KCSD Kenton County School District | *It's about ALL kids.*

Issue Paper

DATE:
08.11.22

AGENDA ITEM (ACTION ITEM):
Consider/Approve The sales contract with Mind Research Institute for Summit View Academy to purchase an annual renewal ST Math Site Subscription License for the 2022 – 2023 school year.

APPLICABLE BOARD POLICY:
01.1 – Legal Status of the Board

HISTORY/BACKGROUND:
ST Math allows teachers to identify student's current academic achievement levels and supplement classroom instruction in Science. This program is able to be differentiated to students' current level of achievement to target specific skills to close gaps and focus on growth. This agreement will allow for renewal of a one year license for students at all grade levels K-5

FISCAL/BUDGETARY IMPACT:
$10,000.00 – ESSER FUNDS

RECOMMENDATION:
Approval The sales contract with Mind Research Institute for Summit View Academy to purchase the annual renewal ST Math Site Subscription License for the 2022 – 2023 school year.

CONTACT PERSON:
Alex Fangman

Principal/Administrator *District Administrator* *Superintendent*

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.
Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.

Quote

MIND

5281 California Avenue, Suite 300
Irvine CA 92617
949-345-8700
866-569-7014
www.mindresearch.org

Created Date	8/26/2022
Quote Number	00009262
Expiration Date	9/30/2022
Partnership Manager	Jon Glenn
Partnership Manager Email	jglenn@mindresearch.org
Renewal Rep	Lance Matus
Renewal Rep Email	lmatus@mindresearch.org

Bill To	Summit View Academy 5006 Madison Pike Independence, KY 41051
Ship To	Summit View Academy 5006 Madison Pike Independence, KY 41051

Product	Account	Quantity	Detail Description	Total Price
Renew ST Math Site Subscription (251+ Students)	Summit View Academy	1.00	Annual Renewal ST Math Site Subscription License: - Annual ST Math Software license for all students, teachers, and administrators (251+ Students Enrolled) - One (1) Professional Learning Offering - Access to ST Math Academy on-demand professional learning modules - Embedded program help and tutorials - Ongoing Minor Software Updates - Technical Support Via Email and/or Phone	USD 12,000.00
MIND in Kind	Summit View Academy	1.00	*This offer of MIND in Kind support is contingent upon applicant's ability to adhere to MIND Research Institute's School Grants Guidelines as described in program application*	USD -2,000.00

Subtotal	USD 10,000.00
Grand Total	USD 10,000.00

Prepared By	Lance Matus
Email	lmatus@mindresearch.org
Phone	(949) 345-8300

Please submit purchase orders:
By email: purchaseorders@mindresearch.org
By Fax: 1-866-569-7014
You can view our technical requirements here.
Thank you for being an ST Math partner!

Thank you for being an ST Math partner! By submitting payment for quoted services, you agree to MIND Research Institute's Terms of Use as described at http://www.mindresearch.org/misc/terms/.

MIND Research complies with applicable state and federal laws and regulations and uses commercially-available measure to protect and maintain the security of any collected data. Our Privacy Policy can be found at http://www.mindresearch.org/misc/privacy/.

KCSD
School District | It's about ALL kids

THE KENTON COUNTY BOARD OF EDUCATION
1055 EATON DRIVE, FORT WRIGHT, KENTUCKY 41017
TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531
WEBSITE: www.kenton.kyschools.us
***Dr. Henry Webb*, Superintendent of Schools**

VENDOR ASSURANCES REGARDING PROTECTION OF PERSONAL AND CONFIDENTIAL INFORMATION

Data Security and Breach Protocols

Vendors that receive Personal Information from Kenton County Board of Education (herein referred to as "KCBOE") as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

a) An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
b) A Social Security number;
c) A taxpayer identification number that incorporates a Social Security number;
d) A driver's license number, state identification card number or other individual identification number issued by any agency as defined under the Act;
e) A passport number or other identification number issued by the United States government; or
f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" includes any person or entity that has a contract or agreement with the KCBOE and receives (accesses, collects or maintains) personal information from the KCBOE pursuant to the contract or agreement.

