

## DYKNOW SOFTWARE AND SERVICES END USER LICENSE AGREEMENT

### **\*\*IMPORTANT\*\***

### **SCROLL THROUGH AND READ ALL OF THE FOLLOWING TERMS AND CONDITIONS**

BY CONTINUING TO USE THE SOFTWARE, YOU ACKNOWLEDGE AND AGREE THAT YOU ARE ACTING AND ENTERING INTO THIS AGREEMENT ON BEHALF OF YOUR INSTITUTION OR ORGANIZATION (THE "ORGANIZATION"), AND YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO LEGALLY BIND THE ORGANIZATION TO THESE TERMS AND CONDITIONS. THE TERMS "YOU" AND "YOUR" SHALL REFER TO YOUR SCHOOL, ORGANIZATION OR INSTITUTION, AND TO YOU IN CONNECTION WITH YOUR USE AS A CLIENT USER. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MAY NOT SELECT THE ACCEPT BUTTON AND YOU SHALL NOT USE THE SERVICE.

BY CONTINUING TO USE THE SOFTWARE, YOU FURTHER ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND INTEND TO BE BOUND BY ALL OF THE TERMS, CONDITIONS, AND NOTICES CONTAINED HEREIN, AS WELL AS THE TERMS, CONDITIONS, AND NOTICES CONTAINED IN THE DYKNOW POLICIES POSTED IN VARIOUS LOCATIONS ON THE DYKNOW.COM WEBSITE (the "**DyKnow Policies**"), JUST AS IF YOU HAD SIGNED THIS AGREEMENT. If You do not accept this Agreement or the DyKnow Policies, You are not licensed or otherwise permitted to use the Software.

DyKnow may at any time modify the terms and conditions of this Agreement, or any part thereof, or may impose new conditions to Your use of the Software. Except as otherwise stated herein, any modification to this Agreement shall be effective ten (10) days after it initially is posted on the <http://www.dyknow.com> website. Your use of the Service after any such modification will be conclusively deemed acceptance of such modification. If any modification is unacceptable to You, You may terminate this Agreement, subject to the terms and conditions contained herein. The Agreement may not otherwise be amended except in a writing signed by You and by a representative of DyKnow. This Agreement was last revised on April 14, 2010.

#### **1. Definitions.** As used herein, the following terms have the following meanings:

- (a) "**Affiliate**" means any entity that controls You, that You control or that is under common control with You where "control" means the ownership, directly or indirectly, of equity securities or other ownership interests which represent more than 50% of the voting power of such affiliate.
- (b) "**Client User**" means an individual user of the Client Application.
- (c) "**Concurrent Users**" means the number of simultaneous connections between the Server Application and Client Applications to which You have purchased rights.
- (d) "**Distributor**" means the reseller that You have chosen to be Your reseller of record.
- (e) "**Documentation**" means the Program specifications that are set forth in the help files of the Program and any release-related notes, guides or manuals DyKnow publishes specific to the currently-supported versions of the Program.
- (f) "**DyKnow**" means Dynamic Knowledge Transfer, LLC (d/b/a DyKnow).
- (g) "**Enabled Use**" means DyKnow's having fulfilled the applicable software delivery process (whether by shipping tangible goods including recorded media containing the Software, enabling downloading of the Software, delivering activation codes or license keys for the Software, or otherwise), thereby enabling Use of the Software.
- (h) "**Hosted Instance**" means an instance of the Program installed on equipment controlled by DyKnow or its agent(s).
- (i) "**Installed Instance**" means an instance of the Program installed on equipment controlled by the Primary User or its agent(s).
- (j) "**Machine**" or "**Machine License**" means computers, work stations or other specific devices that are licensed to install and Use the Software.
- (k) "**Primary User**" means the organization or institution that installs or uses a server-based instance of the Server Application to which Client Users connect to interact with the Server Application.
- (l) "**Program**" means the computer programs (and updates DyKnow makes available to You) licensed or accessible by You in accordance with a Quotation accepted by You or Your organization or institution, a part of which includes the install routine that when executed causes this Agreement to be displayed, including the application Used by Client Users (the "**Client Application**") to connect and interact with the application installed on a central server or hosted by DyKnow or its agent(s) (the "**Server Application**") and the Server Application.
- (m) "**Quotation**" means a quotation for Software or services of DyKnow which, after execution by You creates a valid and binding contract between You and DyKnow for the purchase of licenses or access to Software and Services as set forth on the quotation, in accordance with the terms and conditions of this Agreement.

