

**LearningTree, Inc.**

**Software as a Service Agreement**

**v4\_2021**

**IMPORTANT - READ THIS LEARNINGTREE SOFTWARE AS A SERVICE AGREEMENT (THIS "AGREEMENT") CAREFULLY BEFORE SIGNING THE ORDERING DOCUMENT. BY ACCEPTING THIS AGREEMENT THROUGH AN ORDERING DOCUMENT THAT INCORPORATES THIS AGREEMENT (THE "ORDERING DOCUMENT"), YOU AGREE TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. 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 AND, IN SUCH EVENT, "YOU" AND "YOUR" AS USED IN THIS AGREEMENT SHALL REFER TO SUCH ENTITY.**

**1. Agreement Definitions**

"You" and "your" refers to the individual or entity that has ordered software as a service from LearningTree, Inc. ("LearningTree") or an authorized distributor by executing the ordering document that accompanies and incorporates this LearningTree software as a service agreement (collectively, the "agreement"). Software as a service consists of system administration, system management, and system monitoring activities that LearningTree performs for LearningTree programs, and includes the right to use the LearningTree programs, support services for such LearningTree programs, as well as any other services provided by LearningTree, as defined in the ordering document (collectively, the "services"). The term "program documentation" refers to any documentation as well as any other materials provided by LearningTree as part of the services. The term "LearningTree programs" refers to the software products owned or distributed by LearningTree to which LearningTree grants you access as part of the services, including program documentation, and any program updates provided as part of the services. The term "users" shall mean those individuals authorized by you or on your behalf to use the services, as defined in the ordering document. The term "your data" refers to the data provided by you that resides in your services environment. The term "ordering document" refers to the ordering document signed by the parties that accompanies and incorporate this software as a service agreement, including the services policies and any other document referenced or incorporated into the ordering document.

**2. Applicability of Agreement**

This software as a service agreement serves as a master service agreement between you and LearningTree until superseded by a subsequent master service agreement entered into and jointly signed by you and LearningTree.

### **3. Rights Granted**

Upon LearningTree's acceptance of your order and for the duration of the services term defined in the ordering document, you have the nonexclusive, non-assignable, royalty-free, worldwide limited right to use the services solely for your internal business operations and subject to the terms of the agreement. You may allow your users to use the services for this purpose and you are responsible for your users' compliance with the agreement. The services are provided as described in, and subject to, the services policies referenced in the ordering document.

You acknowledge that LearningTree has no delivery obligation and will not ship copies of the LearningTree programs to you as part of the services. You agree that you do not acquire under the agreement any license to use the LearningTree programs specified in the ordering document in excess of the scope and/or duration of the services. Upon the end of the agreement or the services thereunder, your right to access or use the LearningTree programs specified in the ordering document and the services shall terminate.

### **4. Ownership and Restrictions**

You retain all ownership and intellectual property rights in and to your data. LearningTree or its licensors retain all ownership and intellectual property rights to the services and LearningTree programs. LearningTree retains all ownership and intellectual property rights to anything developed and delivered under the agreement.

Third-party technology that may be appropriate or necessary for use with some LearningTree programs is specified in the program documentation or ordering document as applicable. Your right to use such third-party technology is governed by the terms of the third-party technology license agreement specified by LearningTree and not under the agreement.

You may not:

- remove or modify any program markings or any notice of LearningTree's or its licensors' proprietary rights;
- make the programs or materials resulting from the services available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific program license or materials from the services you have acquired);
- modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the services (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), or access or use the services in order to build or support, and/or

- assist a third party in building or supporting, products or services competitive to LearningTree;
- disclose results of any services or program benchmark tests without LearningTree's prior written consent; and
- license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the services, LearningTree programs or materials available, to any third party other than, as expressly permitted under the terms of the agreement

The rights granted to you under the agreement are also conditioned on the following:

- except as expressly provided herein, no part of the LearningTree program code may be copied, reproduced, distributed, republished, downloaded, displayed, posted, or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; and
- you agree to make every reasonable effort to prevent unauthorized third parties from accessing the services.

## 5. Third-Party Software

LearningTree has entered into agreements with third-party companies that allow LearningTree to authorize you to access and use, through the LearningTree programs, potentially one or more of the following features/components, based upon your licensed subscription services. Your rights to use the applicable third-party features/components will continue in so far as your agreement with LearningTree is in effect, and LearningTree's agreements with the applicable third-party companies are in effect. In the event that LearningTree ceases to have such rights to provide the applicable third-party features/components, LearningTree will work with you to identify an alternative product providing substantially similar features/functions and on substantially similar terms and will make such product available to you if possible. If LearningTree is unable to find or obtain the right to provide an alternative product on such terms, your sole remedy will be a reduction in the Annual Subscription Services fee listed in your order document by the following applicable amount(s) based on the inclusion of the applicable features/components in your order document. LearningTree makes no representations or warranties regarding the availability, functionality, and/or quality of third-party features/components.

