

## **DIGITALED SOFTWARE LICENSE AGREEMENT**

THE FOLLOWING TERMS AND CONDITIONS APPLY TO ALL USE OF THE SOFTWARE (AND ANY OTHER SERVICES OR FEATURES OFFERED IN CONNECTION THEREWITH FROM TIME TO TIME) LICENSED BY THE DIGITAL EDUCATION COMPANY LTD. (“**DIGITALED**”) TO **YOU** (AS DEFINED HEREIN), INCLUDING THE MÖBIUS COURSEWARE, MÖBIUS ASSESSMENT AND MÖBIUS MAA PLACEMENT PRODUCTS (THE “**SOFTWARE**”).

**NOTICE:** THIS IS A CONTRACT BETWEEN YOU AND DIGITALED. BEFORE YOU USE THE SOFTWARE FOR THE FIRST TIME, CAREFULLY READ THIS AGREEMENT. BY USING THE SOFTWARE, YOU CONSENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND YOU AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT WISH TO BECOME A PARTY TO THIS AGREEMENT AND BE BOUND BY ALL OF ITS TERMS AND CONDITIONS, YOU MAY NOT USE THE SOFTWARE.

DIGITALED RESERVES THE RIGHT TO UPDATE THIS AGREEMENT FROM TIME TO TIME AT ITS SOLE DISCRETION. YOU WILL BE GIVEN 30 DAYS NOTICE BEFORE THE NEW AGREEMENT TAKES EFFECT. BY CONTINUING TO USE THE SOFTWARE AFTER THE UPDATED AGREEMENT TAKES EFFECT, YOU ARE DEEMED TO HAVE ACCEPTED THE UPDATED AGREEMENT.

### **1. DEFINITIONS**

Each capitalized term used but not defined herein shall have the meaning ascribed to it in Schedule A to this Agreement.

### **2. YOUR LICENSE TO USE THE SOFTWARE AND LICENSE TERM**

In consideration of the payment of the Fee and subject to the terms and conditions of this Agreement, DigitalEd hereby grants **YOU** a limited, revocable, personal, non-transferable, non-sublicensable, non-exclusive license (the “**License**”) during the License Term to use the Software as set out in this Agreement.

### **3. GENERAL LICENSE RESTRICTIONS**

**YOU** will not misuse or abuse the Software. Without limiting the generality of the foregoing, without the express written permission of DigitalEd, **YOU** shall not, and shall not permit any Registered User or Third Party to:

- (a) reproduce, transmit, modify, adapt, translate or create any derivative work of, any part of the Software, in whole or in part;
- (b) reverse engineer, disassemble, or decompile the Software, create derivative works based on the Software or any DigitalEd IP or otherwise attempt to gain access to the Software’s method of operation, underlying ideas, algorithms or source code;
- (c) sell, license, sublicense or otherwise transfer (whether by sale, exchange, lease, rent, gift, loan, or otherwise) the Software, any copy or portion thereof, in whole or in part, to a Third Party, other than as contemplated in this Agreement;
- (d) use alter, remove, or obscure DigitalEd’s name, trade names, logos, or other trademarks of DigitalEd, or any of its Affiliates or Third Party Licensors, whether in written, electronic, or other form, without DigitalEd’s prior written consent;
- (e) attempt to probe, scan, render unusable or test the vulnerability of the Software or any Systems or to breach or tamper with any security or authentication measures thereof;
- (f) disclose **YOUR** login credentials or purchase code to a Third Party; or
- (g) violate any local, state, federal or foreign law, treaty, regulation or convention applicable to **YOU** in connection with the use of the Software, including, the Canadian *Personal Information Protection and Electronic Documents Act* (“**PIPEDA**”), the EU Data Protection Directive (Directive 95/46/EC), General Data Protection Regulation (“**GDPR**”, GDPR (EU) 2016/679), the US *Family Educational Rights and Privacy Act* (“**FERPA**”, 20 U.S.C. § 1232g; 34 CFR part 99) and other laws applicable to **YOU** related to privacy, data protection and electronic communications.