- (n) **"Software"** means collectively, the Program and the Documentation, and any part thereof.
- (o) **"Supplemental License Terms"** means the additional or modified terms and restrictions that are specific to the Program licensed by you under this Agreement and posted (and as applicable updated) by DyKnow at <http://www.dyknow.com/about-dyknow-software/terms-of-use/>.
- (p) **"Support Services"** means Support that DyKnow delivers to Primary Users because you have purchased a subscription to a maintenance or service plan. Support Services are currently provided for the current version and the previous version of the Program. Technical support policies are published at <http://www.dyknow.com/>. The period for Support Services begins on the date of Delivery, which shall mean the earliest of the delivery of license keys by DyKnow to You, the date of actual installation of an Installed Instance, and the Effective Date set forth in the Quotation. Beginning March 1, 2010, Support Services (also called Maintenance) includes updates and upgrades (if released) related to purchased Program.
- (q) **"Term"** means the term set forth on the applicable Quotation applicable to the Support Services or the Programs.
- (r) **"Use"** means to install and/or execute the Program, provided that:
  - (1) You install the Program only on a computer system that You own or only on a computer system not owned by You if You will be the only party with access to the installed Program; and
  - (2) You execute the Program (i) for its intended purpose and (ii) solely to the extent of any and all applicable limitations (whether as to specific modules or other parts of the Program, or number of production or backup server computers) set forth in this Agreement and any Supplemental License Terms; and
  - (3) You may make only a reasonable number of backup copies of the Program solely for the purpose of reinstalling the Program, if reinstallation becomes necessary; and
  - (4) You may make one copy of the Program for Use in a testing environment solely for testing purposes; and,
  - (5) You may make and install one copy of the Program at a disaster recovery site for Your Use only for so long as a disaster or other emergency prevents You from Using the Program at Your original installation site.

## 2. Introduction.

- (a) DyKnow is willing to grant to You rights of the scope described herein to Use the Software only upon the conditions that You or someone acting on Your behalf and at Your direction, such as Your Distributor, has:
  - (1) Executed a Quotation or otherwise placed an order with DyKnow for either an initial access Term, a license or an upgrade (such as for additional users, additional modules, new versions of the software, etc.), or a service plan for Support Services or other future maintenance or upgrades, and DyKnow has accepted such order and Enabled Use of the Software; and
  - (2) Accepted all of the terms and conditions of this Agreement either before or during installation of the Program.

- 3. **Grant of Rights.** For Client Users and Primary Users with an Installed Instance of the Programs, upon receipt of all amounts due, DyKnow grants to You a limited, non-exclusive, non-transferable license to Use the Software for the Term set forth in the applicable Quotation according to the terms and conditions set forth in this End User License Agreement ("Agreement"). For Primary Users using a Hosted Instance of the Programs, DyKnow hereby grants You a limited, non-exclusive, non-transferable right to access the Programs during the hosting term for which You have paid, subject to all of the additional terms and conditions set forth in Addendum A – Hosting attached hereto, and hereby expressly incorporated herein by this reference in its entirety.

- 4. **Limits of License.** The license contained in this Agreement does **not** include the right to perform, and You agree to refrain from performing, any of the following:

- (a) Allowing or making a number of connections between the Server Application and the Client Applications exceeding the number of Machine Licenses for which You have paid or Concurrent Users licensed by You.
- (b) Except as expressly set forth above, making any copy of the Software, except as an essential step in your permitted Use thereof.
- (c) Distributing any copy of the Software (whether by renting, leasing, lending, sublicensing, time-sharing, or otherwise), except that, if DyKnow consents in writing, which consent will not be unreasonably denied, You may transfer the Software to a purchasing party after the close of a sale of either Your entire business, or all, or substantially all, of the assets of Your business, provided that the purchasing party reads and accepts (in writing to DyKnow) the terms and conditions of this Agreement, the purchasing party agrees to other reasonable transfer requirements, and You do not retain a copy of the Software.
- (d) Using the Software for purposes unrelated to the educational classroom interaction intended by the Program;
- (e) Altering, modifying, translating, decompiling, disassembling or reverse-engineering the Software or creating any derivative work based upon the Software;

- (f) Removing or obscuring any copyright or trademark notices from the Software.
- (g) Using the Software in excess of (i) the limitations set forth in this Agreement and Supplemental License Terms, and (ii) the number and types of users, seats or licenses You purchase or rightfully acquire.
- (h) Client Users are prohibited from installing the Server Application, except when the Organization's installation is accomplished by a user who will also be a Client User.