The vendor hereby agrees to cooperate with the KCBOE in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, KCBOE, the Commissioner of the Kentucky State Police, the Kentucky Auditor of Public Accounts, the Commonwealth (Kentucky) Office of Technology, and the Commissioner of the Kentucky Department of Education of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)(2) applies and the vendor abides by the requirements set forth in that exception. Notification shall be in writing on a form developed by the Commonwealth (Kentucky) Office of Technology.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor hereby agrees that the KCBOE may withhold payment(s) owed to the vendor for any violation of the Act's notification requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933.

Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a), the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth (Kentucky) Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

Student Data Security

Pursuant to KRS 365.734, if the vendor is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the KCBOE, becomes the equivalent of a cloud computing service provider, the vendor further hereby agrees that:

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C.sec.1232g.
- Pursuant to KRS 365.734, the vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act

If during the course of this agreement, the KCBOE discloses to the vendor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. sec. 1232g, *et seq.*), and its regulations, and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 et seq., and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 et seq.), the vendor agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor agrees that FERPA-protected information is confidential information. FERPA-protected information includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific

student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

The vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than $250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than $1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

MIND Research Institute

Vendor Name

5281 California Ave, Suite 300, Irvine, CA 92617

Vendor Address

949-345-8700

Vendor Telephone

bids@mindresearch.org

Vendor Email Address

Brett E. Woudenberg

Signature by Vendor's Authorized Representative

Brett Woudenberg

Print Name

Apr 26, 2022

Date

Terms of Use

Last updated: October 7, 2016

The following Terms of Use, or "Terms" are the rules that govern use of the websites operated by MIND Research Institute ("MIND", "we", "us", "our"), including those located at mindresearch.org, stmath.com, and such other websites and mobile applications ("App(s)") as may be operated by MIND ("Site(s)"), including our ST Math® software products that may be accessed by students or teachers via such sites and applications (the "Software"). By downloading an App or otherwise using a Site, you and the entity that you represent, if applicable ("you", "your") agree to comply with and be bound by these Terms. This Agreement also incorporates by reference our Privacy Policy located at www.stmath.com/privacy-policy, as it may be updated from time to time pursuant to the terms herein and therein. Software licensed by parents/legal guardians for homeschooling will be subject to the end user license agreement ("Homeschooling EULA") provided with such Software.

NOTE: SECTION 5 (Choice of Law; Dispute Resolution; No Class Actions) BELOW CONTAINS A BINDING ARBITRATION PROVISION, INCLUDING A CLASS ACTION WAIVER, THAT AFFECTS YOUR RIGHTS UNDER THESE TERMS AND WITH RESPECT TO DISPUTES YOU MAY HAVE WITH US.

1. 1. Use of the Sites and Software.

- **Users of Our Sites and Software.**

  Certain of our Sites host our ST Math® instructional Software, which has been developed for use by students from pre-kindergarten through high school ("Student(s)"), for the improvement of math-related skills and achievement. Students are provided access to our Software and Sites through their schools and school districts (collectively, "Local Educational Agencies" or "LEAs"), who utilize these services to assess their Students' progress and supplement their mathematics curriculum.

  Student Users.

  If you are a Student, you may only use the Sites and Software if you are at least 13 years of age, or if you are otherwise using the Sites and/or Software with the consent and under the supervision of your parent, legal guardian, or teacher / school representative.

Teachers/LEA Users.

If you represent a school or other LEA, you hereby represent, warrant, and covenant on behalf of such school or other LEA that (a) you have the authority to disclose any Student Records (as defined under the Privacy Policy) provided to us for your Students hereunder, and have obtained all consents necessary for same, and (b) that you have not and will not breach any applicable laws in the collection, disclosure, or use of the Student Records hereunder.

LEAs' Obligations for Students Under 13.

