



Service Agreement

- A. BrightBytes is the owner, developer and provider of interactive online software known as Clarity for Schools™ that provides, in part, skill assessments and reporting solutions (the “ Platform”).
 - B. Customer desires to offer its educators, administrators and other employees a solution for skill assessment.
 - C. BrightBytes is willing to provide Customer use of the Platform for Customer’s internal business purposes, and Customer is willing to use the Platform on the terms and conditions set forth in the Agreement (as defined below). For other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties hereby agree as follows:
1. Governing Terms
 - 1.1. Agreement: Customer acknowledges and agrees that any order forms attached hereto or referencing these Terms & Conditions (each an “Order Form”), these Terms & Conditions and the Terms of Service located in <http://www.brightbytes.net/terms> apply to the Services ordered, a copy of which is attached as Exhibit A and incorporated herein by reference (collectively, this “Agreement”). This Agreement constitutes the entire agreement between BrightBytes and Customer with respect to Customer’s access and use of the Platform and provision of Services by Brightbytes.
 - 1.2. Services: Company may, from time to time during the Term provide certain services to Customer pursuant to an Order Form executed between the parties (“Services”). A description of the Services and any terms and conditions applicable thereto will be set forth in the Order Form. In case of conflict between the terms in the Terms & Conditions and any Order Form, the Terms & Conditions will take precedence over the Order Form, unless the Order Form expressly states such terms are intended to supersede and govern the Services.
 - 1.3. Terms of Service: The Terms of Service located <http://www.brightbytes.net/terms> form a part of this Agreement and are herein incorporated by reference. Customer’s use of the Platform and the provision of Services by BrightBytes will be governed by the terms set forth therein. By using the Platform, Customer and its Authorized Users acknowledge they have read and assent to all of the terms.
 2. Use of Platform
 - 2.1. Responsibility of Customer: Customer will cooperate with BrightBytes in setting up the Platform as reasonably requested by BrightBytes. Customer will be responsible for obtaining and maintaining at Customer’s expense all the necessary computer hardware, software, modems, connections to the Internet and other items required to access the Platform. Customer will remain fully responsible for any use of the Platform by its employees, agents, representatives or independent contractors who are expressly authorized to access and use the Platform (“ Authorized Users”), including compliance with this Agreement and applicable law.
 - 2.2. Responsibility of BrightBytes
 - 2.2.1. Platform: BrightBytes will host and maintain the Platform on servers operated and maintained by or at the direction of BrightBytes for the fees outlined below.
 - 2.2.2. Services: Subject to Customer’s timely payment of the applicable service fees set forth in the Order Form, during the Term Company will provide the Services described therein upon the terms and conditions of this Agreement. Company will perform the Services in a professional and workmanlike manner, using means and methods as it shall reasonably determine, in compliance with all laws applicable thereto.
 3. Fees and Payment Terms
 - 3.1. Fees and Invoicing: BrightBytes will issue an invoice to Customer for the fees for accessing and using the Platform or for the Services in accordance with the amounts set forth in the Order Form (“ Fees”), and Customer will pay BrightBytes the Fees as set forth below. The cost of the service is reflected in the provided Order Form.

- 3.2. Payment Terms: Unless set forth otherwise in the applicable Order Form, Customer will pay BrightBytes' invoice for Fees within 45 days of the date of the invoice issued by BrightBytes. All amounts not paid by the due date will bear interest at the rate of one and one-half percent (1.5%) per month, or at the highest rate allowed by law, whichever is less, from the date due until paid. Without waiving or prejudicing any other rights or remedies, if Customer does not make payment in a timely manner, BrightBytes may suspend access to the Platform or provision of the Services until such time as payments of the Fees are made current. BrightBytes will not be responsible for delays, costs incurred or problems experienced by Customer due to the suspension of BrightBytes' performance under this section.
- 3.3. Taxes: Customer will, in addition to the other amounts payable under this Agreement, pay all federal, state, and local sales, use, value added or other taxes that are imposed by reason of transactions under this Agreement if any (other than for taxes based on BrightBytes' income). If BrightBytes is required to pay any such taxes for which Customer is responsible, then the taxes will be billed to and paid by Customer. If Customer is required by law to withhold from any amount owed to BrightBytes, then the amount payable to BrightBytes will be increased to the extent necessary to ensure that, after such withholding, BrightBytes receives the net amount that it otherwise would have received in the absence of such withholding.
4. Term and Termination
- 4.1. Term: Unless terminated earlier pursuant to this Section 4, this Agreement will commence on the Start Date set forth on the Order Form and will continue for the initial term set forth on the Order Form.
- 4.2. Termination for Default: Either party may terminate this Agreement, upon written notice to the other party, if such other party commits a material breach of this Agreement, which breach is not cured within 30 days of receipt of written notice of such breach from the non-breaching party. Either party may terminate this Agreement immediately upon written notice to the other party if such other party has a receiver appointed, or an assignee for the benefit of creditors or in the event of any insolvency or inability to pay debts as they become due by the other party, except as may be prohibited by applicable bankruptcy laws.
- 4.3. Effect of Termination: Termination of this Agreement does not relieve Customer of the obligation to pay any amounts owed to BrightBytes that became due prior to the termination of this Agreement. Upon any termination of this Agreement, all rights and obligations of the parties immediately terminate, including, without limitation, the right for Customer to use and access the Platform. Notwithstanding the foregoing, Customer's payment obligations hereunder and Sections 2, 3, 4, 5, 7 of the Terms of Service will survive any termination of this Agreement. In addition, the parties agree that, within ten days after termination, it will return to the other party all Confidential Information of the other party in its possession or control.

