



## SOFTWARE END USER LICENSE AGREEMENT

**PCDOLPHIN IS WILLING TO LICENSE THE ENCLOSED SOFTWARE TO LICENSEE ONLY ON THE CONDITION THAT LICENSEE ACCEPTS ALL OF THE FOLLOWING TERMS. LICENSEE MUST READ THE TERMS OF THIS AGREEMENT CAREFULLY AND ACCEPT SAME VIA THE CLICK-WRAP MECHANISM INCORPORATED HEREIN.**

This Software End User License Agreement (“Agreement”) is made and entered into by and between pcDolphin, Inc., an Indiana corporation, with an office at 2222 Profit Drive, Indianapolis, IN 46241 (the “Licensor”) and (the “Licensee”). Licensee acknowledges his acceptance of this agreement by manifesting his acceptance through clicking on the acceptance button in the electronically displayed version of the Software or the installation program for the Software, as appropriate. In consideration of the promises and the mutual covenants herein contained, the parties hereto agree as follows:

**1. License.** Licensor grants Licensee a nontransferable and nonexclusive right to use the enclosed ClassKit™ software products (“Software”) and documentation {See Schedule A}.

**2. Restrictions.** The license granted to Licensee is subject to restrictions with regard to users who may use the Software, to companies whose data may be processed, and to transfers as follows:

- a) **Company Restrictions.** Licensee may use the Software only to process data for Licensee’s enrolled school organizations (“School”). The Software may not be used to process data of any other entity or to operate a service bureau.
- b) **Transfer Restrictions.** Licensee shall not grant sublicenses, assign or transfer (including transfer by rental) the Software or documentation or use of any of these to benefit any third party, without the written consent of Licensor, and only then upon the Assignee’s agreement to assume and agree to perform all obligations and liabilities of the party named hereunder.

**3. Ownership.** Licensor retains ownership of the Software and accompanying documentation and of all rights not specifically granted to Licensee. Licensee may

not modify, adapt, translate, reverse engineer, decompile, disassemble or create derivative works based on the Software or accompanying documentation. Licensee agrees to take any step necessary to protect the proprietary rights of Licensor. Licensee will, at Licensee's own cost and expense, protect and defend the ownership of Licensor in the Software and documentation against all claims, liens, and legal processes of third parties of Licensee, including creditors of Licensee, and must keep the Software free and clear of any such claims, liens and licenses.

**4. Term of Maintenance Agreement.** The Initial term of the Agreement between Licensor and Licensee to provide maintenance (the Initial Maintenance Term) for the Software shall exist for a period from the date of the execution of this Agreement to the following October 31<sup>st</sup>. The Maintenance Term shall be renewed automatically after the end of the Initial term automatically for Subsequent Maintenance Terms (November 1<sup>st</sup> thru the following October 31<sup>st</sup>). The Subsequent Maintenance Terms will continue uninterrupted, as long as the Agreement payments are current, until such time as either party gives ninety (90) days written notice to the other party of its desire to terminate the Agreement. The Licensor can immediately terminate providing maintenance services if any of the Licensee's payments for any of the goods and/or Services rendered pursuant to this Agreement become delinquent or if this Agreement is terminated by either party. During the Initial and Subsequent Maintenance Terms of this Agreement, Licensor (or designated representative) will provide Licensee with maintenance services that consist of providing Licensee with all refinements and added features to the Software which are included in any general release by Licensor during the period covered by that particular Maintenance Term.

**5. Responsibilities of Licensor.** Licensor (or designated representative) shall, during the Maintenance Term provide services and support as described in the Maintenance Agreement attached as Schedule B, which Licensor may amend from time-to-time at its sole discretion.

**6. Termination.** Licensee may terminate the software license granted by this Agreement by destroying (and certifying such destruction in writing) or returning to Licensor the Software and the documentation and all copies thereof. Licensor may terminate this Agreement if Licensee breaches any material representation, warranty, obligation or provision of this Agreement and fails to cure such breach within 30 (thirty) days of notice by Licensor. Upon such termination, Licensee shall promptly return to Licensor all copies of the Software and documentation. In the event of termination Licensor shall have no obligation to refund any amounts paid it pursuant to Section 3.

**7. Confidentiality.** Both parties acknowledge that this Agreement creates a relationship of confidence and trust between Licensee and Licensor with respect to the business of both parties, including but not limited to both parties' trade secrets, customer lists, techniques, inventions, discoveries and know-how (herein collectively called "Confidential Information"). Each party shall hold all Confidential Information disclosed to it by the other party in strictest confidence. Each party undertakes throughout the term of this Agreement and after its termination to hold in trust and confidence any Confidential Information of the other party which is not in the public domain and to refrain from using or disclosing any such information, except to employees to whom such disclosure is necessary under this Agreement.