If you have Students under 13 who will use the Sites or Software, you expressly consent to the collection, use, and disclosure of personal information as set forth in our Privacy Policy from your Student users under the age of 13. You also agree to use the Sites and Software as well as any Student information you collect from such Sites and/or Software in accordance with our Privacy Policy and all applicable laws. You agree and acknowledge that you will not use the Sites or Software with any Student under 13 years old, unless you are an authorized representative of that Student's LEA, with authority to consent to the collection use and disclosure of personal information from such Student.

Acceptable Use Policies.

You agree to use the Site in accordance with all applicable laws. Because MIND is a nonprofit, tax-exempt organization, you agree that you will not use the Site for organized partisan political activities. You further agree that you will not post, upload, transmit, distribute, store, create or otherwise publish through any Site, or through any other MIND computing resources:

- Content that defames or threatens others
- Statements that are bigoted, hateful or racially offensive
- Content that discusses illegal activities with the intent to commit them
- Content that infringes another's intellectual property, including, but not limited to, copyrights, trademarks or trade secrets

- Material that contains vulgar or obscene language or images
- Advertising, promotional materials, or any form of commercial solicitation

You also may not:

- harvest or otherwise collect personal information about users, including e-mail addresses, without their consent
- use any robot, spider, crawler, scraper, bots or other automated means to access or use the Sites
- introduce or attempt to introduce software viruses, Trojan horses, worms, backdoors or any other computer codes, files, or programming instruction or set of instructions that are designed or intended to disrupt, disable, harm, interfere or otherwise adversely affect any computer programs, software, firmware, hardware, mobile devices, wireless devices, computer systems, data or operations.

2. 2. Use of the Sites and Software.

- **License from Us.**
  Subject to your compliance with the Terms, MIND grants you a personal, non- exclusive, non-transferable license to (a) if you are a Student, or parent or legal guardian of a Student, using the App, download, install, and use the App, if applicable, on a mobile device; and (b) access and use the Site, including the contents and materials on the Sites, including reports generated from the Software, for your internal personal purposes, and not for commercial resale, sublicensing, time-sharing or service bureau usage. You may access the Site only for your own personal, non-commercial uses described herein. You may not otherwise copy, reproduce, retransmit, distribute, publish, commercially exploit or otherwise transfer any materials on the Site, including the Software. Any

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Restrictions.

Subject to the terms above, certain reports generated by the Software may be downloaded onto your computer or device through the use of the Software. If you download or print a copy of such content for personal use, you must retain all copyright and other proprietary notices contained therein. The use of bots, crawlers, spiders, data miners, scraping and other automatic access tools to collect any content on the Sites, including User Provider Materials (as defined below), or otherwise access the Sites is expressly prohibited. You agree not to circumvent, disable or otherwise interfere with security related features of the Sites or Software. Notwithstanding anything in the foregoing, you may not interfere copy, modify, distribute or reverse engineer, decompile or disassemble the Apps, Software, or other Sites, or make any derivative works based on any App, Software, or other Sites (including any customization, translation, or localization). Your compliance with the requirements in this paragraph is a condition to, and material inducement and consideration for, our granting you the right to download, access and use the Sites. Any unauthorized use or other activity by you in violation of these Terms of Use will cause the licenses granted to you under this Section 2 (Permission to Use the Sites) to terminate immediately and automatically. Nothing in these Terms of Use transfers or otherwise grants any ownership rights from us to you any intellectual property rights of MIND or any third party licensor; and all right, title and interest in, to and under any intellectual property rights in the Sites, Software, User Provided Materials, or other materials on the Sites will remain solely with the MIND Research Institute, its affiliates or such third party, as applicable.

3. 3. User Provided Content.

- You may use the Site for legal purposes only. The Sites may contain content submitted by you or other users ("User Provided Materials"). MIND

merely hosts and provides tools to post and share User Provided Materials, and you agree and acknowledge that we have no liability with regard to such material. Furthermore, you agree that, if a third party claims that any User Provided Materials you have contributed to the Site is unlawful or breaches any intellectual property, privacy, or other rights of third parties, you will bear the sole burden of establishing that the material complies with all applicable laws and does not infringe any third party rights, and you will bear the sole and exclusive liability for any breach of applicable laws or any third party rights. MIND has the right to remove material from the Site, block access, or take other action with respect to the User Provided Material in its sole discretion.

