at the request of and for the benefit of such other party, without the express prior written consent of the other party.

(e) <u>Copying of Confidential Information</u>. Except as otherwise may be permitted by this Agreement, neither party shall copy or otherwise reproduce any part of any Confidential Information of the other party, nor attempt to do so, without the prior written consent of the other party. Any embodiments of Confidential Information of a party that may be generated by the other party, either pursuant to or in violation of this Agreement, will be deemed to be the sole property of the first party and fully subject to the obligations of confidence set forth herein.

(f) <u>Proprietary Legends</u>. Without the other party's prior written consent, neither party shall remove, obscure, or deface on or from any embodiment of any Confidential Information any proprietary legend relating to the other party's rights.

(g) <u>Reports of Misappropriation</u>. Each party immediately shall report to the other party any act or attempt by any person of which such party has knowledge or reasonably suspects (i) to use, disclose, or copy Confidential Information without authorization from the other party or (ii) to reverse assemble, reverse compile, or otherwise reverse engineer any part of the Confidential Information.

(h) <u>Post-Termination Procedures</u>. Except as otherwise expressly provided in this Agreement, promptly upon the expiration or any termination of this Agreement, or upon any other expiration or termination of a party's right to possess and/or use Confidential Information, each party shall turn over to the other party (or destroy and certify the same in writing, if agreed in writing by the other party) any embodiments of any Confidential Information of the other party.

10. <u>Ownership</u>.

(a) <u>Customer Data</u>. As between Courseflow and Customer, Customer has and retains exclusive ownership of all Customer Data and all intellectual property and proprietary rights therein.

(b) <u>Licensed Materials</u>. As between Courseflow and Customer, Courseflow has and retains exclusive ownership of the Licensed Materials and all intellectual property and proprietary rights therein.

(c) <u>Suggestions and Joint Efforts; Usage Data</u>. Customer may suggest, and the parties jointly may discover or create, inventions, improvements, discoveries, or ideas (each, an "**Idea**") that Courseflow, at its sole option, may incorporate in the Licensed Materials or in other products or services that may or may not be made available to Customer. Any Idea, whether or not patentable, that is conceived or reduced to practice during the Term arising from or related to this Agreement or the Licensed Materials shall be and remain solely the property of Courseflow. Customer acknowledges and agrees that Courseflow has and retains exclusive and valid ownership of all Usage Data. Customer hereby assigns to Courseflow, without any warranties whatsoever (all of which, express or implied, are disclaimed) any and all right, title, and interest in and to any Ideas, and Usage Data.

(d) No Other Rights. Except as expressly set forth in this Agreement, Customer shall not obtain any right, title, or interest in or to anything created or developed by Courseflow in connection with or incident to this Agreement or any other tangible or intangible property of Courseflow.

11. License to Use and Disclose Customer Data. Customer grants to Courseflow a non-exclusive, royalty-free license during the Term to use and disclose Customer Data solely to perform its obligations under this Agreement, including for purposes of monitoring, correcting, and improving the Platform. Customer represents and warrants that it owns or has the legal right and authority, and will continue to own or maintain the legal right and authority, to grant to Courseflow, and for Courseflow to exercise during the Term, the license set forth in this paragraph, including all consents and authorizations necessary pursuant to applicable law and contract for Courseflow, on behalf of Customer, to send Messages.

12. Disclaimers.

(a) PLATFORM PROVIDED AS-IS. THE LICENSED MATERIALS AND SERVICES PROVIDED PURSUANT TO THIS AGREEMENT ARE PROVIDED "AS-IS," WITH NO WARRANTIES, AND COURSEFLOW DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE LICENSED MATERIALS OR THE SERVICES HEREUNDER, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT COURSEFLOW KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR OTHERWISE IS IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING, OR OTHERWISE. COURSEFLOW EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN CUSTOMER.

(b) Other Disclaimers. Customer will be exclusively responsible as between the parties for, and Courseflow makes no representation or warranty with respect to, the following: (i) any Customer Data, including ensuring the accuracy thereof; (ii) effects or results of any misdirected or undelivered Message, whether due to erroneous data, user error, Malfunction, or otherwise; (iii) effects or results of any intended Message, whether such communication is alleged to violate a person's privacy rights, alleged to violate applicable law, or otherwise; (iv) determining whether the Licensed Materials will achieve the results desired by Customer; and (v) selecting, procuring, installing, operating, and maintaining the technical infrastructure for Customer's access to and use of the Licensed Materials. Courseflow shall not be liable for, and shall have no obligations with respect to, any aspect of the Licensed Materials that is modified by any person other than Courseflow or its contractors, use of the Licensed Materials other than in accordance with the most current operating instructions provided by Courseflow, Malfunctions or other effects of problems, defects, or failures of software or hardware not provided by Courseflow or of acts or omissions of Customer or any third party. Customer acknowledges that the operation of the Licensed Materials will not be error free in all circumstances and that all defects in the Licensed Materials may not be corrected.