#### **4. MÖBIUS MAA PLACEMENT LICENSE RESTRICTIONS**

If YOU use Möbius MAA Placement, YOU:

- (a) shall at all times hold a valid license to the most current version of Möbius Assessment;
- (b) shall not, and shall not permit YOUR Registered Users to, use Möbius MAA Placement, including the Möbius Assessment functionalities of Möbius MAA Placement, to develop, deploy and/or deliver Möbius Assessment Content other than for the limited purposes of developing, deploying and/or delivering academic placement testing content unless YOU hold a Möbius Assessment Unrestricted License, in which case YOU may develop, deploy and deliver Möbius MAA Placement Content and/or Möbius Assessment Content;
- (c) may print tests that are included as Original Content, provided that such tests may only be made available to Registered Users of the Software.

#### **5. SELF-HOSTED CUSTOMERS**

If YOU are a customer of DigitalEd who self-hosts the Software (a “**Legacy Customer**”), in addition to complying with all other terms and conditions of this Agreement, YOU:

- (a) agree not to permit the number of Registered Users YOU host on the Software to exceed the number of Registered Users for which the Fee was paid;
- (b) agree that, except for your obligation to notify DigitalEd of any security breach in the Software, Section 13 will not apply to YOU. Instead, YOU agree that (i) all Support will be provided to YOU in DigitalEd’s sole discretion; and (ii) any Support that DigitalEd does provide to YOU will be paid for by YOU at DigitalEd’s then current hourly support rate for Legacy Customers; and
- (c) agree to maintain a current version of the Software (as determined by DigitalEd in its sole discretion) and to promptly install all updates to the Software which DigitalEd may request YOU to install from time to time.

#### **6. UPDATES**

DigitalEd may update the Software from time to time. Prior to any update, DigitalEd will make reasonable efforts to notify YOU of such update and to work with YOU to minimize the impact of the update on YOUR use of the Software. If YOU do not promptly respond to DigitalEd’s notice of a pending update, YOU agree that DigitalEd may update the Software at a time chosen at its discretion. Notwithstanding the provisions above in this Section 6, if a critical security issue is identified in the Software by DigitalEd, DigitalEd may update the Software with no notice to YOU.

#### **7. ADDED CONTENT**

YOU may upload and share Added Content through the Software, subject to the following terms:

- (a) YOU retain all right, title and interest in and to YOUR Added Content, subject to the limited rights granted to DigitalEd pursuant to this Agreement.
- (b) YOU will only upload Added Content to the Software for which you have obtained the necessary licenses and permissions to use and share such Added Content and YOU will comply with the terms of any such licenses and permissions. DigitalEd may, but has no obligation to, monitor, view and analyze Added Content to ensure compliance with this Agreement.
- (c) YOU will not upload, share or make accessible Added Content that (i) is illegal, harmful, threatening, abusive, tortious, profane, or invasive of a person’s privacy; (ii) contains any viruses, malicious code, malware, or any components designed to harm or limit the functionality of the Services or Software; or (iii) negatively affects the performance, operation or security of the Systems (as determined by DigitalEd in its sole discretion).
- (d) DigitalEd may, and YOU grant DigitalEd a non-exclusive, worldwide, royalty-free, sublicensable and transferable license to, store, modify, delete or disclose Added Content if required to do so by law or in the good faith belief that such action is reasonably necessary to: (i) comply with legal processes; (ii) comply

with this Agreement; or (iii) protect the rights, property, or personal safety of DigitalEd, other users or the public.

## **8. RETENTION OF RIGHT, TITLE AND INTEREST IN INTELLECTUAL PROPERTY**

DigitalEd does not sell any rights in and to the Software, but rather grants the right to use the Software pursuant to the terms of this Agreement. The Software, Original Content, Licensor IP and all intellectual property therein (including copyrights, patents, trade secrets, trade marks, moral rights and other intellectual property rights), and all intellectual property rights relating to the provision of Support (collectively, “**DigitalEd IP**”), shall at all times remain the property of DigitalEd or Third Party Licensors, as applicable, and YOU shall have no right, title, or interest therein, except as expressly set forth in this Agreement. Any and all modifications, enhancements, improvements, changes and derivative works to the Software, created by DigitalEd or YOU, shall be the sole intellectual property of DigitalEd or Third Party Licensors. DigitalEd exclusively reserves all rights not explicitly granted herein. To the extent YOU acquire rights in the Software or DigitalEd IP, YOU hereby assign such rights to DigitalEd and waive any moral rights YOU may have therein in favor of DigitalEd.