Your License Grant to MIND.

By submitting User Provided Materials on any of the Sites, you hereby grant MIND a perpetual, irrevocable, transferable, sublicenseable, worldwide, royalty-free, license to host, store, copy, publish, display, distribute, provide access to, modify or create derivative works of, and otherwise use or sell your User Provided Materials, in any form or context we deem appropriate on or through any media or medium and with any technology or devices now known or hereafter developed or discovered.

Feedback that You Provide.

If you provide any ideas, suggestions, documents, and/or proposals ("Feedback") to us through the Sites, you acknowledge and agree that: (a) your Feedback does not contain confidential or proprietary information or yours or any third parties; (b) such Feedback does not infringe the intellectual property rights of any third parties; (c) such Feedback is automatically assigned to MIND, to the maximum extent that such assignment is permissible under applicable laws, and otherwise, you hereby grant MIND a perpetual, irrevocable, worldwide, fully-paid up, royalty free, assignable, sublicensable license to use, reproduce, display, create derivative works of, make, sell, have made, have sold, import, export or otherwise exploit any such Feedback; and (d) you are not entitled to any compensation or reimbursement from MIND for such Feedback.

4. 4. Links to Other Sites.

- MIND's Site may include hyperlinks to websites maintained or controlled by others. MIND is not responsible for and does not routinely screen, approve, review or endorse the contents of or use of any of the products or services that may be offered at these websites.

5. 5. Choice of Law; Dispute Resolution; No Class Actions.

- **Governing Law; Arbitration.**

  The Site is hosted by MIND on computing resources located in Kenton County, Kentucky. You agree that any dispute arising out of or relating to these Terms or any content posted to a Site will be governed by the laws of the State of Kentucky, excluding any conflicts of law provisions to the contrary, as well as all applicable federal laws, including the Federal Arbitration Act. Except as provided in this paragraph with respect to requests for injunctive relief, any controversy, claim or dispute arising out of these Terms or your use of the Site ("Claims")) shall be resolved by final and binding arbitration. Such arbitration shall take place in Kenton County, Kentucky, and shall be administered by a single arbitrator pursuant to the JAMS Comprehensive Arbitration Rules and Procedures. The arbitrator shall be empowered to award any form of individual relief, including injunctive relief. In order to keep costs down for both you and us, hearings may, at our request, be conducted telephonically or entirely upon submissions.

  Causes of Action.

  YOU AND MIND RESEARCH INSTITUTE AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SITE MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

  Class Action Waiver.

  In addition to the above, you waive the right to bring any Claim as a class action, consolidated, multi-district or collective action, or private attorney general action. You also agree not to participate in any class action, consolidated, multi-district or collective action, or private attorney general

action regarding any Claim. If we prevail in any arbitration or proceeding to enforce this Agreement or arising out of your access to or use of the Site, we shall be entitled to recover, in addition to all other available legal and equitable relief, its legal costs, including attorneys' fees.

Third Party Beneficiaries.

You acknowledge and agree that each of our partners and customers, which includes LEAs with Students hereunder, is participating on the Site in reliance of its and your rights, remedies, and obligations under these Terms, including those of this paragraph, and each such entity will be a third-party beneficiary of this Section 5 (Choice of Law; Dispute Resolution; No Class Actions).

6. 6. Disclaimers; Limitation of Liability.

