

CONTRACT NO. S-7669

BETWEEN

**THE STATE OF WASHINGTON
OFFICE OF THE SECRETARY OF STATE,
WASHINGTON STATE LIBRARY DIVISION,**

AND

LITERACY MINNESOTA

This Contract ("Contract") is made and entered into by and between the State of Washington, Office of the Secretary of State, Washington State Library Division, P.O. Box 42460, Olympia, Washington 98504-02460 ("OSOS") and Literacy Minnesota, a Minnesota non-profit corporation with its principal offices located at 700 Raymond Ave. Ste. 180, St Paul, MN 55114-1780 ("Licensor"), for the express purposes set forth herein.

RECITALS

WHEREAS, Licensor owns and licenses for use the web-based application Northstar Digital Literacy, an online platform containing tools, materials and resources that allows end users of the Application to perform computer and online skills assessments, through online, self-guided modules (hereinafter referred to as the "Application"); and

WHEREAS, Licensor licenses the Application to third parties on an annual fee basis; and

WHEREAS, OSOS previously purchased Application licenses from Licensor on behalf of approximately sixty (60) local libraries and other organizations identified by OSOS, for their use and the use of their patrons and invitees, in an effort to increase the resources available and readily accessible to Washingtonians to assess and develop their digital literacy skills; and

WHEREAS, those Application licenses will expire on May 19, 2023 according to their terms; and

WHEREAS, OSOS desires to enter into this multi-year Contract with Licensor to provide year-over-year funding for the Application licenses to ensure that the Application will be continuously available for use by the local libraries and other organizations (and their patrons and invitees) that OSOS specifies to Licensor from time to time throughout the initial term of this Contract and any extensions thereof, at no cost to them; and

WHEREAS, Licensor desires to enter into this Contract to provide such Application licenses to the libraries and other organizations specified by OSOS from time to time during the initial term and any extensions of this Contract, and accept payments for such Application licenses from OSOS, in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual promises and agreements contained herein or attached and incorporated and made a part hereof, OSOS and Licensor mutually agree as follows:

1. **PURPOSE**

OSOS recognizes and acknowledges a need for individuals to obtain digital literacy skills beyond employment skill goals, i.e., skill assessment and development based on literacy standards, rather than employment standards. Skill assessment and development in the workplace context is too narrowly focused to address the multitude of needs and uses outside of the workplace. The rapidly developing world of digital software solutions addressing a wide range of human needs is largely inaccessible to those without the necessary digital literacy skills to take advantage of them. The purpose of this Contract is to provide Washingtonians with a readily accessible resource to assess and develop their digital literacy skills, at locations throughout the state of Washington, by funding the purchase of Application licenses from Licensor for libraries, local government groups, and non-profit, non-governmental community groups for their use and the use of their patrons and invitees at their locations.

2. **GENERAL TERMS AND CONDITIONS**

The terms and conditions attached hereto and incorporated herein as Exhibit A – General Terms and Conditions govern the performance of the parties under this Contract, the nature of the relationship between OSOS and Licensor, and specific rights and obligations of both parties.

3. **LICENSE PURCHASE, LICENSING AND TERMS**

A. Purchase of Licenses; Identification of Licensees. In accordance with the terms and conditions set forth herein, OSOS will purchase sixty (60) one-year Application licenses from Licensor each year during the initial term and any extensions of this Contract, at a cost of \$500 per Application license. OSOS will identify for Licensor the recipients of the licenses, which may be libraries, local government groups, and non-profit, non-governmental community groups within the State of Washington (each a “Licensee” and collectively, the “Licensees”). Provided that the number of Licensees does not exceed the number of Application licenses purchased by OSOS, OSOS may add, remove, or change Licensees at any time and from time to time during the initial term of this Contract and any extensions thereof, by communicating to Licensor the prospective Licensee it wishes to receive an Application license, or the current Licensee that it wishes to remove as a Licensee, or a current Licensee and a prospective Licensee between which OSOS wishes to have the license transferred.

B. Assessments. The Application provides technical instruction and testing of individual users’ digital literacy skills (the “Assessments”). Subject to the provisions of subsection C below, OSOS’s purchase of the sixty (60) Application licenses shall entitle the Licensees collectively to an aggregate maximum number of 210,000 Assessments per year on the Application during the initial term and any extensions of this Contract. The Assessments may be performed at any and all of the Licensee locations and, so long as the aggregate maximum number of 210,000 Assessments is not exceeded, there is no upper limit on the number of Assessments that may be performed at any particular Licensee location or locations, or with respect to any particular Licensee.

C. Additional Licenses and Assessments. OSOS shall have the option, exercisable in its sole discretion at any time and from time to time during the initial term and any extension of this Contract, to purchase up to twenty-five (25) additional one-year Application licenses from Licensor, at a cost of \$400 per license. All additional licenses purchased by OSOS on behalf of prospective Licensees shall confer the same rights and

privileges with respect to the use and administration of the Application and the Assessments as the original sixty (60) Application licenses purchased by OSOS. Each additional Application license purchased by OSOS shall increase the aggregate maximum number of Assessments available to all Licensees by 3,500 per year, up to a maximum of 87,500 additional Assessments per year (or a maximum aggregate total of 297,500 Assessments per year).

D. Licensing. Prior to issuing a license to, or activating the Application for, a prospective Licensee, Licensor may require the prospective Licensee to agree to the terms of the Northstar Location Agreement, the Northstar Digital Literacy Terms of Service, the Northstar Addendum for Government Users (if applicable), and the Northstar Digital Literacy Privacy Policy, all of which documents (collectively, the “Northstar Licensing Agreements”) are attached hereto as Exhibit B – Northstar Licensing Agreements; *provided, however*, that notwithstanding anything to the contrary contained in the Northstar Licensing Agreements, Licensor agrees that it shall not charge or invoice any prospective Licensee identified by OSOS and communicated to Licensor a license or similar fee for use of the Application at any of the prospective Licensee’s locations. Licensor will only invoice and charge OSOS license fees for recipients of Application licenses pursuant to this Contract.

E. Non-Applicability of Northstar Licensing Agreements to OSOS. Licensor acknowledges and agrees that OSOS shall not be bound by and shall have no obligation or liability whatsoever with respect to the terms and/or conditions of the Northstar Licensing Agreements, or any alleged or actual violation or breach thereof by a Licensee, an end user of the Application, or any other person or entity. Licensor will not bring a cause of action against or seek a remedy for such a violation or breach from OSOS, but will look solely to the Licensee or end user of the Application, as applicable.

F. Maintenance of Record of Licensees, Locations, and Shared Access Organizations and Locations. Licensor shall be responsible for maintaining and timely updating the list of current Licensees and their locations. From time to time and at any time during the initial term and any extension of this Contract, OSOS may request the current listing from Licensor, and Licensor shall timely provide such listing to OSOS.