## **9. THIRD PARTY INTELLECTUAL PROPERTY**

Intellectual property licensed to DigitalEd by a Third Party Licensor (the “**Licensor IP**”) may form part of the Software. If applicable, Licensor IP shall be made available to YOU pursuant to the terms and conditions of this Agreement. In the event any additional terms and conditions are imposed upon the use of such Licensor IP, such terms and conditions shall be made available to YOU in the Software or otherwise by DigitalEd.

## **10. SUSPENSION & TERMINATION**

- (a) **Suspension by DigitalEd.** DigitalEd may, in its sole discretion and in addition to any other rights herein, suspend Support and YOUR access to the Software and/or take any remedial action under any applicable law if YOU fail to comply with any provision of this Agreement upon written notice to YOU.
- (b) **Automatic Termination.** This Agreement shall terminate immediately after the License Term, unless YOU renew the License by paying the then-current Fee for a new License Term prior to such expiry date.
- (c) **Voluntary Termination.** This Agreement may be terminated by either Party if one Party gives the other Party 30 days’ written notice in writing that it wishes to terminate the Agreement.
- (d) **Termination by Either Party.** Either party may terminate this Agreement upon the occurrence of any of the following events, which shall be deemed to be a breach of the terms of this Agreement:
  - (i) the other party ceases or threatens to cease to carry on its business, commits an act of bankruptcy or winding-up, makes an assignment or bulk sale of its assets, proposes a compromise or arrangement to its creditors, obtains an order to appoint a receiver over any part of that party's assets or is subject to any proceeding involving any of the foregoing; or
  - (ii) if the other party fails to perform any of its obligations, or there is a material breach of any of the provisions of this Agreement; provided that the party terminating this Agreement shall first have given prior written notice to the other of its intent to terminate, together with details of the default causing the termination, and the party receiving such notice shall have been given 20 days to cure any such default.
- (e) **Obligations upon Termination.** Upon termination of this Agreement:
  - (i) each of the parties shall release the other from all obligations under this Agreement, save and except for those surviving obligations set forth in Section 10(f) hereof. Notwithstanding the foregoing, in the event this Agreement is terminated by DigitalEd pursuant to Section 10(d), YOU agree to pay, as compensation for the damages suffered by DigitalEd, those fees and charges otherwise payable by YOU for the remainder of the applicable Term;

- (ii) if YOU terminate this Agreement in accordance with Section 10(d)(ii), YOU shall only pay the Fee that has accrued up to the date of YOUR notice of termination and any unearned prepaid Fees shall be forthwith paid by DigitalEd to YOU; and
  - (iii) YOU shall immediately discontinue use of the Software.
- (f) Notwithstanding any termination of this Agreement, Sections 7 to 12 and 14 to 21 shall survive termination of this Agreement. All other rights and licenses granted hereunder will cease upon termination.

## 11. FEES AND PAYMENT TERMS

- (a) YOU shall not use the Software unless YOU have paid the applicable Fee or YOU are a Registered User for whom the Fee has been paid by an Academic Institution. All payments shall be non-refundable except as otherwise expressly provided in this Agreement.
- (b) If YOU are an Academic Institution, YOU shall not permit the number of Registered Users who use the Software to exceed the number of Registered Users for which the Fee was paid.
- (c) If YOU are an Academic Institution and YOU and DigitalEd have agreed in writing to a Student-pay use model, then (A) notwithstanding Section 11(a), each Student shall be responsible for paying for his or her use of the Software; and (B) the fee payable by a Student shall be charged to the Student at the time he or she first creates an account for the Software.
- (d) Notwithstanding Section 11(c), Students in receipt of government assistance for the purchase of educational courses and materials may be given temporary access to the Software if they have not received the relevant government assistance payment before the date on which they first use the Software, provided that such Students will be obliged to pay their relevant Fees within three days of receipt of such payment. DigitalEd reserves the right to suspend or terminate any Student's access to the Software for non-payment of fees after such fees become due.
- (e) Any amounts due DigitalEd under this Agreement not received by DigitalEd by the date due shall be subject to a service charge of one and one half percent (1 1/2%) per month, being eighteen percent (18%) per annum, or the maximum charge permitted by law, whichever is less. YOU shall also pay all sums expended (including reasonable legal fees) in collecting any overdue payments.