**5. Additional Restrictions.**

- (a) Any third party software provided for Your use is provided pursuant to the terms and conditions applicable third party software provider ("Suppliers");
- (b) You may not Use, export, re-export or otherwise transfer the Software in violation of any applicable domestic or foreign laws or regulations in effect from time to time. You represent and warrant that You are not located in, under the control of, a national or resident of, any restricted country or of any entity or person designated as restricted.

**6. Limited Warranty and Disclaimers.**

- (a) DyKnow warrants that, during the one hundred and eighty (180) day period (the "Warranty Period") that commences on the date that DyKnow Enabled Use of the Software (whether for an initial license, an upgrade or a maintenance release under a service plan), the Program, when properly Used, shall perform substantially in accordance with the Documentation. DyKnow does not warrant or represent that Your Use of the Program will be uninterrupted or error-free. If You report to DyKnow in writing within the Warranty Period any non-conformity between the Documentation and the Program, and if DyKnow is able to replicate and verify that such non-conformity exists, DyKnow shall exercise commercially reasonable efforts to correct such non-conformity and, if successful, shall supply You with such correction at no additional cost to You. If such efforts are unsuccessful and the non-conformity is material: (1) except for Support Services, You may terminate this Agreement, discontinue Use of, and return all copies You have of the Software, and DyKnow will ensure that You receive a refund of the unused portion of the license or subscription fee You paid and credit for any fees You owe for the Software; and (2) For Support Services, You may terminate Your service plan, discontinue Use of, and return all copies You have of the Support Services, and DyKnow will ensure that You receive a refund of, or credit for, the unused portion of the service fee You incurred for the purchase of Your most recent service plan. The foregoing states Your SOLE AND EXCLUSIVE REMEDY for any breach of this warranty.
- (b) With respect to any media by which You may have received Your installation copy of the Program, DyKnow warrants that the media is free from defects in materials and workmanship under normal use for the Warranty Period. YOUR SOLE AND EXCLUSIVE REMEDY under this warranty is limited to replacement of defective media.
- (c) OTHER THAN THE EXPRESS, LIMITED WARRANTIES STATED ABOVE IN THIS SECTION, DYKNOW AND ITS SUPPLIERS PROVIDE THE SOFTWARE AND SERVICES AS-IS, WITHOUT WARRANTY OF ANY KIND, AND HEREBY EXPRESSLY DISCLAIM TO THE FULLEST EXTENT PERMITTED BY LAW ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS AND GUARANTEES OF ANY KIND OR NATURE WHATSOEVER, EXPRESS, IMPLIED AND STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES, CONDITIONS OR GUARANTEES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OF PROPRIETARY OR INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, AND ARISING FROM CUSTOM OR TRADE USAGE OR BY ANY COURSE OF DEALING OR COURSE OF PERFORMANCE. YOU UNDERSTAND AND AGREE THAT: (1) THE UTILITY OF A PROGRAM DECREASES AS TECHNOLOGY EVOLVES AND THE BUSINESS ENVIRONMENT CHANGES, (2) YOU ARE FREE TO DECIDE, AND ARE RESPONSIBLE FOR DECIDING, WHEN TO UPGRADE YOUR SOFTWARE, AND (3) DYKNOW DISCLAIMS ANY RESPONSIBILITY TO DELIVER LATER-RELEASED SOFTWARE OR OTHERWISE RENDER ANY CUSTOMER SUPPORT SERVICES EXCEPT AS MAY BE AGREED AND PURCHASED UNDER A SEPARATE PURCHASE QUOTATION EXECUTED BY YOU.
- (d) **Other Limitations.** DyKnow will have no responsibility under these limited warranties for any Software or media that has been modified, lost, stolen or damaged by accident, abuse or misapplication. No employee, agent or representative of DyKnow, nor any reseller (including Your Distributor) or any other third party, is authorized to make any warranty with respect to the Software, except those expressly stated in this Agreement, and You may not rely on any such unauthorized warranty. You acknowledge and agree that You have chosen Your Distributor, and that such Distributor is an independent party and not an agent of DyKnow.

