



TERMS AND CONDITIONS BETWEEN EDUCATIONAL DEVELOPMENT ASSOCIATES, INC. ("ACALETICS®") AND LOCAL EDUCATION AGENCY ("CUSTOMER")

These Terms and Conditions, govern the provision of products and services as set forth in the use of the Online Beta (ACALETICS® Online System) and paper-based supplements.

1. DEFINITIONS.

- a. **Online Beta** refers to access of the ACALETICS® Online System. The services include access to the **Licensed Material** (defined below) found at <https://www.acaleticsapp.net/login.html>.
- b. **Licensed Material** refers to the ACALETICS® products and services which include the paper-based materials and the Online Beta, which includes ACALETICS® Courseware, audio, video and other content.
- c. **Professional Development** refers to all implementation planning, program design, administrative and instructional training, consulting and coaching for education professionals provided by ACALETICS® and specified in any applicable quote.
- d. **Paper-Based Materials** refers to ACALETICS® consumable booklets to be used within the school year for which they were purchased.

2. LICENSE and SERVICES.

- a. **License.** ACALETICS® grants Customer a non-exclusive, non-transferable license to access and use Licensed Material for internal educational and training purposes solely for schools purchasing the paper-based materials. This Agreement provides only Customer and Customer's specifically authorized instructors, administrators, students and parents ("End Users") access to and use of the Online Beta solely for internal education- and training-related purposes. The License allows the access of the software throughout the school year by authorized Users not to exceed specific quantities stated on the paper-based materials Price Quote.
- b. **Services.** If set forth in any Quote, ACALETICS® will also provide Professional Development Services, subject to the additional terms and conditions specified in any attached Services Quote.
- c. **ACALETICS® Technical and Customer Support.** ACALETICS® will provide technical and customer support for the Online Beta. Technical support includes system updates and enhancements when generally made available and pushed per ACALETICS®' regularly scheduled maintenance. Information for customer support can be found at <http://www.acaletics2.com/contact-us.php>

3. USE OF ONLINE BETA.

- a. **Customer Data and Student Data.** All data uploaded or entered during use of the Online Beta by Customer, including student information and student records, remain the property of Customer ("**Customer Data**"). All student-generated content and personally identifiable information about any students ("Student Data") shall remain the property of the student, or of the parent or legal guardian of the student. Customer represents and warrants that it has appropriate rights to any Customer Data and Student Data. Customer grants ACALETICS® the right to use the Customer Data and Student Data solely for purposes of performing under this Agreement. Students (or parents or legal guardians of the Student), retain ownership and control of all Student Data that is provided or accessed through ACALETICS® Online Beta, and ownership of such Student Data never passes to ACALETICS®. During the term of this Agreement, Customer may export Customer Data and Student Data to the extent allowed by the functionality within the Online Beta. For training and demonstration purposes, ACALETICS® may use and share Customer Data and Student Data, but will share only with supervisors, instructors and other Customer employees who have appropriate authorization. All Customer data will be deleted at the end of the school year.
- b. **Customer Responsibilities.** Customer must (i) keep its passwords secure and confidential; (ii) be solely responsible for Customer Data and all activity in its account; (iii) use commercially reasonable efforts to prevent unauthorized access to its account and notify ACALETICS® promptly of any such unauthorized access. Customer authorizes its integrators or other third party vendors and ACALETICS® to conduct initial setup and to allow continued access to the Online Beta for the sole benefit of Customer. Customer may provide ACALETICS® the name and contact information for all third parties authorized by Customer, or necessary for Customer to use the Online Beta. Customer is solely responsible for ensuring compliance by its authorized integrators or other third party vendor(s) with all federal, state and local privacy laws and regulations. **ACALETICS® HEREBY DISCLAIMS FOR ALL PURPOSES AND CIRCUMSTANCES ANY RESPONSIBILITY OR LIABILITY FOR USE OF THE PRODUCTS INCLUDING THE CUSTOMIZATION THEREOF.**

4. WARRANTIES and DISCLAIMERS.

- a. **Compliance Warranty & Privacy Policy.** ACALETICS® will comply with, and will cause each of its employees, agents, and contractors to comply with, all state, federal and municipal laws and regulations applicable to its performance under this Agreement ("Applicable Laws"), including without limitation the Family Educational Rights and Privacy Act ("**FERPA**") and the Children's Online Privacy Protection Act ("**COPPA**"). ACALETICS® Privacy Policy, which is incorporated below into these terms and conditions, contains additional terms regarding ACALETICS® use of and commitment to safeguarding Student Data, and compliance with other student privacy laws.