BrightBytes

Customer

Signature:

Signature:

Printed Name:

Printed Name:

Date:

Date:

BRIGHTBYTES, INC.
TERMS OF SERVICE

Welcome to BrightBytes, the online service of BrightBytes, Inc. (“**BrightBytes**,” “**we**,” or “**us**”). This page explains the terms by which you may use and otherwise interact with our online website, applications, and software provided on or in connection with BrightBytes’s proprietary online service, technology, and infrastructure for the distribution of tools and technologies to enable users to access, use, and analyze data, materials, and information relevant to the education market (such applications and software, collectively, “**Applications**,” and such service, technology, and infrastructure, the “**Clarity Platform**”).

By accessing or using the Applications and the Clarity Platform, you signify that you have read, understood, and agree to be bound by these Terms of Service (the “**Terms**”), and to the collection and use of your information as set forth in the BrightBytes Privacy Policy, whether or not you are a registered user of our Applications and the Clarity Platform. The BrightBytes Privacy Policy is attached hereto as Exhibit B and incorporated herein by reference. These Terms apply to all visitors, users, and others who access the Applications and the Clarity Platform.

By accepting these Terms, whether by checking a box indicating your acceptance or by executing a Partnership Agreement or a Service Agreement that references these Terms, you agree to the terms set forth herein. By using the Applications and the Clarity Platform, or otherwise obtaining services from, or providing services to, BrightBytes, you affirm that you: (1) are at least eighteen (18) years of age or older; and (2) have read, understand, and agree to be bound by all of the terms set forth herein and any other applicable terms.

Relationship to Other Agreements

1.1 License and Service Agreements. Depending on the services or materials you will be providing to, or receiving from, BrightBytes, other terms may apply in addition to this Agreement. If you are a Partner who is or will be providing frameworks for analysis of data and information via the BrightBytes Clarity Platform (“**Frameworks**”), the terms of your License Agreement will apply. If you are a Customer of BrightBytes who is or will be purchasing access to Frameworks or other Applications via the Clarity Platform, the terms of your Service Agreement will apply. Throughout these Terms, “the **Agreement**” means these Terms and the terms of your Customer or License Agreement, as applicable.

1.2 Order of Precedence. In the event of a conflict between the terms of your License Agreement or Service Agreement, as applicable, the terms of such agreement will take precedence over the terms set forth in these Terms.

2 Confidentiality

2.1 Definition. “**Confidential Information**” means includes but is not limited to, student names and staff members names, student records as that term is defined in the Illinois School Student Act and/or Family Education Right to Privacy Act (FERPA), and/or any information marked or otherwise identified in writing by either you or us as proprietary or confidential or that, under the circumstances surrounding the disclosure, should be known to constitute proprietary or confidential information. Confidential Information of both parties shall

include, without limitation, any amounts paid under, and the terms of, the Agreement, as well as information regarding either party's business, strategies, plans, suppliers, clients, finances, business plans, product development, technology, and software. For the avoidance of doubt, BrightBytes' Confidential Information shall include the proprietary aspects, designs, and features of the Applications and the Clarity Platform.

2.2 Duty of Confidentiality. Neither party shall use the other's Confidential Information without the other's prior, expressed written consent except for the purpose of exercising its rights or carrying out its obligations under the Agreement. Each party will disclose the other's Confidential Information to its employees, agents, representatives, and consultants only for the purpose of allowing such persons to perform their obligations under this Agreement and subject to the confidentiality obligations contained in this Agreement. Each party will protect the other's Confidential Information using the same degree of care, but no less than reasonable care, to prevent the unauthorized use or disclosure of such Confidential Information.

