Terms of Service Agreement
METRIA EDUCATION MANAGEMENT SOFTWARE SUITE:
COLLABORATIVE STUDENT PERFORMANCE MODULE
METRIA LEARNING FREE VERSION

TERMS OF SERVICE (EULA)
LAST UPDATED JANUARY, 2012

1. WHAT THE AGREEMENT COVERS

This is an agreement between you ("you" or "your") and Metria ("Metria," "we," "us," or "our"). The terms and conditions of this agreement apply to your access to and use of Metria. This includes any technology, information, materials, and updates that Metria makes available to you as part of such services. By accessing or using Metria, you accept the terms and conditions of this agreement.

Please read this Agreement carefully. BY SUBSCRIBING TO AND/OR USING ANY OF THE SERVICE, YOU AGREE TO BE BOUND BY THIS AGREEMENT, INCLUDING ANY MODIFICATIONS MADE TO IT FROM TIME TO TIME. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS IN THIS AGREEMENT, YOU MAY NOT SUBSCRIBE TO OR USE THE SERVICE.

2. DATA

2.1 Your Data
Metria provides a resource for managing curriculum planning, formative assessments, and intervention activities and data; it also promotes collaboration across districts in relation to Professional Learning Communities (PLCs) and their action plans and content.

"Your data" means any and all data that you upload and process using Metria.

3. CODE OF CONDUCT

This Code of Conduct applies to Metria. Please read the Code of Conduct and any supplemental information in the section below for additional details about particular services that you may use.

3.1 Member Qualifications
The services are designed for professional educators 18 years of age or older. As a user of the service you will uphold this Code of Conduct, and are responsible for all activities and content you post/upload. In addition to upholding this Code of Conduct, you are responsible for adhering to all applicable local and national laws.

3.2 Prohibited Uses
You will not upload, post, transmit, transfer, distribute or facilitate distribution of any content

(including text, images, sound, video, data, information or software) or otherwise use the service in a way that:

- Depicts nudity of any sort including full or partial human nudity or nudity in non-human forms such as cartoons, fantasy art or manga.
- Incites, advocates, or expresses pornography, obscenity, vulgarity, profanity, hatred, bigotry, racism, or gratuitous violence.
- Misrepresents the source of anything you post or upload, including impersonation of another individual or entity.
- Provides or creates links to external sites that violate this Code of Conduct.
- Includes content that is protected by intellectual property laws, rights of privacy or publicity, or any other applicable law unless you own or control the rights thereto or have received all necessary consents.
- Is intended to harm or exploit minors in any way.
- Invades anyone's privacy by attempting to harvest, collect, store, or publish private or personally identifiable information, such as passwords, account information, credit card numbers, addresses, or other contact information without their knowledge and willing consent.
- Is illegal or violates any applicable local and national laws; including but not limited to child pornography, bestiality, incest, illegal drugs, software piracy, and harassment.
- Threatens, stalks, defames, defrauds, degrades, victimizes or intimidates an individual or group of individuals for any reason; including on the basis of age, gender, disability, ethnicity, sexual orientation, race or religion; or incites or encourages anyone else to do so.
- Harms or disrupts, or intends to harm or disrupt, another user's computer or would allow you or others to illegally access software or bypass security on Web sites, or servers, including but not limited to spamming.
- Attempts to impersonate a Metria Inc., employee, agent, manager, host, administrator, moderator, another user or any other person through any means.
- Promotes or otherwise facilitates the purchase and sale of ammunition or firearms.
- Contains or could be considered 'junk mail', 'spam', 'chain letters', 'pyramid schemes', 'affiliate marketing' or unsolicited commercial advertisement.
- Mischaracterizes content you post or upload or contains the same or similar content to other content you have already posted.
- Attempts to manipulate the services, including ranking and reputation systems in the services, by violating any of the provisions of this Code of Conduct, colluding with others on voting or using multiple profiles.
- Contains advertising for money making schemes, discount cards, credit counseling, online surveys or online contests.

You will not use any form of automated device or computer program that enables the submission of postings without the express written consent of Metria Inc.

3.4 Rights and Responsibilities

You bear sole responsibility for your data and all other data related to the development, operation, and maintenance of any software programs or services used in connection with your

access to or use of Metria. We encourage you to not share information that others could use to harm you. Metria is not responsible for the content of any user-created posting, listing or message. The decision to view content or engage with others is yours. We advise you to use your judgment. You are responsible for protecting your computer against interference, spyware or viruses that may be encountered when downloading items from the service. We recommend you install a virus protection program on your computer and keep it up to date. You may contact us to report violations of this Code of Conduct.