## 12. TAXES, DUTIES, CUSTOMS

YOU shall be responsible and agree to pay any applicable sales, excise or other taxes, levies or other charges, of any kind ("**Taxes**") imposed by any governmental authority with respect to the Software, the Support, if applicable, or otherwise arising out of or in connection with in connection with this Agreement or the License granted hereunder. YOU shall hold DigitalEd harmless from all claims and liability arising from YOUR failure to pay any applicable Taxes.

## 13. SECURITY, SERVICE, & SUPPORT

- (a) **Security.** DigitalEd shall maintain commercially reasonable security procedures to help protect YOUR Added Content. YOU will promptly notify DigitalEd if YOU become aware of any security breach of the Software or Added Content.
- (b) **Service Availability.** DigitalEd will use all commercially reasonable efforts to make the Software available with an annual uptime percentage of at least 99.5% of the time, as calculated on an annual calendar basis by DigitalEd. However, interruptions of YOUR use of the Software may occur from time to time. DigitalEd shall use commercially reasonable efforts to notify you in advance of any such interruption, provided that notice may not be provided where an interruption arises from a cause beyond DigitalEd's reasonable control.
- (c) **Support.** DigitalEd shall provide YOU with reasonable telephone and email support (the "**Support**") for the Software during DigitalEd's regular business hours. YOU agree to send all non-urgent questions and issues to the e-mail help desk and all urgent questions to the telephone or email help desk. Once DigitalEd receives a request for support from YOU, DigitalEd will use reasonable efforts to respond in accordance with the response time for the severity level (as determined by DigitalEd in its sole discretion) of the problem as defined in the table below:

<b>Severity Level</b>	<b>Description</b>	<b>Response Times</b>
Critical	Software is inoperable causing critical impact to YOUR operations	1 business day
Serious	Software operates with severely reduced functionality causing significant impact to YOUR operations	2 business days
Minor	Software functionality operates contrary to standard operating functionality	3 business days

- (d) **Exclusions.** Notwithstanding the above, DigitalEd shall have no obligation to provide Support with respect to the following matters: (i) any problem resulting from the misuse, improper use, alteration, or damage of the Software; (ii) any problem caused by modifications in any version of the Software not made or authorized by DigitalEd; (iii) any problem resulting from YOU combining or merging the Software with any hardware or software not supplied by DigitalEd, or not identified by DigitalEd as compatible with the Software; or (iv) any problem caused by any action taken by YOU in breach of this Agreement.

#### **14. INFRINGEMENT**

DigitalEd warrants to YOU that the Software does not infringe any registered patent, copyright, trademark or trade secret right or other intellectual property right of a third party resident in Canada or the United States (collectively, the “**Third Party IP Rights**”). DigitalEd shall indemnify YOU and hold YOU harmless from costs, losses, damages and liability which may be incurred on account of a finding of infringement of Third Party IP Rights by the Software by a court of competent jurisdiction, and DigitalEd shall, at its own expense, defend all claims against YOU alleging such infringement of Third Party IP Rights, provided that DigitalEd (i) is promptly notified of such claims; (ii) is given all evidence in YOUR possession; and (iii) is given reasonable assistance by YOU in, and sole control of, the defense thereof and all negotiations for the claim’s settlement or compromise. In the event of such a claim of infringement of Third Party IP Rights, DigitalEd’s obligation under this Agreement shall be fulfilled if DigitalEd: (i) obtains a license for YOU to continue the use the Software, or (ii) replaces or modifies the Software so as to be commercially substantially equal but non-infringing. DigitalEd shall not have any indemnification obligation under this Section for any claim of infringement of Third Party IP Rights related to (i) the Added Content; (ii) any breach of the Agreement by YOU; or (iii) any settlement or compromise made without DigitalEd’s prior written consent.