**7. Exclusions of and Limitation of Liability.**

- (a) You acknowledge Your understanding that software is inherently complex and may not be free from errors, and that You have been advised to verify the work produced by the Program. Neither DyKnow nor its suppliers shall be liable for any special, indirect, incidental, consequential or punitive damages arising in connection with this agreement, Your Use of the Software, or resulting from any defect in the Software or media, even if DyKnow has been advised of the possibility of such damages. This means DyKnow is not responsible or liable for damages or costs incurred as a result of loss of time, loss of data, loss of

anticipated profits, lost opportunity cost or loss of use of the Software, nor for damages or costs incurred in connection with obtaining substitute software, claims made against You by others or similar costs, whether resulting from Internet outages, server downtime of a Hosted Instance or an Installed Instance, or one or more Client Application outages. DyKnow will exercise commercially reasonable efforts to limit downtime to ten (10) or fewer hours per month during Your normal school or business hours. Your sole remedy for any downtime in excess of ten (10) hours per month of Your normal school or business hours will be for You to terminate Your Hosted Instance access and apply the unused balance of fees paid therefore toward an Installed Instance and perpetual license. IN NO EVENT SHALL DYKNOW'S LIABILITY TO YOU ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE FEES ACTUALLY PAID BY YOU FOR THE LICENSE OR RIGHT TO ACCESS THE SOFTWARE. You acknowledge and agree that this Agreement allocates risk between You and DyKnow as authorized by applicable law, and that the pricing of DyKnow's products and services reflects this allocation of risk and the exclusions and limitations of liability contained in this Agreement. If any remedy hereunder is determined to have failed of its essential purpose, all limitations of liability and exclusion of damages set forth in this Agreement shall remain in full force and effect.

(b) You acknowledge that unless You and DyKnow agree in writing for DyKnow, in exchange for professional services fees, to provide software implementation services to implement the Program at Your place of business, You are responsible for engaging a qualified party to provide implementation services for You on terms You negotiate. You also acknowledge that You are responsible for independently investigating the skills and qualifications of such party to ensure that they provide You with the level of skill and service Your business requires. You agree that DyKnow shall have no liability whatsoever for any failure associated with such implementation services, even if the party You engage is an authorized or certified Distributor, consultant, or installer of DyKnow products.

8. **Ownership.** All trademarks, service marks, patents, copyrights, trade secrets, know-how, and other proprietary rights in or related to the Software or the services rendered by DyKnow, or otherwise used by DyKnow to perform its obligations hereunder, are and will remain the sole and exclusive property of DyKnow. DyKnow shall own all right, title and interest, including all intellectual property rights, in and to any improvements to the existing Software and in any services or any new programs, upgrades, modifications or enhancements developed by DyKnow in connection with this Agreement, even when refinements and improvements result from Your request. To the extent, if any, that ownership in such refinements and improvements does not automatically vest in DyKnow by virtue of this Agreement or otherwise, You hereby transfer and assign (and, if applicable, shall cause its Affiliates to transfer and assign) to DyKnow all right, title, and interest in such refinements and improvements. The DyKnow Software and services of DyKnow may be covered by one or more claims of U.S. Patents 7,003,728, and 7,213,211.
9. **Trademarks.** Upon receipt of Your written authorization, DyKnow may use Your trademarks and trade names in connection with provision of the Services and access to the Software, and in connection with the marketing by DyKnow of its services to third parties. Upon receipt of Your written authorization, DyKnow may use specific examples generated by You in connection with Your Use of the Software. DyKnow shall comply with any of Your reasonable written guidelines relating to usage of Your trademarks or trade names. DyKnow will discontinue use of Your trademarks or trade names upon the expiration or termination of this Agreement, except as may be required to exhaust any marketing materials on hand at the time of such expiration or termination.
10. **Non-exclusivity.** You acknowledge and agree that DyKnow is in the business of providing educational collaboration products and services, and that DyKnow may provide such products and services to third parties, including Your competitors, which are the same or similar to the products and/or services provided to You hereunder.
11. **Jurisdictional Rights.** This Agreement gives You specific legal rights, and You may also have other rights, which vary from jurisdiction to jurisdiction. Some jurisdictions do not allow the exclusion or limitation of implied warranties or of liability for incidental or consequential damages, so some or all of those sections of the Agreement may not apply to You.
12. **Term.** This Agreement is effective from the date You accept it and continues in effect until terminated, and with respect to Your individual rights and/or licenses until the end of the Term as set forth on the applicable Quotation or other addendum hereto. You may terminate this Agreement at any time, at which point Your licenses and other rights hereunder will immediately and without notice terminate. This Agreement and the rights granted herein will terminate automatically and without notice if You fail to comply with any term or condition of this Agreement. You agree upon termination to return the original Software to DyKnow and to destroy all other Software copies in Your possession.
13. **Survival.** The provisions of Sections 5 – 8, 10, and 13 - 17 shall survive the expiration or termination of this Agreement for any reason.
14. **Entire Agreement and Severability.** This Agreement (including posted modifications and updates and the Supplemental License Terms, all of which are hereby expressly incorporated by reference herein and made a part hereof) represents the complete and exclusive understanding between You and DyKnow regarding the Software,