2.3 Exclusions. The obligations set forth in this Section 3 will not apply to any information that: (i) was previously known to either party free of any obligation of confidentiality; (ii) is or becomes publicly available other than by means of unauthorized disclosure by either party; or (iii) is required to be disclosed pursuant to statute, regulation, or order of a court.

2.4 Remedies for Breach. The Parties shall be entitled to equitable relief, including injunction and specific performance, in the event of any breach or threatened or intended breach of the Agreement. Such injunctive relief shall not be the disclosing party's exclusive remedy for any breach of the Agreement, but will be in addition to all other remedies available at law or in equity.

3 Representations and Warranties; Disclaimers

3.1 Mutual Representations and Warranties. Each party hereby represents, warrants, and covenants that: (i) it has full authority to enter into the Agreement; and (ii) the Agreement shall constitute a valid and binding obligation on such party, enforceable in accordance with the terms of each.

3.2 Limited Warranty by BrightBytes. BrightBytes hereby warrants that the Applications and the Clarity Platform will perform substantially in accordance with its documentation or specifications. The foregoing warranty shall not apply to performance issues of the Applications and the Clarity Platform: (i) caused by factors outside of our reasonable control; (ii) that result from any actions or inactions of you or any third parties; or (iii) that result from your data structure, operating environment, or equipment.

3.3 Limited Warranty by You. You hereby represent and warrant that you are the owner of or otherwise have the right to use and provide all materials furnished or licensed by you to us in connection with the Agreement, and that such materials do not now and will not at any relevant time infringe upon any third-party's intellectual property rights.

3.4 Disclaimer of Warranties. EXCEPT FOR THE LIMITED WARRANTY PROVIDED IN THIS SECTION 4, BRIGHTBYTES AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS

TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY, OR COMPLETENESS OF THE APPLICATIONS, THE CLARITY PLATFORM, OR ANY OTHER MATERIALS OR SERVICES PROVIDED. BRIGHTBYTES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT: (i) THE USE OF THE APPLICATIONS, THE CLARITY PLATFORM, OR ANY SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE, OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA; (ii) THE APPLICATIONS OR THE CLARITY PLATFORM OR ANY MATERIALS OR SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS; (iii) ERRORS OR DEFECTS WILL BE CORRECTED; (iv) THE APPLICATIONS, THE CLARITY PLATFORM, OR THE SERVER(S) THAT MAKE THEM AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR (v) THE APPLICATIONS, THE CLARITY PLATFORM, OR ANY MATERIALS OR SERVICES WILL BE FREE FROM PROBLEMS ARISING FROM LIMITATIONS, DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM THE UNAVAILABILITY OF, OR LACK OF PERFORMANCE BY THIRD-PARTIES NECESSARY FOR PROVIDING, THE APPLICATIONS, THE CLARITY PLATFORM, OR ANY MATERIALS OR SERVICES. THE APPLICATIONS, THE CLARITY PLATFORM, AND OTHER MATERIALS AND SERVICES ARE PROVIDED TO YOU STRICTLY ON AN “AS IS” BASIS. ALL CONDITIONS, REPRESENTATIONS, AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, ARE HEREBY DISCLAIMED BY BRIGHTBYTES TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

4 **Limitations of Liability**

4.1 **Indirect Damages Waiver.** EXCEPT WITH RESPECT TO LIABILITY ARISING FROM BRIGHTBYTES’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, BRIGHTBYTES AND ITS LICENSORS SHALL NOT BE LIABLE TO YOU FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE, DATA, PROFITS, GOODWILL, OR OTHER ECONOMIC ADVANTAGE, EVEN IF BRIGHTBYTES HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR THE AVOIDANCE OF DOUBT, IN NO EVENT WILL BRIGHTBYTES OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY SUCH DAMAGES ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE APPLICATIONS, THE CLARITY PLATFORM, OR ANY MATERIALS OR SERVICES, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE APPLICATIONS, THE CLARITY PLATFORM, SERVICES, OR ANY CONTENT OBTAINED FROM OR THROUGH THE APPLICATIONS OR THE CLARITY PLATFORM

4.2 **Liability Cap.** IN NO EVENT WILL BRIGHTBYTES’S AGGREGATE LIABILITY EXCEED THE TOTAL CONTRACT VALUE OF THIS AGREEMENT.