## 6. Warranties, Disclaimers, and Exclusive Remedies

LearningTree warrants that the services will perform in all material respects in accordance with the services policies referenced in the ordering document. If the services provided to

you for any given month during the services term were not performed as warranted, you must provide written notice to LearningTree as specified in the ordering document no later than five business days after the last day of that particular month or within such other period stated in the ordering document.

LEARNINGTREE DOES NOT GUARANTEE THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT LEARNINGTREE WILL CORRECT ALL SERVICE ERRORS. YOU ACKNOWLEDGE THAT LEARNINGTREE DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. LEARNINGTREE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE.

## **7. Trial Use of the Services**

If specified in the ordering document, you may order certain services for trial, nonproduction purposes subject to the terms and conditions of the agreement. Services acquired for trial purposes are provided "as is" and LearningTree does not offer any warranties for such services.

## **8. Indemnification**

If a third party makes a claim against either you or LearningTree ("Recipient" which may refer to you or LearningTree depending upon which party received the Material), that any information, design, specification, instruction, software, service, data, or material ("Material") furnished by either you or LearningTree ("Provider" which may refer to you or LearningTree depending on which party provided the Material), and used by the Recipient infringes its intellectual property rights, the Provider, at its sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs, and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

- notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);

- gives the Provider sole control of the defense and any settlement negotiations; and
- gives the Provider the information, authority, and assistance the Provider needs to defend against or settle the claim.

If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require the return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects LearningTree's ability to meet its obligations under the relevant order, then LearningTree may, at its option and upon 30 days prior written notice, terminate the order. The Provider will not indemnify the Recipient if the Recipient alters the Material or uses it outside the scope of use identified in the Provider's user documentation or services policies or if the Recipient uses a version of the Materials which has been superseded if the infringement claim could have been avoided by using an unaltered current version of the Material which was provided to the Recipient. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon (i) any information, design, specification, instruction, software, data, or material not furnished by the Provider, or (ii) any Material from a third party portal or other external sources that is accessible to you within or from the service (e.g., a third party Web page accessed via a hyperlink). LearningTree will not indemnify you to the extent that an infringement claim is based upon the combination of any Material with any products or services not provided by LearningTree. LearningTree will not indemnify you for infringement caused by your actions against any third party if the services as delivered to you and used in accordance with the terms of the agreement would not otherwise infringe any third party intellectual property rights. LearningTree will not indemnify you for any infringement claim that is based on: (1) a patent that you were made aware of prior to the effective date of the agreement (pursuant to a claim, demand, or notice); or (2) your actions prior to the effective date of the agreement. This section provides the parties' exclusive remedy for any infringement claims or damages.

## 9. Support Services

**10. Coverage.** The applications eligible for Support Services are only those applications associated with Ordering Document.

**11. Term.** The term of Support Services coincides with the term specified in the associated Ordering Document.

**12. Standard Support Services.** Standard support services shall include:

- Technical services to design, code, check out and deliver amendments or alterations of the Supported Application necessary to correct or provide a solution to any programming error attributable to LearningTree which caused the Supported Application not to perform substantially as described in the applicable Specifications.

- Reasonable telephone consultation in the use and operation of the Supported Application during LearningTree's standard support service hours, 8:00 am to 8:00 pm (Eastern Time).

- Corrections to the Supported Applications which LearningTree elects to include under its standard support services program and does not market separately to customers generally ("Updates"). Updates do not include significantly enhanced functionality, new functionality, or major changes to the Supported Applications architecture or file structure.

- Up to four (4) Designated Contacts identified by you to serve as primary liaisons between you and LearningTree for technical support. You shall notify LearningTree whenever Designated Contact responsibilities are transferred to another individual.

- Case submission over the web or by telephone. LearningTree will use commercially reasonable efforts to promptly respond to each case and will use commercially reasonable efforts to promptly resolve each case. Actual resolution time will depend on the nature of the case and the resolution. A resolution may consist of a fix, workaround, or other solution in LearningTree's reasonable determination.