G. Suspension or Discontinuation of Application by Licensor. In the event that Licensor should discontinue, suspend or otherwise make the Application and/or Assessments unavailable to Licensees and end users for a period of time greater than ten (10) days, then OSOS may terminate this Contract immediately upon written notice to Licensor, and Licensor shall, within thirty (30) days of receipt of such notice from OSOS, issue a refund to OSOS of the license fees paid by OSOS to Licensor on behalf of the affected Licensees for the current license period, prorated based on the number of days remaining in the current license period as of the date that the Application and/or Assessments first became unavailable for use.

4. PERIOD OF PERFORMANCE

The period of performance of this Contract is from the date of execution as described in Section 12 (the “Effective Date”) through May 31, 2026. OSOS reserves the right to extend the period of performance for up to two (2) additional one-year terms. Any extension will be subject to mutual agreement between OSOS and Licensor. The total Contract term may not exceed five (5) years.

5. COMPENSATION AND PAYMENT

A. Amount of Compensation. OSOS shall pay an amount not to exceed \$200,000.00 for Licensor’s performance of all things necessary for or incidental to the licensing of Licensees and their locations including but not limited to the provision of access to the Application and Assessments to the Licensees at their locations, activating, transferring and terminating licenses, recordkeeping, and such other duties and obligations of Licensor as are specifically set forth herein or necessary to perform such duties and obligations. The not-to-exceed amount of \$200,000.00 is based on the following:

| | |
|---|--------------------------|
| 60 one-year Application licenses (at a cost of \$500 per license) | \$30,000 per year |
| 25 one-year Application licenses (at a cost of \$400 per license) | \$10,000 per year |
| Maximum total of 85 one-year Application licenses | \$40,000 per year |
| | X |
| 3 year initial term + 2 potential one-year extensions | 5 years |
| <hr/> | |
| Total Not-to-Exceed Compensation under Contract: | \$200,000.00 |

B. Billing Procedures. Licensor shall submit invoices on the Effective Date of this Contract for the first year, and annually thereafter on the anniversary date of the Effective date in each subsequent year, including any extension year. **Licensor shall send invoices to the OSOS Project Manager as described in Section 7 below, with a copy to payables@sos.wa.gov.**

Payment will be made by warrant or account transfer by OSOS within 30 calendar days of a satisfactorily completed invoice. Satisfactorily completed is defined as having all the information required for processing by OSOS Financial Services. In addition to a Federal Tax ID number, the Licensor must provide OSOS a Statewide Vendor Number (SWV#), and a Unique Entity Identifier Number. Payment cannot be made without all three numbers on file. **The Contract Number S-7669 and Statewide Vendor number must be referenced on each invoice to be processed.** Payment shall be sent to the address designated by Licensor.

6. PUBLIC RECORDS

Licensor acknowledges that OSOS is subject to Chapter 42.56 RCW and that this Contract shall be a public record as defined in the Public Records Act. Any specific information claimed by Licensor to be proprietary information must be clearly identified as such by Licensor. To the extent consistent with Chapter 42.56 RCW, OSOS shall maintain the confidentiality of all such information marked as proprietary information. If a public records request pursuant to Chapter 42.56 RCW is received for documents related to this Contract, OSOS will give Licensor ten (10) days’ written notice before releasing those documents. It will be Licensor’s responsibility to determine if any of the documents they have provided are confidential and to take legal action to enjoin their release. Licensor will indemnify, defend, and hold harmless OSOS for release of documents related to this Contract as required by law. Nothing contained in this section or any

other portion of this Contract affects or modifies OSOS’s obligation to disclose public records under Chapter 42.56 RCW or other applicable law.

7. CONTRACT MANAGEMENT

The Project Manager for each of the parties identified below shall be the contact person for communications regarding the performance of this Contract:

| <u>Project Manager for Licensor is:</u> | <u>Project Manager for OSOS is:</u> |
|--|--|
| <p><u>Tom Cytron-Hysom</u> Literacy Minnesota 700 Raymond Ave, Suite 180 Saint Paul, MN 55114-1780 Phone: 651-645-2277 E-mail address: thysom@tomcytron-hysom.net</p> | <p><u>Mike Buschman</u> Washington State Library PO Box 42460 Olympia, WA 98504 Phone: 360.704.5248; Fax: 360.586.7575 E-mail address: mike.buschman@sos.wa.gov</p> |

8. INSURANCE

Licensor shall provide a program of self insurance or the following insurance coverage as set out in this Section 8. The intent of the required insurance is to protect the state of Washington, its elected and appointed officials, agents and employees should there be any claims, suits, actions, costs, damages, or expenses arising from any negligent or intentional act or omission of Licensor or any subcontractor, or agents of either, while performing under the terms of this Contract.

By requiring insurance herein, OSOS does not represent that coverage and limits will be adequate to protect Licensor, and such coverage and limits shall not limit Licensor’s liability under the indemnities and reimbursements granted to OSOS in this Contract.

During the initial term of this Contract, and during any extension thereof, Licensor shall, at its own cost and expense, buy and maintain insurance of the types and amounts listed below. OSOS shall be provided written notice before cancellation or non-renewal of any insurance referred to therein. Failure to buy and maintain the required insurance may result in the termination of the Contract at OSOS option.

COMMERCIAL GENERAL LIABILITY (CGL) AND EMPLOYERS LIABILITY INSURANCE

Contractor shall maintain general liability (CGL) insurance, and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 per each occurrence. If such CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the “each occurrence” limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the “each occurrence” limit.

CGL insurance shall be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability arising out of premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) and contain separation of insureds (cross liability) condition.

Licensors shall buy employers liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

EMPLOYERS LIABILITY (STOP GAP) INSURANCE

Licensors shall buy employers liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

BUSINESS AUTO POLICY (BAP)

In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned or unowned by Licensor, automobile liability insurance shall be required. The minimum limit for automobile liability is:

Licensors shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident using a Combined Single Limit for bodily injury and property damage. Such insurance shall cover liability arising out of "Any Auto." Licensor waives all rights of subrogation against OSOS for recovery of damages to the extent they are covered.

Business auto coverage shall be written on ISO form CA 00 01, or substitute liability form providing equivalent coverage. If necessary the policy shall be endorsed to provide contractual liability coverage and cover a "covered pollution cost or expense" as provided in the 1990 or later editions of CA 00 01.

Licensors waives all rights against OSOS for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington and shall name the Office of the Secretary of State, State of Washington, its agents and employees as additional insureds on all general liability, umbrella, excess, and property insurance policies. All policies shall be primary to any other valid and collectable insurance. Licensor shall instruct its insurers to give OSOS 30 days advance notice of any insurance cancellation.

The Licensor shall submit to OSOS, within 7 days of the Contract's Effective Date, a certificate of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified in the Contract, or a complete description of the self insurance program and a financial statement showing the status of the self insurance fund.