services, and the subject matter hereof, and supersedes any prior purchase order, confirmation, advertising, representation, or other communication. This Agreement may not, except as otherwise permitted hereunder, be modified except by a written agreement signed by an authorized DyKnow representative. If any provision of this Agreement is found to be void, invalid, or unenforceable, it shall be severed from and shall not affect the remainder of this Agreement, which shall remain valid and enforceable. Any such severed provision shall be replaced with a similar provision, which conforms to applicable law and embodies as closely as possible the original intent of the parties.

- 15. Choice of Law, Exclusive Jurisdiction, Waiver of Collective or Class Action, Statute of Limitations.** This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, without reference to any jurisdiction's conflict of laws principles to the contrary, and all proceedings relating to the subject matter hereof shall be maintained exclusively in the courts situated in Indianapolis, Indiana. You hereby consent and hereby waive any right to object to the exclusive and personal jurisdiction and venue in such courts. Judgments may be enforced, however, by any court of competent jurisdiction. To the extent permitted by applicable law, You agree that any cause of action or claim will be maintained individually and that You will not consolidate or seek class treatment for any claims, unless previously agreed to in writing by You and DyKnow. **ANY CLAIM OR CAUSE OF ACTION, REGARDLESS OF FORM, MUST BE BROUGHT NO MORE THAN ONE (1) YEAR AFTER IT AROSE, OTHERWISE THE CLAIM OR CAUSE OF ACTION SHALL BE BARRED, EXCEPT THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO THE ENFORCEMENT BY DYKNOW OF ANY OF ITS INTELLECTUAL PROPERTY RIGHTS. THIS PROVISION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.**
- 16. Force Majeure.** To the extent DyKnow is prevented from performing any of its obligations hereunder due to circumstances reasonably beyond its control (including, but not limited to, the action or inaction of any governmental, civil or military authority; a strike, lockout or other labor dispute; or a fire, flood, war, riot, theft, earthquake, power or Internet outage, or other natural disaster, acts of terrorism or other civil disturbance) DyKnow shall not be liable for any losses or damages arising out of such non-performance.
- 17. Your Certifications.** You certify that You understand and acknowledge that:
- (a) DyKnow may, at its sole discretion, refuse to allow and may disable Use or connections which DyKnow believes include defamatory, infringing, or otherwise unlawful activity.
  - (b) DyKnow has no obligation to monitor, "scrub", or otherwise verify the legal compliance of any Use or connection.
  - (c) DyKnow Software enables the electronic and routine conveyance of information, and DyKnow does not perform any activity on behalf of You. The Software strictly enables the interaction between Client Users and Primary Users and, accordingly, You are solely responsible for the information communicated using the Software, the security of such information, abiding by all applicable laws including privacy and export laws, and the creation, initiation and sending of emails, including, but not limited to, the content of such emails, the recipients of such emails, and the timing of such emails.

***You hereby give DyKnow permission to send You information regarding DyKnow's products and services by various delivery methods, including via facsimile.***

ADDENDUM A  
HOSTING Services

This is an addendum ("Addendum A") to the DyKnow Software and Services End User License Agreement (the "EULA").