5 **User Content**

5.1 **General.** Certain of the Applications may allow you or your users to post content such as profile information, comments, questions, articles, and other content or information (any such materials you submit, post, display, or otherwise make available on the Applications or Clarity Platform, “**User Content**”). We claim no ownership rights over User Content created, uploaded, or transmitted by you. The User Content you create remains yours; however, by sharing the User Content through the Applications, you agree to allow others to view, edit,

and share your User Content in accordance with this Agreement. However, BrightBytes may, in its sole discretion, remove any User Content shared via the Applications.

5.2 Restrictions on User Content. You agree that neither you nor your users will post User Content that: (i) may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to you, to any other person, or to any animal; (ii) may create a risk of any other loss or damage to any person or property; (iii) seeks to harm or exploit children by exposing them to inappropriate content, asking for personally identifiable details or otherwise; (iv) may constitute or contribute to a crime or tort; (v) contains any information or content that we deem to be unlawful, harmful, abusive, racially or ethnically offensive, defamatory, infringing, invasive of personal privacy or publicity rights, harassing, humiliating to other people (publicly or otherwise), libelous, threatening, profane, or otherwise objectionable; (vi) contains any information or content that is illegal (including, without limitation, the disclosure of insider information under securities law or of another party's trade secrets); (vii) contains any information or content that you do not have a right to make available under any law or under contractual or fiduciary relationships; or (viii) contains any information or content that you know is not correct and current. You agree that any User Content that you post does not and will not violate third-party rights of any kind, including without limitation any intellectual property rights or rights of privacy. To the extent that your User Content contains music, you hereby represent that you are the owner of all the copyright rights, including without limitation the performance, mechanical, and sound recordings rights, with respect to each and every musical composition (including lyrics) and sound recording contained in such User Content and have the power to grant the license granted below. BrightBytes may reject or remove any User Content that we believe, in our sole discretion, violates these provisions.

5.3 Disclaimer. We take no responsibility and assume no liability for any User Content that you or your users upload, post, send, or otherwise transmit via the Applications. You shall be solely responsible for your User Content and the consequences of posting or publishing it, and you agree that we are only acting as a passive conduit for your online distribution and publication of your User Content. You understand and agree that you may be exposed to User Content that is inaccurate, objectionable, inappropriate for children, presents health risks, or may otherwise be unsuited to your purpose, and you agree that BrightBytes shall not be liable for any damages you allege to incur as a result of your User Content.

5.4 User Content License Grant. By posting any User Content via the Applications, you expressly grant, and you represent and warrant that you have all rights necessary to grant, to BrightBytes a royalty-free, sublicensable, transferable, perpetual, irrevocable, non-exclusive, worldwide limited license to use, reproduce, modify, publish, list information regarding, edit, translate, distribute, syndicate, publicly perform, publicly display, and make derivative works of all such User Content. You also hereby grant each user of the Applications a non-exclusive license to access your User Content through the Applications to the same limited extent described above. Notwithstanding the foregoing or anything in this Agreement to the contrary, under no circumstances whatsoever shall BrightBytes use any User Content that identifies Glenbrook School District 225 or any of its employees, Board members or students or any data that identifies or is allocated in any manner with Glenbrook SD 225. Any User Content submitted by School District 225 and later used by BrightBytes must be done

anonymously, without any reference whatsoever to School District 225 or any of its employees, Board members or students.

6 **DMCA Notice**

6.1 **General**. Because we respect artist and content owner rights, it is our policy to respond to alleged infringement notices that comply with the Digital Millennium Copyright Act of 1998 (“DMCA”). If you believe that your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible via the Applications and the Clarity Platform, please notify our copyright agent as set forth in the DMCA. For your complaint to be valid under the DMCA, you must provide the following information in writing:

- 6.1.1 An electronic or physical signature of a person authorized to act on behalf of the copyright owner;
- 6.1.2 Identification of the copyrighted work that you claim has been infringed;
- 6.1.3 Identification of the material that is claimed to be infringing and where it is located on the Applications or the Clarity Platform;
- 6.1.4 Information reasonably sufficient to permit us to contact you, such as your address, telephone number, and email address;
- 6.1.5 A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agents, or law; and
- 6.1.6 A statement, made under penalty of perjury, that the above information is accurate, and that you are the copyright owner or are authorized to act on behalf of the owner.

6.2 **Submission Information**. The above information must be submitted to the following DMCA Agent:

Attn: DMCA Notice
BrightBytes, Inc.

