WRITING BY DESIGN®

TERMS AND CONDITIONS

Agreement between Customer / Client / Website User (herein referred to as "LICENSEE") and Certified Education Consultants, Inc. dba Writing by Design® (herein referred to as "LICENSOR").

Welcome to WritingbyDesignK8.com. The websites **WritingbyDesignK8.com**, **Clients.WritingbyDesignK8.com**, and **GradingbyDesign.com** (herein referred to as "SITES") are comprised of various web pages operated by Certified Education Consultants, Inc. SITES are offered to you conditioned on your acceptance without modification of the terms, conditions, and notices contained herein. WritingbyDesignK8.com is an E-commerce site. The SITES provide access to LICENSOR's intellectual property (herein referred to as "WORK").

LICENSOR and LICENSEE agree as follows:

1. **Ownership**

    A. LICENSEE acknowledges that LICENSOR is the sole and exclusive owner of WORK and of all associated federal registrations and pending registrations, and LICENSEE shall do nothing inconsistent with such ownership. LICENSEE further agrees that it will not claim ownership rights to WORK, or any derivative, compilation, sequel or series, or related Work owned by or used by LICENSOR. LICENSEE agrees that nothing in this Agreement shall give LICENSEE any right, title, or interest in the WORK other than the right to use WORK in accordance with this Agreement.

    B. LICENSOR owns all rights in and to WORK and retains all rights to WORK which are not transferred herein. LICENSOR retains all common law copyrights and all federal copyrights which have been, or which may be granted by the Library of Congress.

    C. LICENSEE acknowledges that LICENSOR is the sole and exclusive owner of WORK. LICENSEE shall abide by all copyright laws, including non-reproduction of WORK for third parties.

D. LICENSOR has granted LICENSEE a license authorizing the use of WORK by LICENSEE in accordance with the terms and conditions of this Agreement set forth on the website WritingbyDesign.com.

2. **Grant of License**

A. LICENSOR hereby grants to LICENSEE, in accordance with the terms and conditions of this Agreement, a license to use WORK in the course and scope of its business and for no other purpose.

B. LICENSOR grants the right to LICENSEE to reassign a license only in the case of teacher reassignment, termination, resignation, retirement or departure for any other reason.

C. LICENSEE shall not grant sub-licenses or permit any third parties to use and/or reproduce any part of WORK which is licensed, not sold.

3. **Fees**

A. All products, licenses, services, and fees are non-refundable. Returns or exchanges are not accepted.

B. LICENSEE agrees to pay for all products, licenses, services, and processing fees within 30 days from the order date.

C. Failure of LICENSEE to make full payment required under this Agreement when such payment is due, shall result in a monthly 2% late fee.

4. **Term**

This Agreement remains in effect and shall continue in full force for as long as LICENSEE uses WORK unless terminated by LICENSOR for breach of this Agreement or any of the terms and conditions herein by LICENSEE.

5. **Website Use**

A. Links to third party sites/Third party services:

Sites may contain links to other websites. The linked sites are not under the control of LICENSOR, and LICENSOR is not responsible for the contents of any linked site, including without limitation any link contained in a linked site, or any changes or updates to a linked site. LICENSOR is providing these links only as a convenience, and the inclusion of any link does not imply endorsement by LICENSOR of the site or any association with its operators.

WritingbyDesignK8.com uses Google Analytics, a web analytics service provided by Google, Inc. ("Google"). Google Analytics uses "cookies," which are text files placed on computers to help the website analyze how users use the site. LICENSEE may refuse the use of cookies by selecting the appropriate browser settings. Note that if refused, the full functionality of the site may be limited.

LICENSEE can prevent Google's collection and use of data (cookies and IP address) by downloading and installing the browser plug-in available under tools.google.com/dlpage/gaoptout.

Further information concerning the terms and conditions of use and data privacy can be found at www.google.com/analytics/terms/gb.html
or at www.google.com/intl/en_uk/analytics/privacyoverview.html.

B. Intellectual Property -- No unlawful or prohibited use

LICENSEE may not use SITES in any manner which could damage, disable, overburden, or impair/interfere with any other party's use and enjoyment of the SITES.

LICENSEE may not obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through SITES.

