



## TERMS AND CONDITIONS FOR ACHIEVEIT ONLINE, LLC

- 1. LICENSE GRANTS:** Achieve!t Online grants Client a non-exclusive, non-transferable worldwide right to use Achieve!t Online, solely for Client's own internal business purposes subject to the terms of this Agreement. Subject to the terms of this Agreement, Client grants to Achieve!t Online the non-exclusive, worldwide, right to use, copy, store, transmit and display Client Data solely to the extent necessary to provide Achieve!t Online as requested by Client. Client shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise make available to any third party Achieve!t Online or the Content (including tutorials, resource files, instructional materials, and methodology work flows); (ii) modify or make derivative works based upon Achieve!t Online or the Content; (iii) commercially exploit Achieve!t Online or the Content in any way, or (iv) create Internet "links" to Achieve!t Online or "frame" or "mirror" any Content contained in, or accessible from, Achieve!t Online on any other server, wireless, or Internet-based device. Achieve!t Online shall not use the Client Data for any purpose other than to provide Achieve!t Online to Client. All rights not expressly granted to Client are reserved by Achieve!t Online and its licensors.

**2. RESTRICTIONS:** Client is permitted to store, manipulate, analyze, reformat, print, and display the Content only for Client's internal business use. Unauthorized use, resale, or commercial exploitation of Achieve!t Online and/or the Content in any way is expressly prohibited. Client agrees not to reverse engineer Achieve!t Online, or access Achieve!t Online in order to (i) build a competitive product or service, (ii) build a product using similar ideas, features, functions, or graphics of Achieve!t Online, or (iii) copy any ideas, features, functions, or graphics of Achieve!t Online. Client shall not copy, license, sell, transfer, make available, distribute, or assign this license or the Content to any third-party. Client shall not create Internet "links" to Achieve!t Online or "frame" or "mirror" any Content contained on, or accessible from, Achieve!t Online on any other server or Internet-based device. User licenses cannot be shared or used by more than one individual facility.
- 2. THIRD-PARTY INTERACTION:** Client shall not (i) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise make available to any third party Achieve!t Online or the Content, (ii) modify or make derivative works based upon the Achieve!t Online technology or the Content; (iii) commercially exploit Achieve!t Online or the Content in any way, or (iv) create Internet "links" to Achieve!t Online or "frame" or "mirror" any Content contained in, or accessible from, Achieve!t Online on any other server, wireless, or Internet-based device. Achieve!t Online shall not use the Client Data for any purpose other than to provide Achieve!t Online to Client.
- 3. OWNERSHIP:** Achieve!t Online alone (and its licensors, where applicable) shall own all right, title, and interest, including all related Intellectual Property Rights, in and to Achieve!t Online, the Content, and any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Client or any other party relating to Achieve!t Online. This Agreement is not a sale and does not convey any rights of ownership in or related to Achieve!t Online, Achieve!t Online, or Intellectual Property owned by Achieve!t Online to Client. The

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- 4. ACCOUNT INFORMATION AND DATA:** All data submitted by Client to Achievelt Online, whether posted by Client or by third parties, shall remain the sole property of Client or such third parties, as applicable, unless specifically notified in advance. Client, not Achievelt Online, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Client Data, and Achievelt Online shall not be responsible or liable for any action taken by the Client that results in the deletion, correction, destruction, damage, loss, or failure to store any data. In the event that Client terminates this Agreement (other than by reason of Client's breach), Achievelt Online will make available to Client a file of the Client Data within 30 days of termination notice if Client so requests. Achievelt Online reserves the right to withhold Client Data for any breach, including, without limitation, Client's non-payment, until such time that the breach is satisfied. Upon termination for cause, Client's right to access or use Achievelt Online immediately ceases, and Achievelt Online will make available to Client a file of the Client Data within 30 days of termination notice if Client so requests.
  
- 5. CONFIDENTIAL INFORMATION:** All written and oral information and materials disclosed or provided by the Client to Achievelt Online under this Agreement is Confidential Information regardless of whether it was provided before or after the date of this Agreement or how it was provided to Achievelt Online. Confidential Information means all data and information relating to the business and management of the Client. Except as otherwise provided in this Agreement, Achievelt Online must keep the Confidential Information confidential, and the Confidential Information will remain the exclusive property of the Client. Achievelt Online will not use the Confidential Information for any purpose that might be directly or indirectly detrimental to the Client or any of its affiliates or subsidiaries. The obligations to ensure and protect the confidentiality of the Confidential Information imposed on Achievelt Online in this Agreement and any obligations to provide notice under this Agreement will survive the expiration or termination, as the case may be, of this Agreement and will continue for a period of ten (10) years from the date of such expiration or termination.
  