As of the Effective Date, and for the duration of the Contract term, including any extensions, Licensor will require all subcontractors utilized by Licensor in connection with the Application to carry insurance coverage of such types and in such amounts as are appropriate to the risks and liabilities associated with their activities concerning the Application, and take reasonable steps to verify that those requirements are satisfied and continuously maintained. Upon the request of OSOS, Licensor will provide OSOS with copies of the current certificates of insurance evidencing such coverage by its subcontractors.

EXHIBIT A

GENERAL TERMS AND CONDITIONS

These General Terms and Conditions marked as Exhibit A (this "Exhibit A") are attached and incorporated into that certain Contract by and between the Office of the Secretary of State ("OSOS") and Literacy Minnesota ("Licensor"). Capitalized terms used and not defined herein shall have the meanings given to them in the Contract.

1. **DEFINITIONS** - As used throughout this Exhibit A, the following terms shall have the meaning set forth below:

- a. "Agent" shall mean Secretary of State, and/or the delegate authorized in writing to act on the Secretary of State's behalf.
- b. "Licensor" shall mean that firm, provider, organization, individual or other entity performing service(s) under the Contract and shall include all employees of Licensor.
- c. "Individually Identifiable Health Information" shall mean a subset of health information, including demographic information collected from an individual and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, as set forth in 45 CFR § 164.501 as currently adopted and subsequently amended or revised.
- d. "Materials" shall mean all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions.
- e. "Protected Health Information" shall mean Individually Identifiable Health Information that is transmitted by electronic media or transmitted or maintained in any other form or medium, as set forth in 45 CFR § 164.501, as currently adopted and subsequently amended or revised.
- f. "Subcontractor" shall mean one not in the employment of Licensor, who is performing all or part of those services under the Contract under a separate contract with Licensor. The terms "Subcontractor" and "Subcontractors," means Subcontractor(s) in any tier.

2. **ACCESS TO DATA** - In compliance with RCW 39.29.080, Licensor shall provide access to data generated under the Contract to OSOS, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of Licensor's reports, including computer models and methodology for those models.

Licensor agrees to make personal information covered under the Contract available to OSOS for inspection or to amend the personal information. Licensor shall, as directed by OSOS, incorporate any amendments to the personal information into all copies of such personal information maintained by Licensor or its Subcontractors.

3. **AMERICANS WITH DISABILITIES ACT (ADA)**- Licensor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

4. **NO ASSIGNMENT** – Neither the Contract, nor any claim arising under the Contract, shall be transferred or assigned by Licensor without prior written consent of OSOS. For the purposes of the Contract, assignment shall include assignment by merger.

5. **ATTORNEY'S FEES** – In the event of litigation or other action brought to enforce the terms of the Contract, each party agrees to bear its own attorney's fees and costs.

6. **CONFIDENTIALITY / SAFEGUARDING OF INFORMATION** - Licensor shall not use or disclose any information concerning OSOS, or information which may be classified as confidential, for any purpose not directly connected with the administration of the Contract without prior written consent of OSOS, or as may be required by law.

7. **CONFLICT OF INTEREST** - Notwithstanding any determination by the Executive Ethics Board or other tribunal, OSOS may, in its sole discretion, by written notice to Licensor terminate the Contract if it is found after due notice and examination by the Agent that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving Licensor in the procurement of, or performance under the Contract.

In the event the Contract is terminated as provided above, OSOS shall be entitled to pursue the same remedies against Licensor as it could pursue in the event of a breach of the contract by Licensor. The rights and remedies of OSOS provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this Section 7 shall be an issue and may be reviewed as provided in Section 10 below.

8. **COPYRIGHT PROVISIONS** – Unless otherwise provided, all Materials produced under the Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by OSOS. OSOS shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, Licensor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to OSOS effective from the moment of creation of such Materials. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

Licensor shall exert all reasonable effort to advise OSOS, at the time of delivery of Materials furnished under the Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of the Contract. OSOS shall receive prompt written notice of each notice or claim of infringement received by Licensor with respect to any data delivered under the Contract. OSOS shall have the right to modify or remove any restrictive markings placed upon the data by Licensor.

9. **COVENANT AGAINST CONTINGENT FEES** - Licensor warrants and represents that no person or selling agent has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by Licensor for the purpose of securing business. OSOS shall have the right, in the event of breach of this Section 9 by Licensor, to annul the Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

10. **DISPUTES** - Except as otherwise provided in the Contract, when a bona fide dispute arises between OSOS and Licensor and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Agent. The request for a dispute hearing must:

- a. be in writing;
- b. state the disputed issue(s);

- c. state the relative positions of the parties;
- d. state Licensor's name, address, and contract number; and
- e. be mailed to the Agent and the other party's (respondent's) Contract Manager within 3 working days after the parties agree that they cannot resolve the dispute.
- f. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 15 working days.
- g. The Agent shall review the written statements and reply in writing to both parties within 10 working days. The Agent may extend this period, if necessary, by notifying the parties.
- h. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in the Contract shall be construed to limit the parties' choice of a mutually acceptable Alternate Dispute Resolution method in addition to the dispute resolution procedure outlined above.

11. GOVERNING LAW - The Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

12. INDEMNIFICATION - Each party to the Contract shall be responsible for its own acts and/or omissions and those of its officers, employees and agents. No party to the Contract shall be responsible for the acts and/or omissions of entities or individuals not a party to the Contract.

13. INDEPENDENT CAPACITY OF LICENSOR - The parties intend that an independent contractor relationship will be created by the Contract. Licensor and its employees or agents performing under the Contract are not employees or agents of OSOS. Licensor will not hold himself/herself out as or claim to be an officer or employee of OSOS or of the state of Washington by reason hereof, nor will Licensor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with Licensor.

14. INDUSTRIAL INSURANCE COVERAGE - Licensor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If Licensor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, OSOS may collect from Licensor the full amount payable to the Industrial Insurance accident fund. OSOS may deduct the amount owed by Licensor to the accident fund from the amount payable to Licensor by OSOS under the Contract and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from Licensor.

15. LICENSING, ACCREDITATION AND REGISTRATION – Licensor shall comply with all applicable local and state licensing, accreditation and registration requirements/standards, necessary for the performance of the Contract.

16. LIMITATION OF AUTHORITY - Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of the Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of the Contract is not effective or binding unless made in writing and signed by the Agent.

17. NONDISCRIMINATION - During the performance of the Contract, Licensor shall comply with all federal and state nondiscrimination laws, regulations and policies.

18. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS - In the event of Licensor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy the Contract may be rescinded, canceled, or terminated in whole or in part, and Licensor may be declared ineligible for further contracts with OSOS. Licensor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth in Section 10 above.

19. PRIVACY - Personal information including, but not limited to Protected Health Information collected, used, or acquired in connection with the Contract shall be protected against unauthorized use, disclosure, modification or loss. Licensor shall ensure its directors, officers, employees, Subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth in the Contract. Licensor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of OSOS or as otherwise required by law.