## 1. Support Request Management.

Issues will be categorized and handled according to an assigned severity level. The case severity level is selected by the user at time of case submission, and will be updated by LearningTree as follows:

Level 1 - Critical	Critical production issues affecting all users, including system unavailability and data integrity issues with no workaround available.
Level 2 - Urgent	Major functionality is impacted or performance is significantly degraded. The issue is persistent and affects many users and/or major functionality. No reasonable workaround is available. Also

	includes time-sensitive requests such as requests for feature activation or data export.
Level 3 – High	System performance issues or bugs affecting some but not all users. A short-term workaround is available, but not scalable.
Level 4 – Medium	Inquiry regarding a routine technical issue; information requested on application capabilities, navigation, installation, or configuration; bug affecting a small number of users. A reasonable workaround is available. The resolution required as soon as reasonably practicable.

LearningTree will use commercially reasonable efforts to respond to each case within the applicable response time described in the table below, depending on the severity level set on the case.

Severity Level	Target Initial Response Time
1	2 hours
2	4 hours
3	24 hours
4	2 - 3 days

Severity Level 1 and 2 target initial response times is 24x7, including weekends and holidays. Severity Level 1 cases must be submitted via telephone as described above. Severity Levels 1 and 2 target initial response times do not apply to cases submitted via email.

Severity Level 3 and 4 target initial response times include local business hours only and exclude weekends and holidays, and do not apply to cases submitted via e-mail.

Reproducible errors that cannot promptly be resolved will be escalated to higher support tiers for further investigation and analysis. LearningTree must be able to reproduce errors in order to resolve them. You agree to cooperate and work closely with LearningTree to reproduce errors, including conducting diagnostic or troubleshooting activities as requested and appropriate. Also, subject to your approval on a case-by-case basis, users

may be asked to provide remote access to their LearningTree application and/or desktop system for troubleshooting purposes.

1. **e. Your Responsibilities.** You shall allow LearningTree access to the Supported Applications as necessary to provide Support Services.

1. **Services Not Regularly Included in Standard Support Services.** Investigation and research for your identified conditions determined by LearningTree not to be covered by standard support services are billable to you as additional services not included in standard support services. Such additional services include your identified conditions attributable to (i) your failure to accept error corrections, modifications, updates, or releases made available by LearningTree within a reasonable period of time; (ii) modifications to the Supported Application not made by LearningTree, (iii) your misuse, improper use, alteration or damage of the Supported Application, (iv) your failure to operate the Supported Application in the recommended environment or failure to operate or maintain any component as recommended by its supplier, and (v) the additional services described in Section 7 below. You agree to pay additional compensation at LearningTree's then-current standard rates to the extent such a change or failure by you, or any other action or inaction of yours, impedes or renders more difficult than the usual performance of Support Services.

1. **Additional Services.** You agree to pay LearningTree's fees for additional services not included in Support Services at LearningTree's then-current standard rates, together with all reasonable costs incurred in connection therewith. Training, consulting, education services, and any enhanced functionality, new functionality, or major changes to the Supported Applications architecture or file structure are not included in Support Services. If LearningTree and you agree that LearningTree is to perform additional services, not in the original scope of the Support Services specified in this agreement, the parties shall execute separate writing setting forth a description of the services and the terms and conditions applicable to such additional services.

1. **Proprietary Rights.** Any programs, works, manuals, changes, additions, alterations, amendments, or enhancements in the form of new or partial programs, applications, code, or documentation as may be provided by LearningTree under these support services and designated as a LearningTree product, and all copies thereof, shall be and remain the sole and exclusive

property of LearningTree and shall be available for use by you under and subject to the license granted.

## 10. End of Services

Services provided under this software as a service agreement shall be provided for the period defined in the ordering document unless earlier terminated in accordance with the agreement. The term of the services and any renewal years are collectively defined as the "services term." At the end of the services term, all rights to access or use the services, including the LearningTree programs listed in the ordering document, shall end.

If either of us breaches a material term of the agreement and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate the applicable ordering document under which the breach occurred. If LearningTree ends the ordering document as specified in the preceding sentence, you must pay within 30 days all amounts which have accrued prior to such end, as well as all sums remaining unpaid for the services ordered under the agreement plus related taxes and expenses. If LearningTree ends the services under the Indemnification section, you must pay within 30 days all amounts remaining unpaid for services plus related taxes and expenses. The non-breaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if you are in default under the agreement, you may not use the services ordered.

In addition, LearningTree may immediately suspend your password, account, and access to or use of the services (i) if you fail to pay LearningTree as required under the agreement and do not cure within the first ten days of the 30 day cure period, or (ii) if you violate any provision of this software as a service agreement. LearningTree may terminate the services hereunder if any of the foregoing is not cured within 30 days after LearningTree's initial notice thereof. Any suspension by LearningTree of the services under this paragraph shall not excuse you from your obligation to make payment(s) under the agreement.