All content included in SITES, such as text, graphics, logos, images, as well as the compilation thereof, and any software used on SITES, is the property of LICENSOR or its suppliers and protected by copyright and other laws that protect intellectual property and proprietary rights. LICENSEE agrees to observe and abide by all copyright and other proprietary notices, legends or

other restrictions contained in any such content and will not make any changes thereto. LICENSEE will not modify, publish, transmit, reverse engineer, participate in the transfer or sale, create derivative works, or in any way exploit any of the content, in whole or in part, found on SITES. LICENSOR's content is not for assignment, relicensing and/or resale.

C. International Users

SITES are controlled, operated and administered by LICENSOR from our offices within the USA. If LICENSEE accesses SITES from a location outside the USA, LICENSEE is responsible for compliance with all local laws. LICENSEE agrees that LICENSEE will not use the LICENSOR Content accessed through SITES in any country or in any manner prohibited by any applicable laws, restrictions or regulations.

6. **Privacy**

LICENSOR protects the privacy and security of all LICENSEES and students to ensure information is private, safe, and available.

LICENSOR does not advertise in any products, sell personal/professional information, or track users to target ads for third parties.

LICENSOR uses information collected from teachers, administrators, and students to create and manage accounts, administer assessments, and produce reports of assessment results. LICENSOR does not collect information or create student profiles for any reason other than to provide services.

A. Information Collected via Free Trial and Contact Form

Contacts via online submission, telephone, electronic mail or regular mail may be recorded.

B. Information Collected for Use of Grading by Design

1) Teacher Information

LICENSOR collects teacher names, email addresses, passwords, name of school and/or district, classes taught (grade, subject, class name), course assignments, student performance reports, and assessment comments and grades. This information is not shared for any other purpose.

 2) Student Information

LICENSOR collects student email addresses, passwords, name of school and/or district, classes (grade, subject, class name), course assignments, uploaded compositions, rubric and quiz responses, student performance reports, and teacher assessment comments and grades. This information is not shared for any other purpose. Student data may only be accessed by the student, a parent or guardian, and the student's teachers associated with the account.

3) Use of Information

To provide school/district services, LICENSOR uses information collected to create and manage accounts, administer assessments, and produce reports of assessments. Users can access data based on their role. Student access is limited to their student account. Teacher access is limited to their own account, including students currently or previously enrolled in their classes. Administrator access is limited to usernames, classes, and assignment names.

4) Change of Ownership

In the event that LICENSOR sells or transfers any business or assets (in part or whole), LICENSEE information may be disclosed to the prospective buyer or recipient of such business or assets. New owners will be required to maintain the privacy and security of LICENSEE information in accordance with this Privacy Policy. LICENSOR will notify LICENSEE via email or prominent website notice prior to such transfer and provide LICENSEE choices to limit or prohibit transfer of information.

5) Legal Requirements

LICENSOR may disclose LICENSEE information to respond to a subpoena, court order, or other legal obligation. LICENSOR may disclose information to investigate, prevent, or take action regarding suspected or actual prohibited activities, including but not limited to, fraud and situations involving potential threats to the safety of any person or to prevent financial loss to any person or entity.

C. Technical Q&A

Does your product offer a central processing solution and/or a distributed processing solution? Is the technology using a client/server solution, web solution, or combination of both? Can the solution be virtualized within a VMWare environment? Software is provided as a web-based SaaS (Software as a Service) solution. The application runs centrally on our servers and access is provided via the browser. Distributed versions of the software which can be hosted by clients via VMWare is not currently available.

If a web browser is required, what are the specific requirements (i.e. IE, version specific, etc.)? Writing by Design is a stand-alone online program. It functions on all browsers.

What is the minimum system configuration (memory, disk space, etc.) for your product? If the proposed solution is a client/server environment, include specifications for both the client and the server. What measurement is used (i.e. the number of users, the number of students, etc.) to determine an increase in the number of servers/licenses required to support this solution? A basic laptop or tablet with a browser and internet access is all that is required to use the product. Content and data are stored securely server side.

Describe the product compatibility on various platforms, i.e. Chromebooks, Windows, Mac, mobile devices. It is compatible with Chromebooks, Windows, Macs, iPad, tablets, and mobile devices.

How is video streaming/storage handled? Video content is stored and delivered via Digital Ocean Spaces (Highly Available Object Storage similar to Amazon S3). Video-delivered lessons are embedded within assignment pages and are intended to be viewed within the browser.

What peripheral equipment is required to support your product? Please indicate what equipment applies to this question and provide a description of how it is used. The only equipment required is a basic laptop or tablet with a browser and Internet access.

What is your change management methodology for handling software upgrades? Software upgrades happen server-side and are handled in house. Third-party vendors are not involved in this process.