Any breach of this provision may result in termination of the Contract and the demand for return of all personal information. Licensor agrees to indemnify and hold harmless OSOS for any damages related to Licensor's unauthorized use of personal information.

20. PUBLICITY - Licensor agrees to submit to OSOS all advertising and publicity matters relating to the Contract wherein OSOS's name is mentioned, or language used from which the connection of OSOS's name may, in OSOS's judgment, be inferred or implied. Licensor shall not publish or use such advertising and publicity matters without the prior written consent of OSOS.

21. RECORDS MAINTENANCE - Licensor shall maintain books, records, documents, data and other evidence relating to the Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of the Contract. Licensor shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by OSOS, personnel duly authorized by OSOS, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

22. REGISTRATION WITH DEPARTMENT OF REVENUE - If required by Licensor's activities in the performance of its obligations under the Contract, Licensor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under the Contract.

23. RIGHT OF INSPECTION - Licensor shall provide right of access to its facilities to OSOS, or any of its officers, or to any other authorized agent or official of the Washington State or the federal government, at all reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance under the Contract.

24. SAVINGS - In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date of the Contract and prior to normal completion, OSOS may terminate the contract under the "Termination for Convenience" clause, without the ten-day notice requirement, subject to renegotiation under those new funding limitations and conditions.

25. SITE SECURITY – While on OSOS premises, Licensor, its agents, employees, or other Subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

26. SUBCONTRACTING - Neither Licensor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under the Contract without obtaining prior written approval of OSOS. In no event shall the existence of the subcontract operate to release or reduce the liability of Licensor to OSOS for any breach in the performance of Licensor's duties. This clause does not include contracts of employment between Licensor and personnel assigned to work under the Contract.

Additionally, Licensor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in the Contract are carried forward to any subcontracts. Licensor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of OSOS or as provided by law.

27. TAXES – All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for Licensor or its staff shall be the sole responsibility of Licensor.

28. TERMINATION FOR CAUSE – In the event OSOS determines Licensor has failed to comply with the conditions of the Contract in a timely manner, OSOS has the right to suspend or terminate the Contract. Before suspending or terminating the Contract, OSOS shall notify Licensor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) days, the Contract may be terminated or suspended. In the event of termination or suspension, Licensor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. OSOS reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Licensor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Licensor or a decision by OSOS to terminate the Contract.

A termination shall be deemed to be a "Termination for Convenience" if it is determined that Licensor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of OSOS provided in the Contract are not exclusive and are in addition to any other rights and remedies provided by law.

29. TERMINATION FOR CONVENIENCE - Except as otherwise provided in the Contract, OSOS may, by 10 days written notice, beginning on the second day after the mailing, terminate the Contract, in whole or in part. If the Contract is so terminated, OSOS shall be liable only for payment required under the terms of the Contract for services rendered or goods delivered prior to the effective date of termination.

30. TERMINATION PROCEDURES - Upon termination of the Contract, OSOS, in addition to any other rights provided in the Contract, may require Licensor to deliver to OSOS any property specifically produced or acquired for the performance of such part of the Contract as has been terminated. The provisions of the "Treatment of Assets" in Section 31 below shall apply in such property transfer.

OSOS shall pay to Licensor the agreed upon price, if separately stated, for completed work and services accepted by OSOS, and the amount agreed upon by Licensor and OSOS for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by OSOS, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agent shall determine the extent of the liability of OSOS. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause in Section 10 above. OSOS may withhold from any amounts due Licensor such sum as the Agent determines to be necessary to protect OSOS against potential loss or liability.

The rights and remedies of OSOS provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

After receipt of a notice of termination, and except as otherwise directed by the Agent, Licensor shall:

- a. Stop work under the Contract on the date, and to the extent specified, in the notice;
- b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
- c. Assign to OSOS, in the manner, at the times, and to the extent directed by the Agent, all the rights, title, and interest of Licensor under the orders and subcontracts so terminated, in which case OSOS has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agent to the extent Agent may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to OSOS and deliver in the manner, at the times, and to the extent directed by the Agent any property which, if the contract had been completed, would have been required to be furnished to OSOS;
- f. Complete performance of such part of the work as shall not have been terminated by the Agent; and
- g. Take such action as may be necessary, or as the Agent may direct, for the protection and preservation of the property related to the Contract which is in the possession of Licensor and in which OSOS has or may acquire an interest.

31. TREATMENT OF ASSETS

A. Title to all property furnished by OSOS shall remain in OSOS. Title to all property furnished by Licensor, for the cost of which Licensor is entitled to be reimbursed as a direct item of cost under the Contract, shall pass to and vest in OSOS upon delivery of such property by Licensor. Title to other property, the cost of which is reimbursable to Licensor under the Contract, shall pass to and vest in OSOS upon (i) issuance for use of such property in the performance of

the Contract, or (ii) commencement of use of such property in the performance of the Contract, or (iii) reimbursement of the cost thereof by OSOS in whole or in part, whichever first occurs.

B. Any property of OSOS furnished to Licensor shall, unless otherwise provided herein or approved by OSOS, be used only for the performance of the Contract.

C. Licensor shall be responsible for any loss or damage to property of OSOS which results from the negligence of Licensor or which results from the failure on the part of Licensor to maintain and administer that property in accordance with sound management practices.

D. If any of OSOS property is lost, destroyed or damaged, Licensor shall immediately notify OSOS and shall take all reasonable steps to protect the property from further damage.

E. Licensor shall surrender to OSOS all property of OSOS prior to settlement upon completion, termination or cancellation of the Contract.

F. All references to Licensor under this Section 31 shall also include Licensor's employees, agents or Subcontractors.

32. WAIVER- Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of the Contract unless stated to be such in writing and signed by authorized representative of OSOS.

EXHIBIT B

NORTHSTAR LICENSING AGREEMENTS

Northstar Location Agreement

This Northstar location agreement was last modified on December 23, 2022.

This Northstar Location Agreement (this “**Agreement**”), is effective between Literacy Minnesota, a Minnesota non-profit corporation, (“**LM**”) and the organization, business, or other entity (“**Northstar Location**”) joining or continuing use of the Northstar Digital Literacy Project (“**Project**”) as an approved Northstar location.

The Project is an online digital literacy assessment tool hosted by LM designed to be used in educational and non-profit sectors, including libraries, Adult Basic Education, Community Colleges, Community Based Organizations, and similar settings. Northstar Location desires to access the Project to assess the digital literacy of individuals utilizing the assessment through the Northstar Location’s site (“**Test Takers**”) and LM desires to provide such access.

All parties agree:

Northstar Location’s access to and use of the Project is subject to the terms and conditions of the [Terms of Service](#) (“**Terms**”), which are incorporated by reference. In case of a conflict between the terms of this Agreement and the Terms, the provisions of this Agreement govern.