13. Risk Allocation.

(a) EXCLUSION OF INDIRECT DAMAGES. WITHOUT LIMITING A PARTY'S EXPRESS INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT WITH REGARD TO THIRD-PARTY CLAIMS FOR DAMAGES DESCRIBED IN THIS PARAGRAPH, AND OTHER THAN FOR CUSTOMER'S BREACH OF THE LICENSE RESTRICTIONS, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM THE OTHER PARTY'S RIGHTS) FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING LOST PROFITS, LOSS OF OR DAMAGE TO DATA, LOSS OF BUSINESS, OR

OTHER ECONOMIC DAMAGE), WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, SHOULD HAVE ANTICIPATED, OR IN FACT KNEW OF THE POSSIBILITY THEREOF. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS BY ANYONE.

(b) MAXIMUM AGGREGATE LIABILITY. OTHER THAN FOR COURSEFLOW'S LIABILITY WITH REGARD TO A DATA BREACH, CUSTOMER'S BREACH OF THE LICENSE RESTRICTIONS, OR A PARTY'S EXPRESS INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, IN NO EVENT SHALL A PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY (INCLUDING LIABILITY TO ANY PERSON WHOSE CLAIM IS BASED ON OR DERIVED FROM A RIGHT CLAIMED BY OR THROUGH SUCH PARTY), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED (i) WITH REGARD TO A GIVEN EVENT OR SERIES OF RELATED EVENTS, THE SUBSCRIPTION OR LICENSE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE 180-DAY PERIOD IMMEDIATELY PRECEDING THE EVENT OR SERIES OF RELATED EVENTS GIVING RISE TO CLAIM AND (ii) FOR ALL SUCH EVENTS IN THE AGGREGATE, THE SUBSCRIPTION OR LICENSE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE ONE-YEAR PERIOD IMMEDIATELY PRECEDING THE EVENT OR SERIES OF RELATED EVENTS GIVING RISE TO CLAIM; PROVIDED, HOWEVER, THAT COURSEFLOW'S LIABILITY WITH REGARD TO DATA BREACH (INCLUDING ANY INDEMNIFICATION OBLIGATIONS WITH REGARD THERETO) SHALL NOT EXCEED, IN THE AGGREGATE, 200% OF THE FOREGOING AMOUNT.

(c) Intentional Risk Allocation.   Each party acknowledges that the provisions of this Agreement were negotiated, as a material part of the agreement memorialized herein, to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions involved with this Agreement. The warranty disclaimers and limitations in this Agreement are intended, and have as their essential purpose, to limit the circumstances of liability. The remedy limitations and the limitations of liability are separately intended, and have as their essential purpose, to limit the forms of relief available to the parties.

14. Marketing. Courseflow agrees to submit to Customer all advertising, sales, promotion, and other publicity matters relating to the Agreement wherein the name of the Customer is mentioned, or language used from which, in the Customer's judgment, an endorsement may be inferred or implied. Courseflow further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the Agreement without obtaining the prior written approval of Customer.

15. Termination; Disposition of Customer Data.

(a) Termination/Suspension for Breach. A party may terminate this Agreement upon notice to the other party for breach of any provision of this Agreement or such Order if such breach has not been cured 30 days after notice of the breach by the non-breaching party (or, if the breach is of an obligation to pay money, five business days, and if the breach reasonably cannot be cured within 30 days, immediately upon such notice). Without limiting any other rights or remedies available to Courseflow at law or in equity, upon any such breach by Customer, including nonpayment of any amounts due under this Agreement and not disputed as provided in this Agreement, during the pendency of such breach, upon notice to Customer, Courseflow may suspend Customer's access to the Platform and/or any other services to be provided pursuant to the Order. No such suspension shall toll or otherwise affect any amounts due to be paid to Courseflow by Customer hereunder.

(b) <u>Termination upon Certain Events</u>. To the extent permitted by applicable law, a party may terminate this Agreement upon notice to the other party (or, as applicable, to the court, trustee, or receiver) if the other party makes an assignment for the benefit of its creditors, files a petition in bankruptcy, receivership, reorganization, or other like proceeding under any present or future debtor relief law (or is the subject of an involuntary such petition or filing that is not dismissed within 60 days after the effective filing date thereof), or admits of a general inability to pay its debts as they become due.