- **Disclaimers.**

  MIND does not warrant, and hereby disclaims any warranties, either express or implied, with respect to the accuracy, adequacy or completeness of any Site, information obtained from the Site, or link to a Site. MIND does not warrant that Site will operate in an uninterrupted or error-free manner or that the Site is free of viruses or other harmful components. Use of information obtained from or through these Sites is at your own risk. MIND makes no representation regarding your ability to transmit and receive information from or through the Site and you agree and acknowledge that your ability to access the Site may be impaired. MIND disclaims any and all liability resulting from or related to such events. THIS SITE, THE SOFTWARE AND ANY INFORMATION, PRODUCTS OR SERVICES HEREIN ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR USE OF A PARTICULAR PURPOSE, OR NON- INFRINGEMENT.

  Limitation of Liability.

  YOU AGREE THAT MIND WILL NOT BE LIABLE TO YOU FOR ANY LOSS OR DAMAGES, EITHER ACTUAL OR CONSEQUENTIAL, ARISING OUT OF OR RELATING TO THESE TERMS, OR TO YOUR

(OR ANY THIRD PARTY'S) USE OR INABILITY TO USE THE SITE, OR TO YOUR PLACEMENT OF CONTENT ON THE SITE, OR TO YOUR RELIANCE UPON INFORMATION OBTAINED FROM OR THROUGH THE SITE. IN PARTICULAR, MIND WILL HAVE NO LIABILITY FOR ANY CONSEQUENTIAL, INDIRECT, PUNITIVE, SPECIAL OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR DEFAMATION, ERRORS, LOSS OF DATA, OR INTERRUPTION IN AVAILABILITY OF DATA), ARISING OUT OF OR RELATING TO THESE TERMS, YOUR USE OR INABILITY TO USE A SITE, OR ANY PURCHASES ON THIS SITE, OR YOUR PLACEMENT OF CONTENT ON A SITE, OR TO YOUR RELIANCE UPON INFORMATION OBTAINED FROM OR THROUGH A SITE, WHETHER BASED IN CONTRACT, TORT, STATUTORY OR OTHER LAW, EXCEPT ONLY IN THE CASE OF DEATH OR PERSONAL INJURY WHERE AND ONLY TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY. OUR AGGREGATE LIABILITY ARISING OUT THE SITES OR SERVICES WILL NOT EXCEED THE GREATER OF FIVE DOLLARS ($5) OR THE AMOUNT YOU HAVE PAID US IN THE PAST MONTH. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, OUR LIABILITY WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

Release.

YOU HEREBY AGREE TO RELEASE, REMISE AND FOREVER DISCHARGE MIND RESEARCH INSTITUTE AND ITS PARNTERS, CUSTOMERS, SPONSORS, LICENSORS, DIRECTORS, SHAREHOLDERS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, AND SUPPLIERS, AND ITS AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND ALL OTHER RELATED PERSONS OR ENTITIES, FROM ANY AND ALL MANNER OF RIGHTS, CLAIMS, COMPLAINTS, SUITS, DEMANDS, CAUSES OF ACTION, PROCEEDINGS, LIABILITIES, OBLIGATIONS, LEGAL FEES, COSTS,

AND DISBURSEMENTS OF ANY NATURE WHATSOEVER, WHETHER KNOWN OR UNKNOWN, WHICH NOW OR HEREAFTER ARISE FROM, RELATE TO, OR ARE CONNECTED WITH YOUR USE OF ANY OF THE SITES OR SOFTWARE.

IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE SECTION 1542, WHICH STATES: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR" (OR ANY EQUIVALENT STATUTORY PROVISION WITH A SIMILAR IMPORT OR INTENT). IF YOU ARE A RESIDENT OF A STATE OTHER THAN CALIFORNIA, YOU EXPLICITLY WAIVE THE TERMS AND PROTECTIONS OF ANY STATUTE OF YOUR OWN STATE THAT HAS A SIMILAR IMPORT OR INTENT.

7. 7. Our Marks.

- The logo, name and all graphics on the Site of MIND and its affiliates, are trademarks of MIND, or its affiliates. Use, reproduction, copying or redistribution of trademarks, without the written permission of MIND or its affiliates is prohibited. All other trademarks or service marks appearing on the Site are the marks of their respective owners. Unless otherwise noted, all content on the Site is copyrighted by MIND.