This Agreement covers a period of one year (the “Initial Term”). Unless earlier terminated in accordance with this Agreement, this Agreement will automatically renew for successive one-year terms (each a “Renewal Term” and together with the Initial Term, the “Term”) unless either party gives the other party written notice of non-renewal. Either party may terminate the Agreement in case of a material breach that remains uncured for 30 days after the non-

breaching party provides notice of the breach. Following expiration or termination, LM will retain Test Taker Data (as defined below) for up to one year (“Data Retention Period”) in the event Northstar Location elects to reinstate its use of the Project under the then-current terms and conditions, unless otherwise directed by Northstar Location. Northstar Location acknowledges that unless it enters into a new agreement under the then-current terms and conditions within the Data Retention Period, it will have no further access to Test Taker Data collected during the Term of this Agreement. Upon the expiration or termination of this Agreement, all rights licensed to Northstar Location will revert immediately to LM, and Northstar Location will destroy all copies (including deletion of all digital copies) of the Curricula (as defined below).

Northstar Location will use the Project in a non-profit manner and will not charge fees to any Test Taker. The Project infrastructure has been designed to be automated to the greatest extent possible, in order to facilitate optimal access to resources at a reasonable cost. This intent and the limitations of LM’s available resources are acknowledged and will be respected by all parties.

The Project can be used by Northstar Location to:

- Access individual and summary data for Test Takers that use the Project through Northstar Location;
- Analyze individual and group assessment data to determine the areas of instruction needed by Test Takers participating in digital literacy classes;
- Compare assessment results as pre- and post-tests for Test Takers; and
- Access and adapt sample curricula developed by LM (“**Curricula**”).

LM acknowledges that, as between LM and Northstar Location, Northstar Location owns all right, title, and interest, in and to information, data, and other content that is submitted, posted, created by, or otherwise transmitted by or on behalf of Northstar Location or a Test Taker (“**Test Taker Data**”). For clarity, Test Taker Data includes, but is not limited to, the following types of information: Test Taker names, email addresses, assessment scores, and "tags" created by a

Northstar Location admin user. Northstar Location hereby grants to LM a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Test Taker Data and perform all acts with respect to the Test Taker Data as may be necessary for LM to provide the Project to Northstar Location, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Test Taker Data in an aggregate and anonymized manner, including to compile statistical and performance information related to the Project. In addition to the rights granted in the Terms of Service, and subject to the limitations of this Agreement, LM hereby grants to Northstar Location during the Term, a non-exclusive, non-transferable, non-sublicensable license solely to reproduce, perform publicly, display, transmit, distribute, and create derivative works based on the Curricula solely for the purpose of using and adapting the Curricula to support Northstar Location's use of the Project. For clarity, the definition of "Curricula" includes any permitted adaptations made by Northstar Location.

Northstar Location will:

- Complete and update as needed the LM Sponsor Site Application Form;
- Assign a staff member to coordinate implementation and usage of the Project;
- Have proctors complete the online proctor training and follow the proctor Code of Conduct as provided by LM;
- Enforce the Test Taker Code of Conduct, as provided by LM;
- If Northstar Location desires to award Northstar Certificates to Test Takers successfully passing the assessment(s), Northstar Location staff will complete online training and follow all proctor agency requirements as provided by LM.
- Follow all other reasonable requirements of LM;
- Respect and utilize self-help (such as manuals and training materials) and automated features of the Project to request technical assistance to the greatest extent possible;
- Retain copyright notices specified by LM in the Project, including Curricula (further, Northstar Location will not use any copyright notices that conflict with, confuse, or negate notices specified by LM);
- Take reasonable measures to protect and safeguard LM's intellectual property rights in the Curricula;
- Promptly notify LM of any actual, suspected or threatened infringement of the Curricula.

- Not create tags that consist of: highly personal individual identifiers (e.g., birthdate, social security or other government-issued identification numbers, etc.)
- Take full liability for the creation and use of tags that consist of: characteristics of legally protected classifications; professional or employment-related information; or inferences drawn from any of the foregoing that could specifically identify any individual. For clarity, LM does not make standard tags available to Northstar Location, and the capability is provided for Northstar Location's convenience at its own risk.

LM will:

- Provide basic administrative support and training at Northstar Location's reasonable request, through electronic means.
- Provide Northstar Location access to the Project and related resources as provided herein, and subject to the Terms.
- Exercise reasonable efforts to provide the technological interface and resources needed to maintain the intended functionality of the Project in accordance with the Terms.
- Respond to Northstar Location's emails in a timely manner.
- Problem-solve technological, access, management, and related issues in a reasonable timeframe.

Northstar Location acknowledges that LM's obligations above are subject to the limits of LM's then-available resources.

Fees

Northstar Location shall pay LM an annual fee established in accordance with LM's then-current pricing standards, available at <https://www.digitalliteracyassessment.org/pricing>. Northstar Location shall pay in US dollars on or before the due date set forth in an invoice by LM. All fees and other amounts payable are exclusive of taxes and similar assessments. Northstar Location is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental or regulatory authority on any amounts payable by Northstar Location hereunder, other than any taxes imposed on LM's income. Both parties agree to negotiate potential additional costs which could arise from unexpectedly heavy use of bandwidth by the Northstar Location, and for direct training and assistance which significantly exceeds the level provided for by the Project.

Acknowledgement Regarding Student Data

Northstar Locations that are or are associated with schools, school districts, educational organizations, or otherwise provide access to the Project to students (“**Schools**”) acknowledge that the collection of personal information of students (“**Student Data**”) may be subject to certain federal and state laws (including the Federal Education and Privacy Rights Act (“**FERPA**”), Children’s Online Privacy Protection Act (“**COPPA**”), California’s Student Online Personal Information Protection Act (“**SOPIPA**”), or similar laws and regulations). Any Student Data that is submitted to LM is and will continue to be, the property of the School and is subject to the control and direction of the School. Schools have the ability to review, correct, and delete any Student Data submitted via the Project at the School’s site, but may contact LM to correct or delete Student Data if necessary. In the event a third party requests access to Student Data, LM will inform the relevant School of the request or instruct the third party to contact the School directly. LM will not use Student Data for any purposes other than to operate, maintain and provide the Application, or as set forth in its Privacy Policy, or as otherwise allowed by student data privacy laws. LM does not allow marketing within its Application or advertise to students or their families or guardians or develop profiles of students or their families or guardians for commercial purposes unrelated to the Application. LM will not sell or otherwise disclose Student Data for targeted advertising or marketing purposes.

Miscellaneous

Without limiting or restricting any of the terms and conditions of the Terms, both parties agree to mediate any problems related to cost, services, access, or other issues arising out of this Agreement.

US Government Rights. Each of the documentation and the software components that constitute the Project is a “commercial item” as that term is defined at 48 C.F.R. § 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Northstar Location is an agency of the US Government or any contractor therefor, Northstar Location only receives those rights with respect to the Project and documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.