At your request, and for a period of up to 60 days after the termination of the applicable ordering document, LearningTree may permit you to access the services solely to the extent necessary for you to retrieve a file of your data then in the services environment. LearningTree will provide, annually at your request and upon the termination of the applicable ordering document, a backup of your data in a format selected by LearningTree.

You agree and acknowledge that LearningTree has no obligation to retain your data and that your data may be irretrievably deleted after 60 days following the termination of the ordering document.

Provisions that survive termination or expiration of the agreement are those relating to limitation of liability, infringement indemnity, payment, and others which by their nature are intended to survive.

## **11. Fees and Taxes**

You agree to pay for all services ordered as set forth in the applicable ordering document. All fees due under the agreement are non-cancelable and the sums paid nonrefundable. You agree to pay any sales, value-added, or other similar taxes imposed by applicable law that LearningTree must pay based on the services you ordered, except for taxes based on LearningTree's income. You will reimburse LearningTree for reasonable expenses related to providing any on-site portion of the services. Fees for services listed in an ordering document are exclusive of taxes and expenses. All amounts invoiced hereunder are due and payable within 30 days of the date of the invoice.

You agree that you have not relied on the future availability of any services, programs, or updates in entering into the payment obligations in the ordering document; however, the preceding does not relieve LearningTree of its obligation to deliver services that you have ordered per the terms of the agreement.

## **12. Nondisclosure**

By virtue of the agreement, the parties may have access to information that is confidential to one another ("confidential information"). We each agree to disclose only information that is required for the performance of obligations under the agreement. Confidential information shall be limited to the terms and pricing under the agreement, your data residing in the services environment, and all information clearly identified as confidential at the time of disclosure.

A party's confidential information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure, or (d) is independently developed by the other party.

We each agree to hold each other's confidential information in confidence for a period of three years from the date of disclosure. Also, we each agree to disclose confidential information only to those employees or agents who are required to protect it against unauthorized disclosure in a manner no less protective than under the agreement. LearningTree will protect the confidentiality of your data residing in the services environment in accordance with the LearningTree security practices specified in the services policies referenced in the ordering document. Nothing shall prevent either party from disclosing the terms or pricing under the agreement in any legal proceeding arising from or in connection with the agreement or from disclosing the confidential information to a governmental entity as required by law.

### **13. Entire Agreement**

You agree that the agreement (including the information which is incorporated into the agreement by written reference (including reference to information contained in a URL or referenced policy), is the complete agreement for the services ordered by you and that the agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such services. If any term of the agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of the agreement. It is expressly agreed that the terms of the agreement, including any LearningTree ordering document, shall supersede the terms in any purchase order or other non-LearningTree document and no terms included in any such purchase order or other non-LearningTree document shall apply to the services ordered. The agreement may not be modified and the rights and restrictions may not be altered or waived except in a writing by authorized representatives of you and of LearningTree.

### **14. Limitation of Liability**

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THE AGREEMENT), DATA, OR DATA USE. LEARNINGTREE'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS SOFTWARE AS A SERVICE AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO LEARNINGTREE FOR THE SERVICES UNDER THE ORDER THAT IS THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. ANY DAMAGE IN YOUR FAVOR AGAINST LEARNINGTREE SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY YOU UNDER THE AGREEMENT AND ANY SUCH REFUND AND CREDIT SHALL APPLY TOWARDS THE LIMITATION OF LIABILITY.

### **15. Other**

1. LearningTree is an independent contractor and we agree that no partnership, joint venture, or agency relationship exists between We each will be responsible for paying our own employees, including employment-related taxes and insurance.
2. You shall obtain at your sole expense any rights and consents from third parties necessary for LearningTree and its subcontractors to perform the services under the agreement
3. The agreement is governed by the substantive and procedural laws of Georgia and you and LearningTree agree to submit to the exclusive jurisdiction of, and venue in, the courts in Georgia in any dispute arising out of or relating to the agreement
4. If you have a dispute with LearningTree or if you wish to provide a notice under the Indemnification section of this software as a service agreement, or if you become subject to insolvency or other similar legal proceedings, you will promptly send written notice to LearningTree, 3295 River Exchange Drive Suite 372, Norcross GA 30092, Attention: General Counsel, Legal Department LearningTree may give notice applicable to LearningTree's software as a service customer base by means of a general notice on the LearningTree portal for the services, and notices specific to you by electronic mail to your e-mail address on record in LearningTree's account information or by written communication sent by first-class mail or pre-paid post to your address on record in LearningTree's account information.
5. You may not assign the agreement or give or transfer the services or an interest in them to another individual or entity. If you grant a security interest in any portion of the services, the secured party has no right to use or transfer the services or any deliverables.
6. Except for actions for nonpayment or breach of LearningTree's proprietary rights, no action, regardless of form, arising out of or relating to the agreement may be brought by either party more than two years after the cause of action has
7. The Uniform Computer Information Transactions Act does not apply to this software as a service agreement or orders placed under You understand that

LearningTree's business partners, including any third party firms retained by you to provide computer consulting services, are independent of LearningTree and are not LearningTree's agents. LearningTree is not liable for nor bound by any acts of any such business partner unless the business partner is providing services as a LearningTree subcontractor on an engagement ordered under this software as a service agreement.