(c) <u>Remedies Cumulative</u>. Any termination of this Agreement shall be in addition to, and not in lieu of, any other rights or remedies available at law or in equity.

(d) <u>Disposition of Customer Data</u>. Promptly following the expiration or any termination of this Agreement, Courseflow shall destroy the Customer Data; provided, however, that to the extent Courseflow is required by applicable law or legal process to retain any portion of the Customer Data, or to the extent that destruction of any Customer Data is infeasible, Courseflow shall retain such Customer Data as though it were Confidential Information for such time as is required by such law or process or until destruction is no longer infeasible, after which Courseflow promptly shall destroy the Customer Data.

16. <u>Other Provisions</u>.

(a) <u>Interpretation</u>. For purposes of this Agreement, (i) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation" unless otherwise expressly indicated in a given instance, (ii) the word "or" is not exclusive, and (iii) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. The definitions given for any defined terms in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. Unless the context otherwise requires, references herein to sections mean the sections of this Agreement, reference to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, or modified from time to time to the extent permitted by the provisions thereof, and reference to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The division of this Agreement into sections, subsections, and paragraphs and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Agreement. Unless otherwise indicated, references to sections, subsections, and paragraphs are to provisions of this Agreement and references to exhibits are to Exhibits appended to this Agreement. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

(b) <u>Nature of Relationship; Subcontractors</u>. Courseflow shall provide all services hereunder as an independent contractor to Customer. Subject to the provisions of this Agreement regarding confidentiality, Courseflow may perform its obligations hereunder through subcontractors; provided, however, that Courseflow shall be responsible for the performance of such subcontractors. Nothing contained herein shall be deemed to create any agency, partnership, joint venture, or other relationship between the parties or any of their Affiliates, and neither party shall have the right, power, or authority under this Agreement to create any duty or obligation on behalf of the other party.

(c) <u>Force Majeure</u>. Neither party shall be liable for any failure to perform its obligations under this Agreement if such failure arises, directly or indirectly, out of causes reasonably

beyond the direct control of such party and not due to such party's own fault or negligence or that of persons acting on its behalf, and that cannot be overcome by the exercise of due diligence and could not have been prevented through commercially reasonable measures, including acts of God, acts of terrorists or criminals, acts of domestic or foreign governments (including the imposition of or any increase in any tariff), change in any law or regulation, fires, floods, explosions, epidemics and other public health events, disruptions in communications, power, or other utilities, strikes or other labor problems, riots, or unavailability of supplies.

(d) <u>Notice</u>. Except as otherwise expressly provided herein, notices shall be given under this Agreement in writing, in the English language, by personal delivery (in which case such notices shall be deemed given when so delivered), by certified or registered U.S. mail, postage pre-paid, from within the United States (in which case such notices shall be deemed given on the third business day after deposit), or by a recognized overnight courier, pre-paid, with next-business-day delivery instruction (in which case such notices shall be deemed given on the next business day after deposit). Such notices shall be sent to Courseflow at **Attn: Legal Department, Courseflow, Inc., 6500 Papermill Dr., Suite 207, Knoxville, TN 37919**, with a copy (which shall not constitute notice) to Steve F. Wood, Esq., Baker Donelson, by email to sfwood@bakerdonelson.com.   Such notices shall be sent to Customer at the address shown on the Cover Page, with a copy (which shall not constitute notice) to the address shown on the Cover Page, if so indicated. Either party may change its address for purposes of notice by notice thereof to the other party as provided herein. Any notice that this Agreement expressly permits or requires to be given by email shall be transmitted to the email address(es) expressly specified therefor or, if none is so specified, to any of a party's principal contacts with the other party, and any such notice shall be deemed given on the date transmitted to a valid such email address (or, if transmitted other than on a business day, on the next business day following such transmission).

(e) <u>Governing Law; Venue</u>. Any claim, dispute, or litigation relating to the Agreement shall be governed by the laws of the State of Oklahoma without regard to application of choice of law principles. Pursuant to 74 O.S. §85.14, where federal granted funds are involved, applicable federal laws, rules and regulations shall govern to the extent necessary to insure benefit of such federal funds to the State. Venue for any action, claim, dispute, or litigation relating in any way to the Contract Documents, shall be in Oklahoma County, Oklahoma.