Northstar Digital Literacy Terms of Service

Literacy Minnesota (“**LM**,” “we,” “us,” “our”) operates the website at <https://www.digitalliteracyassessment.org> (the “**Website**”). Your access to and use of the Northstar Digital Literacy application that allows users to assess their computer- and online skills through online, self-guided modules, and all information and materials related thereto, our Website or any of its related services, features, tools, or resources (collectively, the “**Application**”) are subject to these terms of service (the “**Terms**”).

By using the Application or by clicking to accept or agree to the Terms when this option is made available to you, you accept and agree to be bound and abide by the Terms and the Northstar Digital Literacy Privacy policy, which is incorporated herein by reference. If you do not want to accept these Terms or the Privacy Policy, you should not access or use the Application.

LM may revise and update these Terms from time to time. Your continued use of the Application following the posting of revised Terms means that you accept and agree to the changes. We encourage you to check this page routinely, so you are aware of any changes, as they are binding to you, you acknowledge that nothing in these Terms constitute an undertaking by LM to provide updates, modifications or enhancements to the Application.

Access and Use by Test Takers

LM may make the Application available to test takers in one of two ways: through testing locations who have a written agreement with LM or through direct access to the Application through the Website. If you are accessing the Application through one of LM's testing locations, you may have the ability to complete a registration process and create a user profile by providing your email address and setting a user name and password. This will allow you to save and review your past assessment activity. Please review the Privacy Policy. for more detail regarding what LM may do with information we collect from you. If you are accessing the Application from the Website, you will have the ability to access and use the Application, but you may not have the ability to set up a user profile or to save assessment results.

LM grants you permission to access and use the Application solely for the purpose of assessing test takers' digital literacy capabilities on a noncommercial basis. You are responsible for obtaining all equipment and services needed to access the Application. If you are accessing the Application via mobile device, your wireless carrier may charge you fees for data, text messaging, and other wireless access or communication services. LM does not guarantee that the Application can be accessed through all wireless devices or service plans, or that it is available in all geographical locations. Additional Rights Applicable to Testing Locations.

Additional Rights Applicable to Testing Locations

If you are accepting these Terms on behalf of a Testing Location, LM hereby grants to you, a non-exclusive license to use any documentation or training materials provided by LM solely for your purposes in connection with your Testing Location Agreement, and to provide access to the Application to test takers through your hosted account. You may have access to information and data about test takers that is submitted or otherwise transmitted by or on behalf of test takers through your site as described in our Privacy Policy.

Restrictions

You must not transmit or otherwise make available through or in connection with the Application, any virus, work, Trojan horse, time bomb, or other computer code, file or program that is potentially harmful or malicious; use any device, software or routine that interferes with the Application; restrict or inhibit any other person from using the Application; except as explicitly allowed herein, reproduce, modify, adapt, translate, create derivative works of or otherwise exploit any portion of the Application; use the Application in an unlawful or fraudulent manner; attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the Application, the server on which the Application is stored, or any server, computer or database connected to the Application; use any automatic device, process or means to access the Application for any purpose, including monitoring or copying content on the Application; or otherwise attempt to interfere with the proper working of the Application. LM may block, limit or terminate your access to the Application for any reason, including if: (i) you violate these Terms; (ii) you violate any applicable law or regulation relating to your use of the Application; (iii) you engage in any conduct which we, in our sole discretion, believe is offensive, harmful, defamatory or otherwise harmful to us or others; or (iv) you breach any other agreement with us..

Application Content

As between you and LM, content made available by LM through the Application, including text, graphics, icons, logos, and images and their selection and arrangement (collectively, 'Content'), is the property of LM, or, if applicable, our licensors, and is protected by U.S. and international copyright laws. All rights not expressly granted are reserved. For clarity, "Content" does not include data entered or transmitted by or on behalf of test takers through a testing location's hosted account.

You shall not use the Application or any Content or data for any purposes beyond the scope of the access granted in these Terms. Except as explicitly allowed herein, you shall not at any time, and shall not permit others to: (i) copy, modify, or create derivative works of the Application or any Content, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Application or any Content; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Application or Content, in whole or in part; (iv) remove any proprietary notices from the Application, Content, or any documentation provided by LM; or (v) use the Application, Content, or documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

LM may, in our sole discretion, suspend or discontinue the Application or any Content at any time without notice.

Trademarks

Northstar Digital Literacy Assessment™, Northstar Digital Literacy Project™, the Northstar Digital Literacy logo, the Literacy Minnesota logo, and other trademarks, service marks and logos ("Trademarks") are the trademarks of LM. Any other trademarks, service marks, logos and trade names used throughout the Application belong to their respective owners and are used with permission and for identification purposes only. Nothing in the Application grants any license or right to use any Trademarks or other intellectual property displayed through the Application. LM prohibits the use of our Trademarks for advertising or marketing purposes, including displaying them on a website or in press releases, without LM's written permission.

Feedback

Unless otherwise described in our Privacy Policy if you choose to provide us with any feedback, suggestions, or similar communications, all such communications ("Feedback") will be considered non-personal, non-confidential and nonproprietary. You hereby grant LM a perpetual, sublicensable, assignable, unrestricted, worldwide, royalty-free, irrevocable license to use, reproduce, display, perform, practice, modify, create derivative or collective works, transmit and distribute your Feedback, in whole or in part, and including all intellectual property rights therein.

Links to Third Party Websites

The Application may provide links to third-party websites. Links to third party websites do not constitute an endorsement for such sites or their content by LM. The providers of these sites, and not LM, are responsible for such websites and you should review and understand any terms of use and privacy policies that govern your use of the websites that you visit. Additionally, if you access a non-LM website that includes one of our Trademarks, for example the website of a testing location, please understand that such websites and their content are not controlled, operated or endorsed by LM.

Disclaimers

While we strive to maintain the Application as accurate and up to date, the Application may include inaccurate or outdated information or information about technology or functionality that are no longer available. LM does not represent the accuracy or reliability of any statement or information made available on or through the Application.

THE APPLICATION AND ALL CONTENT ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LM AND ANY THIRD PARTY PROVIDERS OF CONTENT MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE OWNERSHIP, ACCURACY, OR ADEQUACY OF THE APPLICATION OR ANY CONTENT.

Indemnification

You agree to defend, indemnify, and hold harmless LM and its subsidiaries, affiliates, officers, directors, employees and agents as well as any third party providers of Application-related services or Content ("Application-Related Parties"), from any claim, demand, or damage, including reasonable attorneys' fees, arising out of, or related to your breach of these Terms or your use or misuse of the Application or Content.