What is the primary programming language used to write the proposed application (i.e., Visual Basic, 4-GL, C++, etc.)? Ruby on Rails, HTML, JavaScript

Does your company provide quantitative measures for your system solution in relation to system performance? LICENSOR logs server performance analytics server-side and addresses these with either software or hardware upgrades depending on the issue.

Please provide a complete description of the process for archiving and/or purging historical data housed within the solution and the system security resources (authorization level) required to perform the operations. When accounts are deleted, data is removed from the database. The data will persist in nightly backups until a set time period has passed since the delete (90 days). This data is only accessible by the system administrator.

Does your product have any limitations (size or duration) on the storage of historical data? As long as accounts are active, data persists. There are no current limitations to size or duration.

Please include a comprehensive description of the backup plan and recovery solutions for both the customer data and vendor source code that may be utilized in your solution. Database backups run nightly and are kept for 90 days. System administrator will restore the latest backup in the event of a disaster. Source code exists in source control in a remote repository.

7. **Marketing Communications**

LICENSOR may send periodic promotional or informational emails to teachers and administrators about our services, products, or events. LICENSEE may opt out of such communications by following the opt-out instructions contained in the email. If LICENSEE opts out of receiving emails about recommendations or other information, LICENSOR may send administrative emails about your account or any services you have requested or received from us.

8. **General Provisions/Enforcement of Claims**

A. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof, superseding any and all prior and contemporaneous agreements, understanding, negotiations, and discussions. No supplement, amendment or modification of this Agreement shall be binding unless executed in writing and signed by LICENSEE and LICENSOR expressly stating that modification is intended.

B. This Agreement has been carefully read and voluntarily entered into by LICENSEE. If any construction is to be made of this Agreement, such construction shall not be interpreted against LICENSOR.

C. Indemnification LICENSEE agrees to indemnify, defend and hold harmless LICENSOR, its officers, directors, employees, agents and third parties, for any losses, costs, liabilities and expenses (including reasonable attorney's fees) relating to or arising out of LICENSEE use of or inability to use the Site or services, any user postings made, LICENSEE violation of any terms of this Agreement or LICENSEE violation of any rights of a third party, or LICENSEE violation of any applicable laws, rules or regulations.

D. Jurisdiction and venue for any action or proceeding concerning the enforcement or interpretation of this Agreement shall be in accordance with the laws of the State of California.
California.

We hope we never have a dispute, however, should any action be necessary to construe or enforce the provisions of this Agreement, the Parties agree to first participate in mediation before a mediator agreed upon by both Parties. If the matter is not resolved at mediation, the Parties agree to a binding

individual arbitration before the American Arbitration Association in San Diego, California. THE PARTIES AGREE THAT A PARTY MAY BRING CLAIMS AGAINST THE OTHER ONLY IN EACH'S INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PUTATIVE CLASS, COLLECTIVE AND/ OR REPRESENTATIVE PROCEEDING, SUCH AS IN THE FORM OF A PRIVATE ATTORNEY GENERAL ACTION AGAINST THE OTHER. Further, the arbitrator may not consolidate more than one LICENSEE claims, and may not otherwise preside over any form of a representative or class proceeding.

Should any action be necessary to construe or enforce the provisions of this Agreement, the prevailing party in such action shall be entitled to recover all costs related thereto, including reasonable attorneys' fees.

E. Whenever possible, each provision of this agreement shall be interpreted in such a manner to be interpreted and valid under applicable law, but if any of the provisions of this Agreement shall be prohibited, void, invalid or unenforceable under applicable law, such provision shall be ineffective to the extent of such prohibition, invalidity, unavoidability, enforceability, without invalidating the remaining provisions of this Agreement.

F. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

G. Visiting WritingbyDesignK8.com or sending emails to LICENSOR constitutes electronic communications. LICENSEE consents to receive electronic communications and agrees that all agreements, notices, disclosures and other communications that LICENSOR provides to LICENSEE electronically, via email and on the Site, satisfy any legal requirement that such communications be in writing.

A printed version of this agreement and of any notice given in electronic form shall be admissible based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. It is the express wish of the parties that this agreement is written in English.

9. **Changes to Terms**

LICENSOR reserves the right, in its sole discretion, to change the Terms under which SITES are offered. The most current version of the Terms will supersede all previous versions. LICENSOR encourages you to periodically review the Terms to stay informed of our updates.

10. **Contact**

Your questions or comments are welcomed.

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