Address: 490 2nd St., Ste. 302
San Francisco, CA 94107

Telephone:(877) 433-4036

Fax: [REDACTED]

Email: [copyright@brightbytes.net]

6.3 **Knowing Misrepresentations**. UNDER FEDERAL LAW, IF YOU KNOWINGLY MISREPRESENT THAT ONLINE MATERIAL IS INFRINGING, YOU MAY BE SUBJECT TO CRIMINAL PROSECUTION FOR PERJURY AND CIVIL PENALTIES, INCLUDING MONETARY DAMAGES, COURT COSTS, AND ATTORNEYS’ FEES.

6.4 Not Legal Advice. Please note that this procedure is exclusively for notifying us and our affiliates that your copyrighted material has been, or may have been, infringed. The preceding requirements are intended to comply with our rights and obligations under the DMCA, including 17 U.S.C. §512(c), but do not constitute legal advice. It may be advisable to contact an attorney regarding your rights and obligations under the DMCA and other applicable laws.

6.5 Termination Policy. In accordance with the DMCA and other applicable law, we have adopted a policy of terminating, in appropriate circumstances, users who are deemed to be repeat infringers. We may also at our sole discretion limit access to the Applications and the Clarity Platform and terminate the accounts of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

7 General

7.1 Independent Contractors. The relationship between you and BrightBytes under the Agreement is that of independent contractors only. Nothing in this Agreement will be construed so as to constitute a partnership, joint venture, or agency relationship. Neither party will have any power or authority to bind the other in any transaction with a third-party. Unless otherwise expressly agreed by the parties, the services rendered hereunder shall be on a nonexclusive basis and the party rendering them shall be free to accept other engagements at all times.

7.2 Notices. All notices, requests, claims, demands, and other communication under this Agreement may be delivered by any method chosen by the sender that positively establishes legally valid and admissible evidence of actual receipt by the named recipient. The sender shall bear the burden of establishing delivery with respect to the method chosen.

7.3 Integration; Modifications; Severability. This Agreement sets forth the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes all other oral or written representations and understandings. Any additions or modifications to this Agreement must be made in writing and must be signed by the authorized representatives of both parties. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder shall be enforceable to the maximum extent possible.

7.4 Assignment. Neither party may assign or transfer this Agreement without the prior written consent of the other party, except that either party may assign this Agreement without consent in connection with a merger, consolidation, restructuring, or sale of all or substantially all of its equity, business, or assets to which this Agreement relates.

7.5 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Illinois without regard to its conflict of laws principles. Each party hereby expressly and irrevocably consents to the exclusive jurisdiction of the state and federal courts located in Cook County, Illinois in connection with any action to enforce the provisions of this Agreement, to recover damages or other relief under this Agreement, or otherwise arising under or by reason of this Agreement.

- 7.6 Waiver. Neither the waiver by either party of a breach of or a default under any of the provisions of this Agreement, nor the failure of either party, on one or more occasions, to enforce any of the provisions of this Agreement, or to exercise any right or privilege hereunder will thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any of such provisions, rights, or privileges hereunder.
- 7.7 Compliance with Laws. Each party will comply with all federal, state, and local laws, rules, and regulations, as amended from time to time, applicable to such party's performance of its obligations under this Agreement, including all applicable export laws, rules, and regulations of the United States and other applicable jurisdictions, and those related to data privacy.
- 7.8 Force Majeure. Neither party will be liable for any failure of performance hereunder or for damages caused by any delay or failure to perform hereunder if performance is made impracticable or impossible due to any occurrence beyond its control, including without limitation: acts of God, fires, floods, wars, riots or civil disorders, acts of a public enemy, sabotage, accidents, enactment or act of any government or governmental instrumentality (whether federal, state, local, or foreign, and whether valid or invalid), failure of technical facilities, and any other occurrence which would have a material adverse impact on a party's ability to perform under this Agreement which is not reasonably within such party's control.
- 7.9 Exclusion for Official Use. If you are a federal, state, or local government entity in the United States using the Applications or Clarity Platform in your official capacity and legally unable to accept the controlling law, jurisdiction, or venue clauses above, then those clauses do not apply to you. For such U.S. federal government entities, the Agreement and any action related thereto will be governed by the laws of the United States of America (without reference to conflict of laws) and, in the absence of federal law and to the extent permitted under federal law, the laws of the State of California (excluding choice of law).
- 7.10 Restrictions on Advertising. Notwithstanding anything in this Agreement to the contrary, BrightBytes is absolutely prohibited from using, referring or to or in any way referencing School 225 in any advertising, nor may BrightBytes School District identify or disclose School District 225 as a client of BrightBytes.