1. **Access to Hosting Environment.** Subject to the terms and conditions of this Addendum A, and in consideration for the payment of all Hosting Services fees and other fees pursuant to the Agreement and any Addenda thereto, DyKnow grants to Licensee nonexclusive, nontransferable electronic access to DyKnow's hosting environment (the "Hosting Environment") solely for Licensee's internal use and not for or on behalf of any third party. Licensee's use of the software and the Hosting Environment will be limited to the software and the number of authorized users ("Users") indicated in the authorized quote.
2. **Hosting Services.** DyKnow agrees to provide hosting services for the software and related services as described herein (together the "Hosting Services"), which will include the installation, operation and maintenance of a single instance of the Hosting Environment for Licensee to access and use the software as permitted under the EULA. During the term of this Addendum A, DyKnow will establish the Hosting Environment on DyKnow's (or its authorized agent's) side of the point at which the public Internet connects to the border router to support Licensee's use of the Hosting Environment. DyKnow will apply Updates and Upgrades to the hosted software, and Licensee will be responsible for (a) purchasing annual Upgrades and Support Services (Maintenance), (b) migrating Licensee's data and configuration to the new software versions, and (c) updating DyKnow Vision and/or DyKnow Monitor programs installed on User devices.
3. **Authorized Quotation.** DyKnow may provide a quotation for software and services (an "Authorized Quotation"). An Authorized Quotation must be agreed to by Licensee's authorized representative to receive such software and services.
4. **EULA.** Software applications are licensed pursuant to the EULA, the terms of which are accepted at the time the applicable software application is installed or otherwise made available to Licensee.
5. **Security.** DyKnow will use commercially reasonable efforts to maintain and enforce security procedures in the Hosting Environment that consist of the operating system, database, and web server security measures and use of firewall systems intended to provide security from unauthorized intrusion during the term of this Addendum A. Licensee acknowledges that reasonable security procedures are a base level of security, that the Hosting Environment is subject to risks associated with that level of security, and that the Hosting Environment is subject to a risk of unauthorized access, including unauthorized use of Licensee login credentials, which are the sole responsibility of Licensee and its users. Additional redundancy or security measures may be added to the system in DyKnow's sole discretion or pursuant to a separate written agreement, but are not part of this Agreement.
6. **Directions.** Licensee will provide DyKnow with such guidelines, provisions or other information (collectively, "Directions") as may reasonably be requested by DyKnow to enable DyKnow to perform the Hosting Services described herein. DyKnow may rely on any such Direction and will incur no liability as a result thereof. DyKnow will not be required to follow any Direction not made or confirmed in writing; however, DyKnow will not be required to follow the Directions if doing so would require additional Hosting Services or require DyKnow to incur out-of-pocket expenses, unless Licensee has agreed in writing to pay DyKnow in respect of such fees.
7. **Maintenance Windows.** DyKnow will establish maintenance windows during which DyKnow may take down the Hosting Environment to conduct maintenance and backups outside the Hours of Operation posted at <http://www.dyknow.com/service-support/> (the "DyKnow Site") or via email notification from DyKnow. DyKnow will use commercially reasonable efforts to advise Licensee prior to any scheduled maintenance occurring outside the scheduled maintenance windows, including maintenance to occur during the Primary Hours of Operation (PHO). DyKnow will not be responsible for any damages or costs incurred by Licensee or any User during or as a result of such down time, and Licensee hereby releases DyKnow from any and all claims for such damages or costs. Whenever feasible, database backups will be performed outside the PHO.
8. **Service Levels.** DyKnow will use commercially reasonable efforts to provide availability of the Hosting Environment during the PHO. If the Hosting Environment is unavailable due to down time more than five percent (5%) of the PHO during any month, Licensee will be entitled upon prompt request to a credit of up to one hundred percent (100%) of its monthly hosting fees for that month. The amount of this credit will be the monthly hosting fee allocable to that month multiplied by the portion of the PHO in that month that the Hosting Environment was not available due to down time, and such credit will be Licensee's exclusive remedy. Such remedy is not available for unavailability due to: (a) a breach of any of Licensee's responsibilities under this Agreement; (b) failure or malfunction of any equipment or services selected by Licensee but not provided by DyKnow; or (c) a Force Majeure Event as defined at the DyKnow Site. Licensee will have access to information stored on the server during the term of the Addendum A, but not to exceed one year for each student account and three years for each instructor account.
9. **Data.** Licensee will own all of its Confidential Information stored in the Hosting Environment as well as all data entered into the Hosting Environment by or on behalf of Licensee and/or derived from processing of Licensee's data in the Hosting Environment. Licensee will be solely responsible for and releases and holds DyKnow harmless from all loss, damage, corruption, access, or other harm ("Damages") to Licensee's data, including without limitation such Damage caused by: (i) the negligent or willful misconduct of Licensee's employees,