4. TERM AND TERMINATION

Metria reserves the right to amend or change the Code of Conduct or any service at any time without notice. We encourage you to periodically review these guidelines to ensure you are in compliance. Some information you provide or upload to the service may be stored outside of the country in which you reside.

4.1 Our Notices to You

You agree that Metria may provide you with notices in a manner determined by Metria in its sole discretion, including without limitation by emailing or posting any such notices on a portal or community development center Web site for Metria. Notices provided to you via email will be deemed given and received on the transmission date of the email. As long as you can access and use Metria, you have the necessary software and hardware to receive these notices. If you do not consent to receive any notices electronically, you must stop using Metria.

4.2 Your Notices to Us

You may notify us as stated in the "Contact Us" area of Metria. Notices, authorizations, and requests in connection with this Agreement must be sent by regular or overnight mail, or express courier, to the addresses listed below. Notices will be treated as delivered on the date shown on the return receipt. Termination of the Agreement, a Subscription, or cancellation of a Subscription should be requested in email address below.

Notices should be sent to:	info@MetriaLearning.org
Copies should be sent to:	Metria Inc. Law and Corporate Affairs 10210 Ne Points Drive Suite 400 Kirkland, WA 98033 USA

4.3 Termination by Metria

Metria may cancel or suspend your individual use of the Service or a portion thereof at any time if you violate the terms of this Agreement, if Metria believes that your use of the Service represents a direct or indirect threat to its network function or integrity or anyone else's use of the

service, or if Metria is otherwise required by law to do so. Upon notification by Metria of any such cancellation or suspension, your right to use the service will stop immediately. If you are using Metria as an employee of a subscribing customer, Metria will alert your school district first before terminating your use of the service.

4.4 Termination by You
As a user of our free version, you may cancel the service at any time for any reason. To cancel, you should send email to us as explained in section (4.2 "Your Notices to Us") of this document. For subscribed version customers, your termination abilities are governed by your licensing contract with Metria.

4.5 Effect of termination
Upon termination or cancellation of the service by either party for any reason, Metria may delete your data permanently from its servers. Notwithstanding the foregoing, Metria will keep your data for a period of 90 days before it is deleted from Metria's servers. You are solely responsible for taking the necessary steps to back up your data.

4.6 Waiver of rights and obligations.
To the extent necessary to implement the termination of this Agreement, each party waives any right and obligation under any applicable law or regulation to request or obtain intervention of the courts to terminate this Agreement.

4.7 No liability for deletion of data.
You acknowledge that, other than as expressly described in these terms, Metria will have no obligation to continue to hold, export or return your data. You acknowledge that Metria will have no liability whatsoever for deletion of your data pursuant to these terms. Metria reserves the right, at its sole discretion, and without any obligation to do so, to review and remove user-created services and content at will and without notice, and delete content and accounts. Metria reserves the right, at its sole discretion, to ban participants or terminate access to services.

5. METRIA

5.1 Metria Learning Free Version Services and Updates
Metria Free Version may experience interruptions and extended downtime, during which you may not be able to use Metria. Updates may be provided throughout the term, and such updates may result in deleting or corrupting your data. In general, due to the prerelease nature of Metria, some or all of your data may be lost or corrupted.

5.2 Future Releases and Ongoing Access to the Free Version
Metria may change Metria Free Version at any time, including without limitation for a future prerelease or commercial version, and we may not release a free version, or discontinue it at any time.

5.3 How You May Use Metria
You may access and use Metria only in accordance with the terms of this agreement and the

policies and procedures we designate for use of Metria. Provided that you comply with the terms of this agreement, you may use Metria for the sole purpose of managing the curricular/skills/assessment plans for your classes and the performance of students enrolled in the classes you teach.

5.4 How You May Not Use Metria
In using Metria, you may not:

- Store, read, update, or delete data that (a) you are not the owner of, (b) you have not obtained permission from the rightful owner for such use, or (c) is in violation of any third party's intellectual or proprietary rights, terms of use, or other terms relating to that data.
- Use any unauthorized means to modify or reroute, or attempt to modify or reroute, Metria.
- Damage, disable, or impair Metria [or the network(s) connected to Metria] or otherwise interfere with anyone's ability to access and use Metria.
- Access or use Metria in any way that is illegal or promotes illegal activities, including, without limitation, in any manner that might be discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age.
- Violate local, state, federal, or other applicable consumer privacy regulations.
- Access or use Metria in a manner that is defamatory, offensive, malicious, or harmful to any person or entity.