8. 8. Your Representations and Warranties; Indemnification.

- **FERPA Compliance.**

  If you are a school or LEA, you hereby designate MIND Research Institute as an "other school official" under The Family Educational Rights and Privacy Act, 20 U.S.C. §1232g ("FERPA"), that has a "legitimate educational interest" in using and accessing Student Records disclosed to us for use of the Sites or Software, and you hereby represent, warrant, and covenant that (a) you have obtained all consents necessary in connection with disclosing any Student Records directly or indirectly to us, and (b) such disclosures have not and will not violate FERPA.

  Indemnity.

You agree to indemnify and hold MIND, its subsidiaries, affiliates, partners, customers, sponsors, service providers, officers, employees, and agents harmless from any claims, losses, costs or damages, including legal fees, resulting from your violation of these Terms, your use of the Site or your placement of any link, content or other information on the Site, and your violation of the rights of any third party, and to fully cooperate in MIND's defense against any such claims.

9. 9. Your Account.

- If you use this site, you are responsible for maintaining the confidentiality of your account and password, if any, and for restricting access to your computer, and you agree to accept responsibility for all activities that occur under your account or password. You agree to immediately notify us of any unauthorized use of either your password(s) or account(s) or any other breach of security. MIND is not liable for any loss or damage arising from your failure to comply with any of the foregoing obligations. You further agree that you will not permit others, including, without limitation, those whose accounts have been terminated, to access our Sites using your account(s) or user ID. If you are under 18, you may purchase products or services only through a parent or guardian. You agree that billing and registration information you provide on the Site will be accurate and complete. MIND and its affiliates reserve the right to refuse service, terminate accounts, remove or edit content, or cancel orders in their sole discretion.

10. 10. Termination of Use.

- **Termination by LEA.**

  An LEA may terminate use of the Sites or Software by provision of written notice of termination to us, pursuant to the notice provisions set forth in Section 11 (General) below. We will terminate use and storage of any Student Records received from the LEA following written notice of termination, unless we have received consent directly from such Student, if aged 13 or above, or the Student's parent or legal guardian otherwise, to store such Student Records.

  Termination or Suspension by Us.

We may suspend or terminate your access to all or any part of the Sites or Services, or block or disable your access or use of the Apps, at any time, with or without cause, with or without notice, effective immediately. Without limiting the foregoing, we may suspend or terminate your access to all or any part of the Sites or Services, or block or disable your access or use of the Apps if (a) we believe, in our sole discretion that you are in breach of this Agreement or are acting in a manner that shows that you do not intend to, or are unable to, comply with the Terms and Conditions; (b) we are required to do so by law (for example, where the provision of Services to you is, or becomes, unlawful); (c) we elect to no longer provide the Sites or Services to users in the state or country in which you are resident or from which you use the Sites or Services; (d) we believe that your use of the Sites or Services may infringe or violate the rights of a third party or subject us or one of our affiliates to civil or criminal liability or reputational harm; or (e) we believe such suspension or termination is necessary or appropriate to avoid harm to the Sites, Services, or persons; in each such a case, no portion of your subscription payment will be refunded. If we suspend or terminate your access for no reason or for a reason other than those set forth in the preceding sentence, we will refund to you any unused portion of your subscription payment, if any, which will be your sole and exclusive remedy upon such suspension or termination. Termination may result, in our sole discretion, in the forfeiture and destruction of all information associated with your account. All Terms and Conditions that by their nature should survive termination of this Agreement, including, without limitation, ownership provisions, warranty disclaimers, indemnity, limitations of liability, shall so survive. If your account is cancelled or terminated for any reason, you will no longer be able to access information under your account.

11. 11.General.

- **Assignment.**

  You will not assign any of your rights and obligations under these Terms of Use without our prior written consent. We reserve the right to assign or transfer our rights and obligations under this Agreement in connection with

an acquisition by or merger with another company, if substantially all of our assets are transferred to another company, or as part of a bankruptcy proceeding.