Information We Collect and How We Use It

Our website does not collect any personal information about you unless you choose to make that information available. When you complete the "Contact Us" form, we use personal information, including name, phone number, and email, to promptly respond to you. We use non-personally identifiable information, such as browser version, to develop statistics so we can make technological improvements. This information is not tied to any personal information.

Any personal information, collected by permission only, is only accessible by those who have special access rights to our systems and are required to keep the information confidential.

Outside Parties

We will not sell or rent your personal information to outside parties. We will only release your information if we must do so to comply with the law.

The privacy policy herein only applies to information collected through our website. Should you have any questions or comments regarding the policy or our privacy practices, feel free to contact us at: customerservice@acaletics.com

Customer is responsible for providing notice of its own privacy policy to parents of its student and for obtaining any necessary parental consents for students to use the Online Beta as may be required by Applicable Law.

- b. Professional Development.** ACALETICS® warrants that it will provide Professional Development in a professional and competent manner consistent with the terms of this Agreement and under generally accepted industry standards.
 - c. Online Beta Service Warranty.** ACALETICS® warrants that it will make commercially reasonable efforts to maintain the online availability of the Online Beta. CUSTOMER'S EXCLUSIVE REMEDY AND ACALETICS®' ENTIRE LIABILITY UNDER THIS WARRANTY WILL BE FOR ACALETICS® TO REPAIR THE NON-CONFORMING SERVICE, OR IF ACALETICS® CANNOT MAKE SUCH REPAIR WITHIN A REASONABLE PERIOD OF TIME, THEN ACALETICS® MAY TERMINATE ACCESS TO THE ONLINE BETA.
 - d. DISCLAIMERS.** THE ONLINE BETA IS PROVIDED "AS IS" AND WITH ALL FAULTS. ACALETICS® IS A 100% FACE-TO-FACE, PRINT-BASED CONSUMABLE SUPPLEMENTAL MATH PROGRAM. WE ALLOW OUR CLIENTS TO USE OUR ONLINE BETA IF THEY DESIRE. EXCEPT FOR THE ABOVE WARRANTIES, THE ONLINE BETA AND ANY PROFESSIONAL DEVELOPMENTS SERVICES ARE PROVIDED ON AN "AS-IS" AND "WHEN AVAILABLE" BASIS. ACALETICS® EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES CONCERNING THE ONLINE BETA AND SERVICES TO THE EXTENT ALLOWED BY LAW, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE IS NO WARRANTY THAT THE OPERATION OR CONNECTIVITY OF THE ONLINE BETA WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE ONLINE BETA WILL BE FREE OF ALL POSSIBLE METHODS OF UNAUTHORIZED ACCESS, ATTACK, OR INTRUSION.
- 5. PAYMENT, INVOICING AND TAXES.** Unless otherwise provided in a Quote, Customer will pay the amount of each invoice net 30 days after the invoice date. Except to the extent that Customer provides ACALETICS® with a valid tax exemption certificate authorized by the appropriate taxing authority, Customer must pay any taxes, impositions, or other charges imposed or levied by any governmental authority, including any sales, use, value-added, or withholding taxes, in connection with a Quote, excluding ACALETICS® income and payroll taxes.
- 6. MUTUAL CONFIDENTIALITY.**
- a. Definition of Confidential Information.** Confidential Information means all non-public information including Personally Identifiable Information ("**PII**") as defined by Applicable Law, disclosed by a party ("**Discloser**") to the other party ("**Recipient**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure ("**Confidential Information**"). ACALETICS® Confidential Information includes without limitation the Service, its user interface design and layout, pricing information, and the Licensed Material.
 - b. Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this Agreement.
 - c. Exclusions.** Confidential Information excludes information that: (i) is or becomes generally known

to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient before its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance written notice to seek a protective order.

7. ACALETICS® PROPERTY.

- a. **Reservation of Rights.** The content, documentation, software, workflow processes, user interface, designs, know-how and other items provided by ACALETICS® as part of the Online Beta, any Professional Development, or in response to Customer requests for customized content are the proprietary property of ACALETICS® and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with ACALETICS® and its licensors. Customer may not remove or modify any proprietary marking or restrictive legends in the ACALETICS® Courseware. ACALETICS® reserves all rights unless expressly granted in this Agreement.
- b. **Restrictions.** Customer may not (i) sell, rent or lease the access to the Online Beta or use it in a service provider capacity; (ii) use the Online Beta to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Online Beta or attempt to gain unauthorized access to the Online Beta or its related systems or networks; (vi) use the Online Beta for other than internal Customer educational purposes; (v) reproduce, frame, mirror, modify, translate, enhance, decompile, disassemble, copy, download or reverse engineer the Online Beta or modify, create derivative works based on the Online Beta; or (vi) access the Online Beta to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.