**8. Survival.** The obligations of the parties under Section 7 shall survive and continue after any termination of the license under this Agreement.

**9. Limited Warranty.** Subject to the limitations below, Licensor warrants that, for a period of 90 (ninety) days from delivery of the Software to Licensee, the Software (a) will substantially conform to the accompanying documentation; and (b) is properly copied onto its media.

**10. Warranty Limitation.** The above warranty is null and void if Licensee or any third party modifies or changes the Software in any way beyond the customization options contained in the Software, or if failure of the Software has resulted from accident, abuse or misapplication. Licensee agrees to defend and hold harmless Licensor against any loss, cost or expenses incurred as a result of a claim based on modifications to the Software made by or for Licensee without Licensor's prior written approval. In order to receive and maintain this warranty, Licensee must further (i) use the Software in accordance with the documentation; (ii) use the Software on the hardware and with the operating system for which it was designed; and (iii) use only qualified personnel to operate the system and the hardware. Licensor will not be required to maintain compatibility between the Software and any other software not specified in this Agreement. Licensor does not warrant that the functions contained in the Software will meet Licensee's requirements or that the operation of the Software will be uninterrupted or error-free or that all defects will be corrected. This warranty does not apply to errors or malfunctions caused by (i) machine malfunction; (ii) equipment or software not licensed in this Agreement; (iii) use of incorrect procedures or data by Licensee; or (iv) any other cause not attributable to Licensor.

**11. Remedies.** Licensor's entire liability and Licensee's exclusive remedy relative to the Software shall be for Licensor, at its option, to either: (i) replace the defective media; or (ii) replace the Software that does not meet the limited warranty described above; or (iii) attempt to correct any errors which Licensee finds in the Software during the warranty period and which prevent the Software from substantially performing as described in the documentation. Any replacement Software will be warranted for the remainder of the original warranty period or for thirty (30) days, whichever is longer.

**12. DISCLAIMER OF WARRANTY. EXCEPT AS STATED ABOVE, LICENSOR MAKES NO OTHER WARRANTIES REGARDING THE SOFTWARE OR DOCUMENTATION, INCLUDING, WITHOUT LIMITATION, EXPRESS OR IMPLIED WARRANTIES, AND EXPRESSLY DISCLAIMS BOTH THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND THE WARRANTY OF MERCHANTABILITY, AND ANY OTHER WARRANTY, EXPRESS OR IMPLIED. ANY STATEMENTS MADE BY ANYONE OTHER THAN LICENSOR OR BY ANY METHOD OTHER THAN THESE WRITTEN WARRANTIES OF LICENSOR ARE NOT WARRANTIES AND CANNOT BE RELIED UPON BY LICENSEE.**

**13 LIMITATION OF LIABILITY. IN NO EVENT SHALL LICENSOR OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION,**

**PRODUCTION OR DELIVERY OF THE SOFTWARE OR THE DOCUMENTATION BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF GOODWILL OR TORTIOUS CONDUCT RELATING TO, CAUSED BY OR ARISING OUT OF ANY BREACH OF OBLIGATIONS OR DELAY IN DELIVERY OF SOFTWARE OR DOCUMENTATION UNDER THIS AGREEMENT OR FROM LICENSEE'S USE OR INABILITY TO USE THE SOFTWARE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. ANY DAMAGES THAT LICENSOR IS REQUIRED TO PAY FOR ANY AND ALL CAUSES, WHETHER FOR NEGLIGENCE, BREACH OF CONTRACT OR OTHERWISE, REGARDLESS OF THE FORM OF ACTION, SHALL, IN THE AGGREGATE, BE LIMITED TO THE PRICE PAID BY LICENSEE FOR THE SOFTWARE.**

**14. Listing.** Licensee agrees to be listed (by name and industry only) in Licensor's public customer list.

**15. Notices.** All notices required by this Agreement shall be in writing and personally delivered or sent by either prepaid (1) same-day courier; (2) overnight courier; or (3) registered mail; or (4) certified mail, return receipt requested. All such notices must be properly addressed to the most recent address that the recipient party provided to the sending party. Confirmation of such notices shall be required and shall promptly be given by the receiving party.

**16. Miscellaneous.**

A} This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Indiana except for the Conflicts of Laws Rules of the State of Indiana. The United Nations Convention on Contracts for the International Sales of Goods shall not apply to this Agreement.

B} If any part, term or provision of this Agreement should be held illegal or unenforceable, the validity or enforceability of the remainder hereof shall not be affected, unless the business purpose of this Agreement is substantially frustrated thereby.