Limitation of Liability

RISK. IF YOU ARE DISSATISFIED WITH THIS APPLICATION OR THE CONTENT, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE YOU AGREE THAT NONE OF THE APPLICATION-RELATED PARTIES SHALL BE LIABLE FOR ANY DAMAGE RESULTING FROM YOUR USE OR INABILITY TO USE THE APPLICATION OR CONTENT. THIS PROTECTION COVERS CLAIMS BASED ON WARRANTY, CONTRACT, TORT, STRICT LIABILITY, AND ANY OTHER LEGAL THEORY. THIS PROTECTION COVERS ALL LOSSES INCLUDING, WITHOUT LIMITATION, DIRECT OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, AND PUNITIVE DAMAGES, PERSONAL INJURY/WRONGFUL DEATH, OR DAMAGES RESULTING FROM LOST DATA OR BUSINESS INTERRUPTION. THE TOTAL CUMULATIVE LIABILITY OF THE APPLICATION-RELATED PARTIES INCLUDING ALL AFFILIATES, AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, IF ANY, FOR LOSSES OR DAMAGES SHALL BE LIMITED TO THE AMOUNT OF YOUR ACTUAL DAMAGES, NOT TO EXCEED US. \$1.00. THE LIMIT OF LIABILITY MAY NOT BE EFFECTIVE IN SOME STATES. IN NO EVENT SHALL THE APPLICATION-RELATED PARTIES BE LIABLE TO YOU FOR ANY LOSSES OR DAMAGES OTHER THAN THE AMOUNT DESCRIBED ABOVE. YOU AGREE THAT YOU USE THIS APPLICATION AT YOUR OWN APPLICATION.

Governing law; Jurisdiction

These Terms are governed by the laws of the State of Washington without reference to the principles of conflicts of laws thereof. You agree that the only proper jurisdiction and venue for any dispute with LM relating to your use of the Application, is in the state and federal courts in the State of Washington, U.S.A. You further agree and consent to the exercise of personal jurisdiction in these courts in connection with any dispute involving LM or its employees, officers, directors, agents and providers.

Miscellaneous

If any provision of these Terms is determined to be invalid under any applicable statute or rule of law, such provision is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable. Before seeking legal recourse for any harm you believe you have suffered arising from or related to your use of this Application, you agree to inform us in writing and to give us 30 days to cure the harm before initiating any action. You must initiate any cause of action within one year after the claim has arisen, or you will be barred from pursuing any cause of action. The Application is controlled and operated from the United States and is not intended to subject LM to any non-U.S. jurisdiction or law. The Application may not be appropriate or available for use in some non-U.S. jurisdictions. Any use of the Application is at your own risk, and you must comply with all applicable laws, rules and regulations in doing so.

Under no circumstances will LM be held liable for any delay or failure in performance due in whole or in part to any acts of nature or other causes beyond our reasonable control. If any provision of these Terms is found to be unlawful or unenforceable, then that provision will be deemed severable from these Terms

and will not affect the enforceability of any other provisions. The failure by us to enforce any right or provision of these Terms will not prevent us from enforcing such right or provision in the future. We may assign our rights and obligations under these Terms, including in connection with a merger, acquisition, sale of assets or equity, or by operation of law. You may not assign rights and obligations under these Terms, including in connection with a merger, acquisition, sale of assets or equity, or by operation of law, without LM's prior written consent.

NORTHSTAR ADDENDUM FOR GOVERNMENT USERS

This Addendum for Government Users (“**Addendum**”) modifies and supersedes the Testing Location Agreement and the Northstar Digital Literacy Terms of Service (collectively, the “**Agreement**”). Capitalized terms used in this Addendum which are not defined herein shall have the meanings given to them in the Agreement. These terms or modifications to the Agreement apply to U.S. federal or state government agencies only. The Agreement is modified by this Addendum, as follows.

A. Government agency

For the purpose of this Addendum, “**Government Agency**” means the agency itself and will not apply to nor bind the individuals who use the Program on the agency’s behalf. Northstar will look solely to the Government Agency to enforce any violation or breach of the Agreement as amended by this Addendum.

B. Indemnification

All indemnification provision(s) of the Agreement are hereby deleted. Liability of the Government Agency or Northstar for any breach of the Agreement or this Addendum, or any claim arising from the Agreement or this Addendum, shall be determined under the Federal Tort Claims Act, or other applicable governing authority.

C. Assignment

Neither party may assign its obligations under this Addendum or the Agreement to any third party without prior written consent of the other.

D. Governing law

The dispute resolution provision in the Agreement is hereby deleted. The Agreement and this Addendum shall be governed, interpreted and enforced in accordance with applicable laws of the United States of America. To the extent permitted by applicable law, the laws of the State of Minnesota will apply in the absence of federal law.

E. Termination rights

The automatic renewal provision in the Agreement is hereby deleted. Upon the expiry of the Initial Term, the Agreement will terminate unless otherwise agreed by the parties in writing.

F. Fees

The late payment penalties provision in the Agreement is hereby deleted.

G. Precedence; Further Amendment

This Addendum constitutes an amendment to the Agreement; language in the Agreement indicating it may not be modified or that it alone is the entire agreement between the parties is waived. If there is any conflict between this Addendum and the Agreement, or between this Addendum and other rules or policies on Northstar's website, this Addendum shall prevail. This Addendum may be further amended only upon written agreement executed by both parties.

NorthStar Digital Literacy Privacy Policy

Literacy Minnesota (“**LM**,” “we,” “us,” “our”) values your privacy. This Northstar Digital Literacy (NDL) Privacy Policy (this or the “**Privacy Policy**”) explains our practices, defines our users’ (“**you**” or “**your**”) privacy options, and describes how your information is collected and used by LM through the use of the application and website provided below.

By using the NDL application that allows users to assess their computer- and online-skills through online, self-guided modules, and all information and materials related thereto (the “**Application**”), our website at <https://www.digitalliteracyassessment.org/> or any of its related services, features, tools, or resources (collectively the “**Website**”), you agree to the terms of and consent to the collection, use, sharing, and maintenance of your information by us as described in this Privacy Policy. If you do not consent to our collection, use, sharing or maintenance of your information as described below, you may not use the Application and Website.

LM may make the Application available to you in one of two ways: through Northstar locations who have a written agreement with LM (“**Northstar Locations**”) or through direct access to the Application through the Website. Please be aware that Northstar Locations may have their own privacy practices that apply to your information. This Privacy Policy applies only to our own data practices, and not to the practices of Northstar Locations.

Updates to this Policy

We reserve the right to modify this Privacy Policy from time to time and will mark new versions with a corresponding effective date. We recommend you visit the Website routinely to review any changes in our practices. Your continued use of the Application and Website constitutes your agreement to our then-current Privacy Policy. In addition to this Privacy Policy, your access and use of the Application and Website is governed by our [Terms of Service](#).

Third-Party Websites

Our Application and Website may contain links to other websites. These websites may have privacy policies different than ours. The Application and Website may also contain certain social media icons or widgets. Although you can view the material we have linked to, you may have to create an individual account or register to use these third-party social media sites to use interactive features. Any interaction on social media websites, or within the widgets within the Application and Website, is governed by the terms of use and privacy policy of the applicable platform.