8. TERM AND TERMINATION.

- a. **Term.** The Term of this Agreement and Customer's access to the Online Beta, Services, and any Professional Development services will continue for the school year or the period indicated on any applicable Quote, unless terminated by ACALETICS® for material breach.
- b. **Mutual Termination for Material Breach.** If either party is in material breach of this Agreement, the non-breaching party may terminate this Agreement at the end of a written thirty (30) calendar day notice and cure period, if the breach has not been cured.
- c. **Access to and Return of Customer Data and Student Data.** For a period of up to sixty (60) days after termination, upon request, ACALETICS® will make the Online Beta available for Customer to access and export Customer Data and Student Data. Alternately, Customer may submit a written request to ACALETICS® up to sixty (60) days after termination, to request the deletion of Student Data (other than anonymized or de-identified data that may be retained pursuant to ACALETICS® Privacy Policy).
- d. **Suspension for Violations of Law.** ACALETICS® may temporarily suspend the Online Beta or remove the applicable Customer Data, or both, if it in good faith believes that, as part of using the Online Beta, Customer has violated a law. ACALETICS® will attempt to contact Customer in advance.
- e. **Return or Destroy ACALETICS® Materials related to the Online Beta Upon Termination.** Within sixty (60) days after expiration or termination of this Agreement for any reason, upon request, Customer agrees to return, delete or destroy all proprietary ACALETICS® materials related to the use of the Online Beta. Customer will confirm its compliance with this destruction or return requirement in writing upon request of ACALETICS®.

9. LIABILITY LIMIT.

- a. **EXCLUSION OF INDIRECT DAMAGES.** ACALETICS® IS NOT LIABLE FOR ANY INDIRECT,

SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY; LOSS OF DATA, RECORDS OR INFORMATION; AND LOST PROFITS), EVEN IF IT KNOWS OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

- b. **TOTAL LIMIT ON LIABILITY.** ACALETICS® TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) DOES NOT EXCEED THE AMOUNT PAID BY CUSTOMER WITHIN THE 12-MONTH PERIOD BEFORE THE EVENT THAT GAVE RISE TO THE LIABILITY.

10. OTHER TERMS.

- a. **Governing Law.** If Customer is a public school or district or other state or municipal governmental agency, this Agreement will be governed by the laws of the state where the Customer resides, excluding any conflict of law principles. Otherwise, this Agreement will be governed by the laws of the state of Florida.
- b. **Entire Agreement and Changes.** These Terms and Conditions (and any Attachments) and any Quote constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. The Parties may modify this Agreement only by written agreement signed by both parties.
- c. **No Assignment.** Neither party may assign or transfer this Agreement or a Quote to a third party, except that this Agreement with all Quotes may be assigned, without the consent of the other party, as part of a merger or sale of all or substantially all the assets of a party.
- d. **Independent Contractors.** The parties to this Agreement are independent contractors, and this Agreement does not create any partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.
- e. **Feedback.** By submitting ideas, suggestions or feedback to ACALETICS® regarding the Online Beta, Customer agrees that items submitted do not contain confidential or proprietary information; and Customer grants ACALETICS® an irrevocable, unlimited, royalty-free and fully-paid perpetual license to use such items for any business purpose.
- f. **Enforceability and Force Majeure.** If any term of this Agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of fees, neither party is liable for events beyond its reasonable control, including, without limitation force majeure events, failure of Internet services, any third party service and telecommunications services.
- g. **Money Damages Insufficient.** Any breach by a party of this Agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- h. **No Additional Terms and Order of Precedence.** This Agreement supersedes any additional or conflicting terms of any Customer form-purchasing document. If there is an inconsistency between these Terms and Conditions and any Quote, the Quote will prevail only with respect to pricing, duration and service specific terms.
- i. **Survival of Terms.** Sections 5 through 10, 11(a)(e)(g) (h) and (i) shall survive termination of this Agreement.

11. E-Verify

- A.** Pursuant to Fla. Stat. § 448.095, ACALETICS shall use the U.S. Department of Homeland Security's E-Verify system, <https://www.e-verify.gov/> to verify the employment eligibility of all employees hired during the term of this Agreement.

- B.** Subcontractors.
 - (i)** ACALETICS shall also require all subcontractors performing work under this Agreement to use the E-Verify system for any employees they may hire during the term of this Agreement.

 - (ii)** Subcontractors shall provide ACALETICS with an affidavit stating the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, as defined by Fla. Stat. § 448.095.

 - (iii)** ACALETICS shall provide a copy of such affidavit to the CUSTOMER upon receipt and shall maintain a copy for the duration of the Agreement.