C} The failure of either party at any time to enforce any provision of this Agreement shall in no way affect its right thereafter to require complete performance by the other party, nor shall the waiver of any breach of any provision hereof be taken or held to be a waiver of any subsequent breach of the provision or be a waiver of the provision itself. Any waiver to be effective must be in writing.

D} There are no understandings or representations concerning this Agreement which are not fully expressed herein, and nothing in this Agreement, expressed or implied, shall confer upon any party other than the parties hereto or their respective successors, any rights, remedies, obligations or liabilities, except as expressly provided herein. This Agreement supersedes all prior agreements and undertakings between or among the parties relating to the subject matter hereof. This Agreement may be amended only with the mutual written consent of the parties hereto or their respective successors.

E} Any dispute, controversy, or claim arising out of or relating to any provision of this Agreement or the interpretation, enforceability, performance, breach, termination, or validity hereof, including without limitation this arbitration clause, shall be solely and finally settled by arbitration that shall be heard exclusively in Indianapolis, Indiana in accordance with, but not under the auspices of, the rules of the American Arbitration Association as modified by the provisions of this Section 16E. An award rendered in connection with an arbitration pursuant to this Section 16E shall be final and binding upon the parties, and any judgment upon such an award may be entered and enforced in any court of competent jurisdiction. To the extent this Section 16E is deemed a separate agreement, independent from this Agreement, Sections 16A and 15, concerning applicable law and notices, respectively, are incorporated herein by reference. Judgment upon any award rendered in connection with arbitration pursuant to this Section 16E may be entered in the United States District Court for the Southern District of Indiana, and any other Court having jurisdiction or application may be made to such Court for a judicial acceptance of the award and an order of enforcement, as the case may be. For any dispute in which arbitration is not permissible, each Party hereby consents to the exclusive jurisdiction of and the exclusive venue in the State and Federal Courts sitting in Indianapolis, (Marion County) Indiana.

**17. Headings.** Headings in this Agreement have been included for convenience only and shall not be used in construing any provision herein.

**18. Binding Effect.** All the terms, covenants and conditions of this Agreement shall be binding upon, and inure to the benefit of and be enforceable by the parties hereto and their respective successors.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and effective as of the date and year first above written.

“LICENSOR”

“LICENSEE”

pcDolphin, Inc.

\_\_\_\_\_

By \_Jan L.Kilies\_\_\_\_\_

By\_\_\_\_\_

Title \_President\_\_\_\_\_

Title \_\_\_\_\_

Date : as indicated on time stamp of the execution of the Acceptance by Licensee

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## **SCHEDULE A**

### **SOFTWARE PRODUCTS AND DOCUMENTATION LISTING**

THIS SCHEDULE IS PART OF THE CLASSKIT SOFTWARE LICENSE DATED  
(SEE EXECUTION DATE ON DEALER APPLICATION FORM) BY AND  
BETWEEN LICENSEE AND PCDOLPHIN, INC.

#### **CLASSKIT END USER SOFTWARE PACKAGE:**

- CLASSKIT SOFTWARE
  - PARENT MODULE
  - TEACHER MODULE
  - PROGRAM ADMINSTRATOR MODULE
  - DEALER ADMINISTRATION MODULE

ALL MODULES INCLUDED HEREIN HAVE FULL DOCUMENTATION  
ATTACHED, EITHER IN PRINT OR ON COMPUTER MEDIA, OR BOTH, BASED  
SOLELY ON THE DECISION OF PCDOLPHIN, INC.



## **SCHEDULE B**

### **SOFTWARE MAINTENANCE AGREEMENT**

THIS SCHEDULE IS PART OF THE CLASSKIT SOFTWARE LICENSE BY AND BETWEEN LICENSEE AND PCDOLPHIN, INC.

DURING THE MAINTENANCE TERM, LICENSOR SHALL PROVIDE SUPPORT OF PRODUCTS LISTED ON SCHEDULE A OF THIS LICENSE AGREEMENT IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT:

**SERVICE HOURS:** Licensor, or designated representative, shall provide support to Licensee from 8:00 A.M. to 5:00 P.M., Indianapolis time, Monday through Friday. Licensor, or designated representative, shall respond to support calls reasonably identified as critical by Licensor, or designated representative, within one (1) hour from the initial call to Licensor, or designated representative. Licensor, or designated representative, shall respond to all other calls within four (4) business hours. If the payments for this Agreement are in arrears or the Maintenance Term has ended, then no support shall be provided until such time as the Licensee account is considered current and Licensor, or designated representative, agrees to again commence providing Maintenance Services to Licensee.

Licensee is solely responsible for the maintenance of its network systems and the periodic, timely back-up of any and all the Licensee's computer files.

**Any requests for support during times other than those times listed above will be handled on a first-come, first-serve basis at the then current support rate.**