- 6. HIPAA COMPLIANCE FOR HEALTHCARE ORGANIZATIONS:** Achievelt Online shall respect the confidentiality of all patient information and records and shall comply with all applicable laws and regulations concerning their maintenance and protection, including the Health Insurance Portability and Accountability Act ("HIPAA") and any regulations promulgated thereunder relating to patient information and records, including HIPAA-compliant software, websites, and data bases. "Patient information and records" shall be defined consistent with applicable law and shall include, without limitation, any and all "protected health information," as that term is defined by HIPAA, any and all individually identifying information concerning patients, and any and all records generated by Achievelt Online or Client. Violation of this section by Achievelt Online shall constitute a material breach of this Agreement, authorizing Client to immediately terminate this Agreement.

7. **SECURITY:** Achievelt Online shall use reasonable measures available to protect the security of Client's data, including data encryption and virus protection, but does not warrant or guarantee that Achievelt Online is free from the vulnerability of Internet attacks.
  
8. **INTERNET DELAYS:** Achievelt Online's services may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. Achievelt Online is not responsible for any delays, delivery failures, or other damage resulting from such problems.
  
9. **MUTUAL INDEMNIFICATION:** Client shall indemnify and hold Achievelt Online, its licensors, and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Client Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by Client of the representations and warranties; or (iii) a claim arising from the breach by Client or Users of this Agreement, provided in any such case that Achievelt Online (i) gives written notice of the claim promptly to Client (ii) gives Client sole control of the defense and settlement of the claim (provided that Client may not settle or defend any claim unless it unconditionally releases Achievelt Online of all liability and such settlement does not affect Achievelt Online's business or Achievelt Online); (iii) provides to Client all available information and assistance; and (iv) has not compromised or settled such claim. Achievelt Online shall indemnify and hold Client and its parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that Achievelt Online directly infringes a copyright, a U.S. patent issued as of the Effective Date, or trademark of a third party; (ii) a claim, which if true, would constitute a violation of Achievelt Online of the representations or warranties; or (iii) a claim arising from breach of this Agreement by Achievelt Online's; provided that Client (i) promptly gives written notice of the claim to Achievelt Online's; (ii) gives Achievelt Online sole control of the defense and settlement of the claim (provided that Achievelt Online may not settle or defend any claim unless it unconditionally releases Client of all liability); (iii) provides to Achievelt Online all available information and assistance; and (iv) has not compromised or settled such claim. Achievelt Online shall have no indemnification obligation, and Client shall indemnify Achievelt Online pursuant to this Agreement, for claims arising from any infringement arising from the combination of Achievelt Online with any of Client's products, service, hardware, or business process(s).
  
10. **DISCLAIMER OF WARRANTIES:** ACHIEVEIT ONLINE AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, INTERNET AVAILABILITY, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY, OR COMPLETENESS OF ACHIEVEIT ONLINE OR ANY CONTENT; ACHIEVEIT ONLINE AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET CLIENT'S REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES,

INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY CLIENT THROUGH ACHIEVEIT ONLINE WILL MEET CLIENT'S REQUIREMENTS OR EXPECTATIONS, (E) ERRORS, OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS;(III) THE SERVICE AND ALL CONTENT IS PROVIDED TO CLIENT STRICTLY ON AN "AS IS" BASIS; AND (IV) ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY ACHIEVEIT ONLINE AND ITS LICENSORS.

**11. LIMITATION OF LIABILITY:** IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED ONE TIME THE AMOUNT ACTUALLY PAID BY AND/OR DUE FROM CLIENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**12. ADDITIONAL RIGHTS:** Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages, so the exclusions set forth above may not apply to Client.

**13. GENERAL:** With respect to all Clients, this Agreement shall be governed by Delaware law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims, or causes of action arising out of or in connection with this Agreement or Achieveit Online shall be subject to the exclusive jurisdiction of the state and federal courts located in Wilmington, Delaware. No text or information set forth on any other purchase order, preprinted form, or document shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between Client and Achieveit Online as a result of this agreement or use of Achieveit Online. The failure of Achieveit Online to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Achieveit Online in writing. This Agreement comprises the entire agreement between Client and Achieveit Online and supersedes all prior or contemporaneous negotiations, discussions, or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

14. **PRIVACY:** The privacy policy for AchieveIt Online can be found online at [www.achievet.com](http://www.achievet.com). AchieveIt Online reserves the right to modify this privacy policy in its reasonable discretion from time to time.