#### **15. LIMITED LIABILITY**

OTHER THAN AS EXPRESSLY SET OUT HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS, THE SOFTWARE AND ANY SUPPORT IS PROVIDED “AS IS” WITHOUT ANY WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY DIGITALEd, ITS AFFILIATES, DEALERS, RESELLERS OR DISTRIBUTORS, SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. YOU ASSUME THE ENTIRE RISK AS TO THE USE AND PERFORMANCE OF THE SOFTWARE, SUPPORT AND DOCUMENTATION IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS, OR OTHERWISE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN NO EVENT SHALL DIGITALEd, ITS AGENTS OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE SOFTWARE, SUPPORT AND/OR DOCUMENTATION BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF REVENUES OR PROFITS, BUSINESS INTERRUPTION, TESTING INTERRUPTIONS, LOSS OF BUSINESS INFORMATION, AND THE LIKE) ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, THE SUPPORT, THE TERMINATION OF THIS AGREEMENT, THE FAILURE OF EQUIPMENT RELATED TO YOUR COMPUTER OR DAMAGE TO YOUR COMPUTER, SOFTWARE OR OTHER PROPERTY RESULTING FROM YOUR USE OF THE SOFTWARE OR SUPPORT, EVEN IF DIGITALEd OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR CLAIM, OR IT IS FORESEEABLE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO

YOU IN SUCH A CASE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, DIGITALEd'S MAXIMUM AGGREGATE LIABILITY TO YOU PURSUANT TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY YOU TO DIGITALEd FOR YOUR SOFTWARE LICENSE. THE LIMITATIONS OF THIS SECTION SHALL APPLY WHETHER OR NOT THE ALLEGED BREACH OR DEFAULT IS A BREACH OF A FUNDAMENTAL CONDITION OR TERM. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON DURATION OF AN IMPLIED WARRANTY, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

## 16. STATISTICAL INFORMATION & FEEDBACK

- (a) **Statistical Information.** Notwithstanding any other provision of this Agreement, DigitalEd may monitor and compile anonymized statistical data based upon YOUR use of the Software (which may be combined with other data of DigitalEd's other customers and users, but always in an aggregate and anonymous manner) to derive statistical and performance information related to the provision and operation of the Software ("**Aggregated Statistical Information**") and DigitalEd may use or make such Aggregated Statistical Information publicly available, provided that such Aggregated Statistical Information does not include any data that would enable, directly or indirectly, the identification of any person or the disclosure of Personal Information. DigitalEd retains all rights, title and interest in and to such Aggregated Statistical Information.
- (b) **Feedback.** If YOU send information to DigitalEd, for example feedback, comments or suggestions relating to the Software that is not Personal Information ("**Submissions**"), YOU grant DigitalEd a perpetual, sub-licensable, royalty-free, transferable license to use, modify and incorporate such Submissions into DigitalEd's products and services. YOU hereby waive all moral rights in and to such Submissions.

