

# Renaissance Learning™, Inc. Application Hosting Agreement

**1. Recitals and Definitions.** This application hosting agreement ("Agreement") is made between Renaissance Learning, Inc. ("RLI") and East Baton Rouge Parish School Board, Baton Rouge, LA ("Customer"). Customer desires RLI to provide an application hosting service for certain RLI software licensed by Customer ("Hosted Application(s)"), which is installed on servers located within the RLI hosting network and accessed by Customer via the Internet, and RLI desires to provide such application hosting service to Customer pursuant to the terms and conditions found in this Agreement. NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, it is hereby agreed between the parties as follows:

**2. Description of Application Hosting Services ("Hosting Services").** RLI shall provide access to the Hosted Application for those schools in the Customer's district that have purchased Hosting Services from RLI, as evidenced by a Customer purchase order or a quote accepted by Customer ("Order") which shall be deemed to be part of this Agreement. This Agreement solely covers the installation and use of separately licensed applications via the RLI hosting network. No license to use any software is explicitly stated or implied within this Agreement, all software applications must be licensed separately. License terms are contained within each Hosted Application and must be accepted by Customer in each respective application.

**3. Access to Hosted Application.** Access rights granted to Customer shall be limited to those access rights necessary to use the functions provided in the Hosted Application. RLI reserves the right to restrict or prevent access to (i) any and all functions that access critical server or system resources; (ii) directly modify the Hosted Application directories or database; or (iii) violate the terms of any Hosted Application software license agreement. RLI will provide Customer with an administrative logon ID and other information necessary to: connect to, access, and, use the Hosted Application.

**4. Customer Responsibilities and Acknowledgements.** Customer agrees and understands that:

- (i) The Hosted Application will be housed at an RLI chosen facility, and will operate on servers determined by RLI;
- (ii) Under this Agreement, RLI will only provide the services described in paragraph 2 and 3 above;
- (iii) Customer covenants that it will purchase, has purchased, or has otherwise legally obtained licenses for each Hosted Application, and represents to RLI that it has the right and power to enter into this Agreement;
- (iv) Customer will only use Hosted Applications in accordance with the software license agreement terms, will not make any Hosted Application available to any third party and, in particular will not allow Accelerated Reader quizzes to be taken from outside Customer's school or district facilities.
- (v) Use of computer technology, public utilities and the internet are inherently subject to uncertainties and there can be no assurances that the Hosting Services will be uninterrupted, error-free, virus free, without slow response time, or completely secure; and,
- (vi) Nothing in this Agreement shall be construed as granting Customer any additional rights to any Hosted Application, or as modifying any software license agreement.

**5. Term, Termination and Renewal.** This Agreement shall be effective as of the date of Customer's Order and continue for the period of the Hosting Services purchased. If Customer purchases an additional period of Hosting Services, this Agreement will apply to that subsequent period. Either party may terminate this Agreement upon 60 days written notice to the other party. Customer access to the Hosted Application will be discontinued upon the effective date of termination.

**6. Confidentiality.** In accordance with FERPA, RLI shall not disclose any personally identifiable student records from the Hosted Application's database to any third party except: (i) if required by law or valid court order, (ii) as directed in writing by Customer or, (iii) as permitted elsewhere in this agreement. RLI and its contractors may use data in the Hosted Application's database: (i) to maintain and improve application performance or functionality, (ii) for general research and, (iii) for other valid purposes. Any contractors of RLI shall be subject to the same obligation of confidentiality as RLI.

Customer will not disclose to any third party any confidential or proprietary information of RLI or any technical information relative to the setup and security of the Hosting Service including but not limited to Hosting Service Internet addresses, passwords, Internet URL's, Virtual Private Network setup and encryption key information, unless such disclosure is approved in writing by RLI.

**7. Disclaimer of Warranties.** ALL SERVICES PROVIDED PURSUANT TO THIS AGREEMENT ARE PROVIDED OR PERFORMED ON AN "AS IS" BASIS, AND CUSTOMER USE OF THE SERVICES IS SOLELY AT ITS OWN RISK. CUSTOMER'S EXCLUSIVE REMEDY IS TERMINATION AS SET FORTH IN PARAGRAPH 5 OF THIS AGREEMENT. RLI DOES NOT MAKE, AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A

PARTICULAR PURPOSE. RLI DOES NOT WARRANT THAT THE SERVICES PROVIDED HEREUNDER WILL BE UNINTERRUPTED, ERROR-FREE, WITHOUT SLOW RESPONSE TIME, OR COMPLETELY SECURE. IN NO EVENT SHALL RLI BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSSES, LOST PROFITS, LOST OR STOLEN DATA, DAMAGES, DELAYS INTERRUPTIONS, OR VIRUSES ARISING OUT OF OR RELATED TO THIS AGREEMENT REGARDLESS OF THE BASIS OF THE CLAIM. NOTWITHSTANDING ANYTHING TO THE CONTRARY, RLI'S AGGREGATE LIABILITY TO CUSTOMER (INCLUDING ATTORNEY'S FEES), IF ANY, SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID TO RLI BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWO (2) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH CLAIM ACCRUED.

**8. Force Majeure.** Neither party shall be deemed in default or otherwise liable under this Agreement due to its inability to perform its obligations by reason of any fire, earthquake, flood, hurricane, tornado, snowstorm, epidemic, accident, explosion, casualty, virus or other malicious software, strike, lockout, labor controversy, riot, civil disturbance, act of public enemy, embargo, war, act of God, act of terrorism, or any municipal, county, state or national ordinance or law, or any executive, administrative or judicial order (which order is not the result of any act or omission which would constitute a default hereunder), or any failure or delay of any transportation, power, or communications system or any other or similar cause beyond that party's reasonable control.

**9. Miscellaneous.** This Agreement supersedes all previous agreements between the parties with respect to the subject matter hereof and shall be binding upon the parties, their respective successors, assigns, subsidiaries, affiliates, and administrators. No modification, amendment or waiver of any provision of this Agreement shall be effective unless approved in writing by both parties. The failure of RLI at any time to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of RLI thereafter to enforce each and every provision thereof in accordance with its terms. Customer may not assign its rights or obligations under this Agreement without the written consent of RLI except that this Agreement may be assigned to a successor and it shall be binding upon the successor. This Agreement is freely assignable by RLI. This Agreement shall be governed by the laws of the state of Wisconsin and the exclusive venue for disputes arising out of or related to this Agreement shall be an appropriate state or federal court located in Wisconsin.

This agreement is duly executed by the authorized representatives noted below.

RENAISSANCE LEARNING, INC.

CUSTOMER

Signature:



Signature:

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Name: Robert R. Case

Name:

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Title: Director, Technical Services

Title:

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Date: 07/18/2011

Date:

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210980 - East Baton Rouge Parish School Board

Questions on your quote? Please call your Renaissance Learning, Inc. Sales Representative, Janel Bliske, at (800)656-6517.