8. Assignment; Successors and Assigns. Neither party may assign this Agreement or its obligations hereunder without the prior written consent of the other party hereto, except that either party may assign this Agreement in connection with a sale of all or substantially all its outstanding equity or assets without the consent of the other party hereto. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of, each of the parties hereto and, except as otherwise expressly provided herein, their respective legal representatives, successors, and assigns.

## 16. Force Majeure

Neither of us shall be responsible for failure or delay of performance 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 the denial or cancellation of any export or other license); other events outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such an event continues for more than 30 days, either of us may cancel unperformed services upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or your obligation to pay for the services.

## 17. Your Data

You agree to provide any notices and obtain any consents related to your use of the services and LearningTree's provision of the services, including those related to the collection, use, processing, transfer, and disclosure of personal information. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and ownership of all of your data.

## 18. Restrictions on Use of the Services

You agree not to use or permit the use of the services, including by uploading, emailing, posting, publishing, or otherwise transmitting any material, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c)

violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, “junk mail”, “spam” or chain letters; (e) constitutes an infringement of intellectual property or other proprietary rights, or (f) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to LearningTree under the agreement, LearningTree reserves the right to remove or disable access to any material that violates the foregoing restrictions. LearningTree shall have no liability to you in the event that LearningTree takes such action. You agree to defend and indemnify LearningTree against any claim arising out of a violation of your obligations under this section.

## **19. Services Tools**

LearningTree may use tools, scripts, software, and utilities (collectively, the “tools”) to monitor and administer the services and to help resolve your LearningTree service requests. The tools will not collect, report or store any of your data residing in the service production environment, except as necessary to troubleshoot service requests or other problems in the service. Data collected by the tools (excluding production data) may also be used to assist in managing LearningTree’s product and service portfolio and for license management. You agree that (a) except as set forth in the following paragraph, you may not access or use the tools, and (b) you will not use or restore the tools from any tape backup at any time following termination of the agreement.

If LearningTree provides you with access to or use of any tools in connection with the services, your right to use such tools is governed by the license terms that LearningTree specifies for such tools; however, if LearningTree does not specify license terms for such tools, you shall have a non-transferable, non-exclusive, limited right to use such tools solely to facilitate your administration and monitoring of your services environment, subject to the terms of the agreement. Any such tools are provided by LearningTree on an “as is” basis and LearningTree does not provide technical support or offer any warranties for such tools. Your right to use such tools will terminate upon the earlier of LearningTree’s notice (which may be through posting on LearningTree’s support site), the end of the services term, or the date that the license to use such tools ends under the license terms specified for such tools.

## **20. Statistical Information**

LearningTree may compile statistical information related to the utilization and performance of the services and may make such information publicly available, provided that such information does not incorporate your personally identifiable information or include your company’s name. LearningTree retains all intellectual property rights in such information.

## **21. Third-Party Web Sites, Content, Products, and Services**

The services may enable you to add links to Web sites and access to content, products, and services of third parties, including users, advertisers, affiliates, and sponsors of such third

parties. LearningTree is not responsible for any third-party Web sites or third-party content provided on or through the services and you bear all risks associated with the access and use of such Web sites and third-party content, products, and services.

## **22. Customer Reference**

You agree (i) that LearningTree may identify you as a recipient of services and use your logo in sales presentations, marketing materials, and press releases, and (ii) to develop a brief customer profile for use by LearningTree on LearningTree.com for promotional purposes.

## **23. Open Source Software**

A portion of the Software may contain or consist of open source software, which you may use under the terms and conditions of the specific license under which the open source software is distributed.

THIS OPEN SOURCE SOFTWARE IS DISTRIBUTED IN THE HOPE THAT IT WILL BE USEFUL, BUT IS PROVIDED "AS IS" WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY REGARDING TITLE OR AGAINST INFRINGEMENT. IN NO EVENT SHALL LEARNINGTREE, THE COPYRIGHT HOLDERS, OR THE CONTRIBUTORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS OPEN SOURCE SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.