consultants or agents to whom Licensee has provided access to the Hosting Environment; (ii) the conduct of any third party that has accessed the Hosting Environment using Licensee's passwords through no fault of DyKnow; or (iii) Licensee's failure to comply with the EULA or any law or regulation. Data saved to the Hosting Environment will be saved up to two years for students and up to four years for teachers.

- 10. Limited Warranty for Hosting.** DyKnow warrants that it will perform all Hosting Services in a good and workmanlike manner by qualified personnel, and the Hosting Environment setup will be capable of operating the software (subject to the capacity thereof). DyKnow will not be liable for any loss or corruption of data that occurs during or as a result of its transmission via the Internet.
- 11. WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, DYKNOW DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, RELATED TO THE SUBJECT MATTER HEREOF.
- 12. Term.** The term of this Addendum A will coincide with the term of the Hosting Services defined in the Authorized Quotation associated with each licensed unit of software.
- 13. Survival.** The rights and obligations of the parties that by their sense and context are intended to survive termination will so survive, including obligations to pay amounts owed.
- 14. Total Liability; Disclaimer.** DyKnow's cumulative liability to Licensee from all causes of action and all theories of liability relating to the Hosting Services provided under this Addendum A will be limited to and will not exceed the amounts paid to DyKnow by Licensee for monthly Hosting Services pursuant to this Addendum A for the six (6) month period preceding the date of the accrual of the cause of action or claim. IN NO EVENT WILL DYKNOW BE LIABLE TO LICENSEE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS) ARISING IN CONNECTION WITH OR OUT OF ANY PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED UPON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 15. Other Terms.** DyKnow publishes additional terms at the DyKnow Site, including without limitation its current versions of the EULA and DyKnow's policies and procedures, any of which DyKnow may revise from time to time in its sole discretion upon posting, or prior or concurrent notice to Licensee's Support Coordinators identified in connection with the Addendum A. All such terms that appear there and all other definitions in the EULA that reasonably apply are incorporated herein by reference, and Licensee's continued receipt of Hosting Services or use of the Hosting Environment are Licensee's acceptance of such revisions. The EULA provisions with respect to choice of law, jurisdiction, export controls, assignment, and enforceability are hereby incorporated by reference herein and are made a part hereof.
- 16. Licensee Responsibilities.** Licensee will continuously procure Support Services and Upgrades (Maintenance) during the term of this Addendum A. Licensee will be solely responsible for any damage to its data, the software or the Hosting Environment caused by (i) negligent or willful misconduct of Licensee's employees, consultants or agents to whom Licensee has provided access to the Hosting Environment; (ii) the conduct of any third party that has accessed the Hosting Environment using Licensee's passwords through no fault of DyKnow; or (iii) Licensee's failure to comply with all applicable laws. Licensee will: (i) maintain the equipment, lines and connections external to the Hosting Environment necessary for Licensee's Users to access the Hosting Environment; (ii) perform any tests or procedures recommended by DyKnow for the purpose of identifying and/or resolving any problems; (iii) at all times follow routine operator procedures as specified in the documentation; and (iv) at all times comply with the reasonable rules and policies of any third party co-location vendor utilized by DyKnow in connection with providing the Hosting Services.
- 17. Entire Agreement.** This Addendum A, including all schedules, exhibits, and attachments, plus the EULA and any other related Addenda, collectively contain the complete understanding and agreement of the parties and supersede all prior or contemporaneous agreements or understandings, oral or written, relating to the subject matter herein. Any waiver, modification or amendment of any provision of this Addendum A will be effective only if in writing and signed by duly authorized representatives of both parties. In the event of any conflict between the terms of this Addendum A, EULA, and the Authorized Quotation, this Addendum A will control.