What Information is Collected?

This Privacy Policy differentiates between learners ("**Test Takers**") that use the Website to assess their skills, and administrators and proctors of Northstar Locations ("**Administrators**") who are able to proctor assessments, see reporting on Test Takers' test scores, and have access to other information input or transmitted by or on behalf of Test Takers accessing the Application through the Northstar Locations' site.

Personally Identifiable Information. We may collect personally identifiable information such as your name and contact information when you provide it to us directly or to a representative of a Northstar Location, such as when you register and create an account to use the Application, enter into a Northstar Location Agreement, or contact us to request more information about the Application or Website. Information collected by us is voluntarily provided by you and may include information such as your name and email address for both Test Takers and Administrators. We may also collect phone numbers and physical mailing addresses from Administrators for the purpose of communications regarding the Northstar location's account.

may not be limited *Non-Personal Information.* Our Application and Website may also collect general information about your technology interface or preferences (such as the type of browser used or the files requested). Additionally, we may collect information regarding the websites you visit and other information. The information we may collect includes, but *to*:

- Information regarding your browser and other technical specifications required to use our Application or Website;
- Computer data or files, often called 'cookies,' which may be sent by your web browser and stored on an individual computer to allow our server to "recognize" you through the navigation of the Website;
- Computer data files, often called "web beacons" that are collected from emails or links on third-party sites that allow our server to evaluate the popularity of those links or the information contained in emails or on third-party sites;
- Your IP address to measure our website traffic and to help provide a more personalized experience;
- Your history relating to the use of the Application.

Our Application and Website may also use third party analytics vendors such as Google Analytics. Please click here for more information about how data is collected and processed in connection with the Google Analytics service: <https://policies.google.com/privacy/partners>. We and our third party vendors or partners use analytics data for a variety of purposes, such as to improve the design and content of our Application and Website and understand what users like to see.

Student Data and Children Under the Age of 13

Our Application and Website are not designed for or directed at children. Certain Northstar Locations may include schools, school districts, or other educational organizations ("**Schools**") that may provide students with access to the Application. Any information or personal data relating to students ("**Student Data**") collected through a School is subject to the control and direction of the School. Each School has the ability to review, correct, and delete any Student Data submitted to the Application through the School's site.

We do not knowingly collect information directly from any person under the age of 13. If we learn that we have collected or received personal information from a child under 13 without verification of parental consent, we will delete that information. If you believe we have received or collected information from or about a child under the age of 13, please contact us at support@digitalliteracyassessment.org.

How is User Information Used and Shared?

We collect information about you in order to provide you with access to the Application and Website and information that is necessary for our Application and Website to work properly. We use personal information about our users for a variety of purposes related to the Application, including but not limited to:

- Allowing Administrators to receive information from us regarding the Application;
- Allowing Test Takers to claim badges when they pass assessments, and/or certificates when they pass assessments in a proctored environment;
- Allowing Administrators to search, view, and export data on their Northstar locations' Test Takers;
- Tracking information about your use of the Application and visits to our Website to allow us to provide better service;
- Contacting you regarding an inquiry that you have initiated; and
- Other purposes necessary to carry out our obligations under this Privacy Policy.

We may share non-personal information, in the aggregate, regarding online browsing preferences to evaluate our Application and Website or allow third parties we work with to better serve our users. We will not share personally identifiable information in these instances, other than described in this Privacy Policy.

We may provide user information to third-party service providers or vendors for purposes of, including without limitation, sending direct marketing emails on our behalf (you may unsubscribe at any time), sending non-promotional emails regarding your account, data tracking, and maintenance or development of our Application or Website, development of online products and services or customer service or new product development. We will not share your information with third parties to directly market **their owners**. We may also products to you. We may share information with any subsidiaries, licensees, suppliers, distributors, affiliates, assigns, successors, or other related entities and their respective share your personal information in connection with law enforcement requests or in response to other legal process to establish or exercise our legal rights or defend against legal claims or as otherwise required by law.

How is User Information Protected?

We use reasonable security measures to protect personal information from loss, misuse, unauthorized access, disclosure, alteration and destruction while it is under our control. Unfortunately, the transmission of information via the internet is not completely secure. Although we do our best to protect your personal information, we cannot guarantee the security of any information transmitted through the Application or Website. Any transmission of personal information is at your own risk. You acknowledge and agree that we are not responsible for circumvention of any privacy setting or security measures contained within the Application or Website.

How Can Users Limit Information Collected?

By providing information to us or browsing our Website, you are consenting to our use of your data as outlined in this Privacy Policy. While we work hard to use and disclose our users' personal information only for the purposes identified above, you can choose not to provide personal information or limit the personal information obtained by us as follows:

- You may limit the collection of “cookies” from your Website usage through your browser settings. However, this may disable our ability to provide you with the most relevant products or information regarding the Application or Website.
- *Do Not Track Disclosure.* The Website does not monitor for or behave differently if your computer transmits a “do not track” or similar beacon or message.

Updating Your Personal Information

If you would like to update or correct personal information you have input to the Application, please go to your user profile. If you accessed the Application through a Northstar Location, the Northstar Location Administrator can also update, correct, or delete your information.

Additionally, you may send us an email at support@digitalliteracyassessment.org to request access to, correct or delete any personal information that you have provided to us. In each such case, you must clearly identify the information that you wish to have changed or clearly indicate that you wish to have your personal information removed from our database. If you access the Application through a Northstar Location, we may direct your request to that Northstar Location’s Administrator. Note that despite any request for a change to or removal of your personal information, we may need to retain certain information for recordkeeping purposes, and there may also be residual information that will remain within our databases and other records, which will not be removed or changed.

Geographic Restrictions; Data Processing in the United States

The Application and Services are intended for access and use by visitors located in the United States. LM and its servers and technology service providers supporting the Application and Website may be located in a jurisdiction that is not the same as yours. Information collected through the Application and Website may be processed, transmitted and stored in the United States. If you submit any personal information through the Application or Website (for example, if you provide your email to request materials) you understand that you are voluntarily consenting to the transmission of such information to a company in the United States and your information may be stored and processed in the United States. You acknowledge and consent to such collection, process, transmission and storage of your information in the United States.

Canadian Privacy Notice

Certain Canadian laws, including Canada’s Personal Information Protection and Electronic Documents Act ((S.C. 2000, c. 5) (“PIPEDA”), provide certain rights to Canadian residents including the right to request information from an organization about the existence, use or disclosure of such resident’s personal information, to request access to that information, and to challenge the accuracy and completeness of the information and have it amended as appropriate. If you are a Canadian resident and

would like to make a request regarding your information that is under our control, please contact us through the information provided below.

We will attempt to respond to your request within a reasonable time. Such response will be at minimal or no cost to you.