Severability.

If any provision of these Terms of Use is found to be void or unenforceable, then the remainder will have full force and effect, and the invalid provision will be partially enforced to the maximum extent permitted by law to effectuate the purpose of these Terms of Use.

No Waiver.

No waiver of any term of these Terms shall be deemed a further or continuing waiver of such term or any other term, and the MIND Research Institute's failure to assert any right or provision under these Terms of Use shall not constitute a waiver of such right or provision.

Mobile and Internet Usage.

By using the Sites from your mobile phone, you understand that your wireless or internet services provider's standard SMS, MMS and/or data rates will apply to your use of the Sites. By using the Sites, you agree to be responsible for any fees that are incurred as a result of your use of the Sites. You hereby represent and warrant that you are the owner or authorized user of any mobile or other wireless device that you use to access the Services, and that you are authorized to approve all associated SMS, MMS and data charges.

Certain Third Party Terms.

You agree that, in addition to these Terms, your use of Apps may be subject to (a) the usage rules set forth in Amazon Appstore's terms of use, Apple App Store's terms of use, or Google Play's terms of service, if you download Amazon Appstore, Apple App Store or Google Play, respectively; or (b) those of any other third party platform, developer or distributor end-user license agreement and/or terms and conditions by which you agree to be bound when you download or access the App.

Entire Agreement.

These Terms, including our Privacy Policy, together with any legal notices or other terms or conditions published on the Sites or in the Software, as

applicable (including the Homeschooling EULA for those who have licensed such Software) constitute the entire agreement between you and MIND and its affiliates with respect to the subject matter herein and supersedes any and all prior or contemporaneous oral or written agreements.

Amendments.

We reserve the right to amend these Terms of Use at any time and any amendments, changes or modifications shall be effective immediately upon notice of them. It is your responsibility to review these Terms of Use for any changes. Your use of the Site following any amendment of these Terms of Use will signify your assent to and acceptance of its revised terms.

Notices.

All notices, demands and other communications hereunder shall be in writing and shall be effective upon receipt, provided that we may provide notice to you by posting announcements on any of the Sites or sending an e-mail to you at the e-mail address that is currently associated with your account if you have one. Any such e-mail notice to you will be deemed given on the day it is sent. Except as specified in the next sentence, all notices to us of a legal nature shall be in writing and shall be sent by certified first-class U.S. mail, return receipt requested, to:

Attention: Controller

controller@mindresearch.org

MIND Research Institute

5281 California Avenue, Suite 300

Irvine, CA 92617

Tel: (949) 345-8700

Toll Free: (888) 751-5443

Fax: (949) 572-2680

All notices regarding copyright or other intellectual property infringement issues shall be sent as described below under Section 12 (Copyright Complaints). If you have any questions about these Terms, then please contact us at the postal address set forth above.

Our Communications with You.

We may contact you (via the Sites, electronic mail, physical mail or otherwise) for the purpose of informing you of changes or additions to the Sites or Software, or of any related products and services. You agree that any notice, agreement, disclosure or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing. You may opt out of commercial advertising and marketing communications at any time by following the unsubscribe instructions included in each communication. Please see our Privacy Policy for further information on how we manage and process your personal information.

12. 12. Copyright Complaints.

- MIND respects the intellectual property rights of others. If you believe your copyright has been violated on a MIND Site or any content posted on such Sites, please contact the Controller at controller@mindresearch.org or the U.S. Mail address above and provide the following information:
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    - An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest.
    - A description of the copyrighted work that you claim has been infringed.
    - A description of where (by URL and physical description) the material that you claim is infringing is located on the Site.
    - Your address, telephone number, and email address.
    - A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law.
    - A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.
- Upon our receipt of a takedown notice complying materially with all of these requirements, we will remove, or cause to be removed, the identified materials. The individual that had posted such materials will then have an

opportunity to demand reposting. You will receive notice of such if the individual properly requests reposting. Repeat offending websites, contributors (if any), or account holders (if any) will be terminated