## 17. PERSONAL INFORMATION

- (a) **Personal Information.** Where YOU disclose Personal Information to DigitalEd in any manner, including through YOUR use of the Software, YOU represent, warrant, and covenant that:
  - (i) YOU are solely and exclusively responsible for the collection, accuracy or completeness of Personal Information disclosed or provided to DigitalEd, whether such Personal Information was generated directly by YOU or through an agent employed by YOU;
  - (ii) all Personal Information disclosed to DigitalEd has been collected and disclosed in accordance with all applicable laws pertaining to the Personal Information in question, and where applicable, all applicable consents to disclose to DigitalEd or, more generally, to a service provider by YOU, have been obtained from the individual(s) whose Personal Information is provided; and
  - (iii) YOU will identify an individual, employed or otherwise authorized by YOU, to respond to enquiries concerning any Personal Information provided to DigitalEd and to promptly address all enquiries concerning such information.
- (b) **Privacy Policy.** DigitalEd's collection and use of Personal Information is governed by DigitalEd's Privacy Policy which can be found here: <https://www.digitaled.com/privacy/>.
- (c) **Access and Use of Personal Information.** DigitalEd shall have the right to access and use Personal Information for the limited purposes of invoicing for the Software, providing Support, administering and maintaining the Systems and the Software, and to inspect YOUR use of the Software so as to ensure YOUR compliance with this Agreement, including that the number of Registered Users does not exceed the number paid for by the Fee. DigitalEd shall access and use Personal Information in accordance with all applicable laws and shall not permit access to or use any Personal Information for any purposes other than as expressly set forth in this Agreement or with YOUR prior consent.

## 18. YOUR INDEMNIFICATION

YOU agree to indemnify and hold DigitalEd and any Third Party Licensors harmless from and against any loss, liability, cost, expense or damage (including reasonable legal fees) arising directly or indirectly out of any claim, suit action or judgment brought against DigitalEd or its Affiliates related to any: (i) act or omission by YOU relating to the Software that is contrary to the terms of this Agreement (ii) breach of any representations, warranties or covenants made by YOU hereunder, (iii) failure by YOU to comply with any of the terms of this Agreement, (iv)

claim that Added Content infringes, misappropriates or violates any copyrights, trademarks, trade secrets or other proprietary rights of, or has otherwise caused harm to, a Third party, or (v) violation by YOU of any provincial, state, federal, foreign, or other laws or regulations or any Third Party rights.

## 19. COMPLIANCE AND AUDIT RIGHTS

YOU agree to notify DigitalEd promptly of any failure by YOU or YOUR Registered Users to comply with one or more licenses granted under this Agreement, or any failure to comply with any other material term of this Agreement. If YOU are an Academic Institution, YOU agree to allow a Third Party auditor appointed by DigitalEd or by a Third Party Licensor (if applicable) (the “**Auditor**”) to (i) audit YOUR use of the Software to verify that your use of the Software is in conformity with the terms of this Agreement; and (ii) access YOUR property, facilities, and computer systems, and provide cooperation from YOUR employees and consultants, as reasonably requested by the Auditor in order to perform such audit, all during normal business hours, and after reasonable prior notice from Auditor. If the audit discloses a shortfall in licenses for the Software or Services, YOU will immediately acquire any necessary licenses, subscriptions, and applicable back maintenance and support. If the underpaid Fees exceed 5% of the value of the payable Fees, then YOU will also pay the cost of such audit.

## 20. MARKETING

If YOU are an Academic Institution, unless otherwise agreed to by YOU and DigitalEd in writing, YOU agree that DigitalEd may use YOUR name and logo to identify YOU as a customer of DigitalEd on DigitalEd’s website, and as a part of a general list of DigitalEd’s customers for use and reference in DigitalEd’s corporate, promotional and marketing literature.