(f) <u>Assignment</u>. A party may transfer or assign some or all of its rights and/or delegate some or all of its obligations (other than as permitted of Courseflow with regard to subcontractors) under this Agreement only with the express prior written consent of the other party, which may be granted or withheld in such party's sole discretion; provided, however, that a party may assign all of its rights hereunder indivisibly to any Affiliate of such party or to a purchaser of substantially all of such party's assets or equity interests. No such assignment shall relieve Customer of any obligation to make payments to Courseflow without the prior written consent of Courseflow thereto in Courseflow's sole discretion. Any purported transfer or assignment of any right under this Agreement otherwise than in accordance with the provisions of this paragraph shall be null and void and a breach of this Agreement.

(g) <u>Successors and Assigns</u>. This Agreement will be binding upon and inure to the benefit of the parties and their successors and assigns permitted by this Agreement.

(h) <u>No Third-Party Beneficiaries</u>.   Except with regard to indemnitees under express indemnification as set forth in this Agreement, nothing in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties any rights, remedies, obligations, or liabilities whatsoever.

(i) Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. No prior or contemporaneous representations, inducements, promises, or agreements, oral or otherwise, between the parties with reference thereto will be of any force or effect. Each party represents and warrants that, in entering into and performing its obligations under this Agreement, it does not and will not rely on any promise, inducement, or representation allegedly made by or on behalf of the other party with respect to the subject matter hereof, nor on any course of dealing or custom and usage in the trade, except as such promise, inducement, or representation may be expressly set forth herein.

(j) Amendment and Waiver. Except as otherwise expressly provided herein, no modification or amendment to this Agreement will be valid or binding unless in writing and duly executed by the party or parties to be bound thereby. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect the right of such party to require performance of that provision. Any waiver by either party of any breach of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right under this Agreement.

(k) Severability. If any provision of this Agreement is ruled wholly or partly invalid or unenforceable by a court or other body of competent jurisdiction, then (i) the validity and enforceability of all provisions of this Agreement not ruled to be invalid or unenforceable will be unaffected; (ii) the effect of the ruling will be limited to the jurisdiction of the court or other body making the ruling; (iii) the provision held wholly or partly invalid or unenforceable shall be deemed amended, and the court or other body is authorized to reform the provision, to the minimum extent necessary to render them valid and enforceable in conformity with the parties' intent as manifested herein; and (iv) if the ruling or the controlling principle of law or equity leading to the ruling subsequently is overruled, modified, or amended by legislative, judicial, or administrative action, then the provision in question as originally set forth in this Agreement shall be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

(l) Injunctive Relief. Each party acknowledges that any violation of its covenants in this Agreement relating to the other party's Confidential Information and intellectual property would result in damage to such party that is largely intangible but nonetheless real and that is incapable of complete remedy by an award of damages. Accordingly, any such violation shall give such party the right to a court-ordered injunction or other appropriate order to enforce specifically those covenants without bond and without prejudice to any other rights or remedies to which such party may be entitled as a result of a breach of this Agreement.

(m) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. An executed counterpart of this Agreement (including a document facsimile in PDF) or a document executed by any electronic signature complying with the U.S. Federal ESIGN Act of 2000 (e.g., www.docusign.com), delivered by means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart hereof signed by each of the parties.

EXHIBIT A

Functional Specifications

- Sends on-demand, scheduled, and recurring announcements to individuals or groups via SMS text, phone, email, and in-app message center

- Can be integrated with existing technologies, such as SIS/LMS

- Configurable to notify students, parents, instructors, and/or administrators automatically of relevant classroom and school-related data via SMS text and/or email

- Users can create survey campaigns that automatically send surveys to students, parents, and faculty, the results of which Courseflow collects and reports to a designated survey coordinator on a weekly, monthly, quarterly, or annual basis

EXHIBIT B

Information Security Requirements

1.   <u>Due Diligence</u>. If Courseflow has submitted or submits written responses to any questionnaire from Customer regarding Courseflow's information security protocols and/or Courseflow's compliance with any laws or regulations, Courseflow represents and warrants that Courseflow's responses to each such questionnaire at the time of such submission are, and Courseflow's responses to any such future questionnaire provided pursuant to this Agreement will be, accurate and complete in all material respects.

2.   <u>Safeguards</u>. Courseflow at all times shall maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, availability, and integrity of (i) Student Information that it maintains or transmits and (ii) logon credentials and computing equipment and devices used, or capable of being used, for remote access to any network or system that is operated by or on behalf of Customer.

3.   <u>Encryption of Student Information</u>.