## 21. GENERAL TERMS AND CONDITIONS

- (a) **Export Controls.** The Software is subject at all times to all applicable export control laws and regulations in force from time to time. YOU agree that YOU shall not make any disposition of the Software purchased or licensed from DigitalEd that would violate those laws or regulations or would be contrary to the terms of this Agreement.
- (b) **Federal Acquisition.** The Software is a commercial product that has been developed exclusively at private expense or with public funds from sources other than the United States Government. If the Software and Documentation is acquired directly or indirectly on behalf of a unit or agency of the United States Government under the terms of (i) a United States Department of Defense contract, then pursuant to DOD FAR Supplement 227.7202-3(a), the United States Government shall only have the rights set forth in this License Agreement; or (ii) a civilian agency contract, then use, reproduction, or disclosure is subject to the restrictions set forth in FAR clause 27.405(b)(2)(i), entitled Acquisition of Existing Computer Software, and any restrictions in the agency's FAR supplement and any successor regulations thereto, and the restrictions set forth in this License Agreement. If this Agreement and the licenses herein fail to meet the United States Government’s needs or are inconsistent in any respect with U.S. federal procurement law, the government agrees to return the Software, unused, to DigitalEd.
- (c) **For European Union Users Only.** Any contractual provisions of this Agreement contrary to laws implemented under Article 6 of Appendix V of the European Union Software Directive or to the exceptions provided for in Article 5(2) and (3) of such Appendix, as amended from time to time, shall be null and void solely to the extent decompiling, disassembling, or otherwise reverse-engineering of the Software is necessary to enable YOU to create an independent software that is interoperable with the Software or any other permitted objectives specified by such laws implemented under such directive (collectively, the “**Permitted Objectives**”), provided that any such information gained is used solely for such Permitted Objectives. For the terms regarding data protection, please refer to Schedule A of this Agreement (Data Protection for European Union Users) which replaces Section 17 of this Agreement for European users.
- (d) **Force Majeure.** Neither party to this Agreement shall be liable to the other for any failure or delay in performance by circumstances beyond its control, including acts of God, fire, labour difficulties, governmental action, terrorism, or telecommunications infrastructure failure, provided that the party seeking to rely on such circumstances gives written notice of such circumstances to the other party hereto and uses reasonable efforts to overcome such circumstances.
- (e) **Governing Law.** This Agreement is governed by the laws of the Province of Ontario, Canada and, if the Software was acquired within Canada, each of the parties hereto irrevocably attorns to the exclusive

jurisdiction of the courts of the Province of Ontario without regard to conflicts of laws principles. If the Software was acquired outside Canada, each of the parties hereto irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario; provided that YOU agree that any claim or action brought by YOU shall be commenced in the courts of the Province of Ontario. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

- (f) **Successors and Assigns.** These terms and conditions inure to the benefit of, and shall be binding upon, the parties' respective heirs, successors or permitted assigns. YOU shall not assign this Agreement.
- (g) **Invalidity of Terms.** If any of the terms and conditions of this Agreement are found by a court of competent jurisdiction to be invalid, the parties hereto nevertheless agree that the court should endeavour to give effect to the parties' intentions as reflected in such terms or conditions, and the other terms and conditions shall remain in full force and effect.
- (h) **Entire Agreement.** Unless otherwise agreed to by DigitalEd in writing, this Agreement (including any Schedules hereto, and all terms incorporated herein by reference) constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all agreements, understandings, negotiations and discussions, whether oral or written, of the parties and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein. This Agreement may only be amended by written agreement of both parties.

Should you have any questions concerning this Agreement, contact DigitalEd at: Customer Service Department, 615 Kumpf Drive, Waterloo, Ontario, Canada N2V 1K8; Email: [info@digitaled.com](mailto:info@digitaled.com) ; Phone: Canada/US: 1-800 268-2935 or International: +800 774 72373.



## SCHEDULE A: DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

“**Academic Institution**” means an educational institution, secondary school, high school, college, or vocational institute or any other Entity providing courses or educational content.

“**Added Content**” means any Content added or uploaded to, or otherwise made accessible through, the Software by YOU, including any Personal Information, which is not Original Content.

“**Affiliate**” means, with respect to a party to this Agreement, any individual or Entity which, directly or indirectly controls, is controlled by, or is under common control with such party. The term “control” means possession, direct or indirect, of the power to direct or cause the direction of the management of policies of a person or Entity; whether through ownership or equity participation, voting securities, beneficial interest, contract, agreement or otherwise.

“**Auditor**” has the meaning set forth in Section 19.

“**Content**” means the text, images, audio, video, graphics, lessons, assignments, tests and other electronic uploaded to, and displayed within, the Software.

“**DigitalEd IP**” has the meaning set forth in Section 8.

“**Documentation**” means the user guides, study guides and other documentation made available by DigitalEd from time to time, whether or not made available in connection with the delivery of the Software, as may be updated from time to time. Documentation may be delivered in printed and/or online forms, and in one or more languages.

“**Entity**” means a corporation, association, joint venture, partnership, trust, business, individual, IT professional, or Academic Institution, including an agency, or any organization that can exercise independent legal standing.