    (a)   Courseflow shall render all Student Information in transmission unusable, unreadable, or indecipherable by encryption using an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key. Such algorithmic process shall comply with the requirements of Federal Information Processing Standards (FIPS) 140-2, Security Requirements for Cryptographic Modules, including, as appropriate, standards described in NIST Special Publication 800-52, Guidelines for the Selection and Use of Transport Layer Security (TLS) Implementations, NIST Special Publication 800-77, Guide to IPsec VPNs, NIST Special Publication 800-113, Guide to SSL VPNs, or other standards that are FIPS 140-2 validated.

    (b)   With regard to Student Information stored on laptop computers, mobile devices, external hard drives, and removable media, Courseflow shall render all such Student Information in storage unusable, unreadable, or indecipherable by encryption using an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key. Such algorithmic process shall be consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-111, Guide to Storage Encryption Technologies for End Authorized User Devices.

    (c)   With regard to Student Information stored on servers and workstations within physically secure facilities, Courseflow shall use reasonable efforts to encrypt such Student Information as provided in this Exhibit.

4.   <u>Secure Destruction of Student Information</u>. When Student Information is required under this Agreement to be destroyed, the media on which such Student Information is stored or recorded shall be destroyed as follows: (i) paper, film, or other hard copy media shall be shredded or destroyed such that the Student Information cannot be read or otherwise cannot be reconstructed; and (ii) electronic media shall be cleared, purged, or destroyed consistent with NIST Special Publication 800-88, Guidelines for Media Sanitization, such that the Student Information cannot be retrieved.

5.   <u>Subcontractors</u>. Any disclosure of Student Information to an independent contractor or agent of Licensor (each, a "**Subcontractor**"), including any hosting vendor, security consultant, or other service provider that will maintain or have access to Student Information, shall be pursuant to a written agreement between Licensor and such

Subcontractor containing reasonable and appropriate obligations for such Subcontractor to safeguard such Student Information. Licensor shall take reasonable steps to ensure that the acts or omissions of its Subcontractor would not breach the terms of the Agreement if done by Licensor, including making reasonable inquiry of such Subcontractor regarding its ability to comply with the foregoing obligations and taking reasonable steps to monitor such compliance.

6.   No Export of Student Information. Except with regard to use of the Platform by Authorized Users, Licensor shall not transmit Student Information to or store Student Information at any location outside of the United States of America and shall not authorize any Subcontractor to do so or authorize any Subcontractor outside of the United States of America to access or view Student Information remotely.

7.   Questionnaires; Inspection. Unless Courseflow has delivered or made available to Customer a third-party certification as contemplated in Section 8 of this Exhibit that remains effective or, within the prior one-year period, a third-party assessment as contemplated in Section 8 of this Exhibit, then within a reasonable time following the written request of Customer from time to time, not more frequently than once in any one-year period, Courseflow, at Customer's election, (i) shall provide accurate and complete written responses to reasonable questionnaires from Customer regarding Courseflow's internal practices, books, and records relating to the safeguarding of Student Information and Courseflow's compliance with its security obligations under this Agreement or (ii) shall make its internal practices, books, and records relating to the safeguarding of Student Information available to Customer or, subject to execution of a nondisclosure agreement reasonably satisfactory to Courseflow, Customer's designee for the purposes of determining Courseflow's compliance with its security obligations under this Agreement. Nothing in this paragraph shall waive any attorney-client privilege or other privilege applicable to either party.

8.   Third-party Reports. In the event that Courseflow achieves any third-party certification of its information security management program (such as, without limitation, certification under ISO 27001 or HITRUST) or obtains any third-party assessment of the design and/or effectiveness of its information security management program (such as, without limitation, a SOC 2 report prepared by a Certified Public Accountant), upon Customer's written request, Courseflow shall deliver or make available to Customer a copy of such certificate or assessment report (or permit Customer or, subject to execution of a nondisclosure agreement reasonably satisfactory to Courseflow, Customer's designee to review the same at Courseflow's offices or, at Customer's election, via a secure online collaboration session).

9.   Disclaimer. The fact that Customer exercises its rights under this Exhibit, fails to exercise such rights, or has such rights shall not relieve Courseflow of its obligations pursuant to this Exhibit or otherwise under the Agreement, nor shall Customer's review of any report provided pursuant hereto, failure to review any such report, failure to detect, or detection of but failure to notify Courseflow or require Courseflow's remediation of, any practice or condition of Courseflow constitute acceptance of such practice or condition or a waiver of any of Customer's rights under this Exhibit or otherwise under the Agreement