“**Fee**” means the applicable fee payable to DigitalEd by YOU for YOUR use and access to the Software during the License Term.

“**including**” or “**includes**” means including, without limitation or includes, without limitation.

“**License**” has the meaning set forth in Section 2.

“**License Term**” means the license term provided at the time of payment of the Fee. If no term has been specified to YOU in writing by DigitalEd, the License Term is one calendar year.

“**Licensor IP**” has the meaning set forth in Section 9.

“**Möbius Assessment**” means the Möbius Assessment Software enabling YOU or Registered Users to develop, deploy and deliver web-based testing and assessment systems and to create, manage and deploy Möbius Assessment Content.

“**Möbius Assessment Content**” means tests and assignments created, managed, or deployed using the Möbius Assessment Software, excluding Möbius MAA Placement Content.

“**Möbius Assessment Unrestricted License**” means that as part of the Fee, YOU paid for the ability to fully use Möbius MAA Placement, including the Möbius Assessment functionalities of Möbius MAA Placement, to develop, deploy and deliver Möbius MAA Placement Content and/or Möbius Assessment Content.

“**Möbius Courseware**” means the “Möbius Courseware Software” enabling YOU or Registered Users to develop, deploy and deliver Content.

“**Möbius MAA Placement**” means the version of Möbius Assessment known as “Möbius MAA Placement Software” that enables YOU and Registered Users to deploy and deliver web-based placement tests in combination with the Möbius MAA Placement Content.

“**Möbius MAA Placement Content**” means the Original Content in Möbius MAA Placement.

“**Original Content**” means any Content, including but not limited to any testing or assessment Content, included in the Software prior to any access by YOU or any Registered User or added to the Software by DigitalEd from time to time.

“**Permitted Objectives**” has the meaning set forth in Section 21(c).

“**Personal Information**” means any information, recorded in any form, about an identifiable individual, including Registered Users or other individuals, or an individual whose identity may be inferred or determined from the information. Personal information also includes any “student education record” or “personally identifiable information” as defined by FERPA.

"**Registered User**" means a user of the Software that is (i) YOUR employee or consultant, who is either an instructor, faculty or academic staff member or (ii) one of YOUR Students.

"**Registered User Data**" means any data, Content and other information, (including the names of Registered Users, assignment and test answers and test scores attributable to Registered Users and any other information about an identifiable individual or an individual whose identity may be inferred or determined from the information) or other materials of any nature recorded in any form whatsoever disclosed or provided to DigitalEd by Registered Users (as hereinafter defined) in the course of using the Software and all information generated by the Registered Users' use of the Software.

“**Software**” has the meaning set out at the beginning of this Agreement.

“**Student**” means: (i) a full-time or part-time undergraduate student who is either working toward a degree or a diploma in an Academic Institution and actively enrolled therein at the material time; (ii) a student registered in a continuing or professional education program of an accredited institution; (iii) a student enrolled in a high school, vocational institute or other accredited institution; or (iv) any person endorsed by an accredited institution as being a student. Students may be enrolled on campus or in distance education courses. DigitalEd shall determine whether or not an institution is “accredited”, in its sole discretion. Students are required to provide applicable proof of their Student designation, either at time of purchase or afterward as directed by DigitalEd in its sole discretion.

“**Student Use**” means the installation and use of the Software by a Student for the purpose of meeting classroom requirements of courses, self-study and non-commercial research. For greater certainty, Student Use shall exclude use as an employee or otherwise for commercial gain, instruction, teaching or research.

“**Systems**” means DigitalEd’s hosted facility and/or other computer, software and cloud-based systems. Parts of the Systems may be owned and operated by Third Parties.

"**Support**" means the general maintenance services and technical support provided in respect of the Software set forth in Section 13.

“**Third Party**” means any person or legal person that is not DigitalEd, YOU, an Affiliate or a Registered User.

“**Third Party IP Rights**” has the meaning set forth in Section 14.

“**Third Party Licensor**” means a person who, or Entity which, licenses intellectual property to DigitalEd.

“**YOU or YOUR**” means the individual or Entity licensing the Software under this Agreement.