6. PROPRIETARY RIGHTS

6.1 Reservation of Rights; No Other License
Except for your limited use and access rights to Metria as set forth in this agreement, Metria reserves all other rights not expressly granted in this agreement. No additional rights (including implied licenses, rights, or covenants) are granted by implication, estoppels, or otherwise. For example, Metria does not grant you any license or rights under this agreement to use any data, software programs, or services. We also do not grant you any license or rights under this agreement to any related or enabling technologies that may be necessary to use such data, software programs, or services. For clarity, any license or other terms associated with any data, software programs, or services that access or use Metria shall not be binding on Metria.

6.2 Proprietary Rights and Confidentiality
The software is owned by Metria and its suppliers and is protected by copyright, patent, and trade secret laws. You will take the steps reasonably necessary to protect Metria and its suppliers' proprietary rights in the software related to your use and possession of the same, including but not limited to maintaining the confidentiality of your passwords, if any. You will keep the software confidential and will not disclose or publish it, or any part of it, to others, except as specifically provided herein. All design elements of the software, including but not limited to the design, text, graphics, interfaces, and the selection and arrangement thereof, are protected by copyrights owned by Metria. ALL RIGHTS NOT EXPRESSLY GRANTED HEREIN ARE RESERVED TO METRIA. Trademark notices on company, publication, and product names of

unrelated entities are for informational purposes only and are not intended as a claim of right by Metria. Other product, publication, and company names herein may be the trademarks of their respective owners.

6.3 No Responsibility
Metria will not be liable for losses or damages arising from or in any way related to Metria software. If the software is found to be defective in workmanship or materials and Metria is given notice within 10 days of discovering such defect, your sole and exclusive remedy, and Metria's sole and exclusive obligation to you, is a replacement of the defective portion of the software.

6.4 No Claims of Ownership by You
Except as expressly permitted under this agreement, you agree to claim no ownership of or control over Metria.

7. YOUR SERVICE ACCOUNT

7.1 Responsibility for Your Service Account
Only you may use your service account. We may allow you to set up additional member accounts that are dependent on your account (an "associated account"). We may limit who can use your service account or any associated accounts. You are responsible for all activity under your service account, associated accounts, and passwords. You are solely responsible for monitoring usage of your service account. You also are solely responsible for any use or misuse of your service account or the service that results from any third party using any password or user name selected by you or issued to you.

7.2 Accuracy of Your Information
You agree to provide Metria with complete and accurate contact information. This information includes your legal company name, street address, email address, and the name and telephone number of your administrator. You agree to update this information within thirty (30) days of any change to it. If the contact or billing information you have provided is false or fraudulent, Metria reserves the right to terminate your access to the service in addition to pursuing any other legal remedies.

8. SERVICE LEVELS; SECURITY

8.1 Service Levels
We have no obligation to provide any support services for Metria. Metria may be inaccessible due to scheduled and unscheduled reasons, including maintenance updates, power outages, system failures, extended downtime, and other interruptions. During such periods, you may be unable to access or use all of, or a portion of, Metria. Some or all of your data may be lost or corrupted. If an event, such as an outage or interruption, occurs that we determine may cause risk to Metria or other Metria services, we may determine in our sole discretion to suspend Metria.

8.2 Security
We use a variety of security technologies and procedures to help protect unauthorized access or use of Metria; however, we cannot guarantee that we will be successful at doing so. Accordingly, without limitation to any other provisions of this agreement, you acknowledge that you bear sole responsibility for adequate security, protection, and backup of your data and any other data, software programs, or services that you use in connection with Metria. We strongly encourage you, where available and appropriate, to take measures to protect your data, including without limitation using encryption technology to protect your data from unauthorized access and routinely archiving your data.

8.3 Security Breach: Notice to Metria
In using Metria, you agree to promptly notify us if you learn of a security breach related to Metria.

9. METRIA DOES NOT HAVE EDITORIAL CONTROL

9.1 Content
Metria, you, your associated account users, and third parties may be able to post or store materials—including data, documents, information, advertisements, communications, messages, and links to third-party Web sites ("content")—on the service. You may be able to post or provide materials (including feedback) that are part of the service in a publicly accessible or other public area that allows you to communicate with others ("public areas of the service"). Areas of the service to which you can control access by your authorized users of associated accounts ("private areas of the service") are also included.

9.2 Intellectual Property Rights
Metria does not sanction or approve the unauthorized use of content protected by copyright and other intellectual property rights. You understand that sharing content that violates others' copyrights and intellectual property rights violates this agreement. You represent and warrant that the use and publication of the content by you and others does not violate the intellectual property rights of any third party. You understand that Metria may remove content at any time without notice when the content violates this agreement or an applicable code of conduct, or when we have a good faith reason to believe it is necessary to do so.

9.3 Posting Content
You understand that Metria does not control or endorse the content that you and others post or provide on the service. Metria does not claim ownership of content that you and others post or provide. By posting or providing content, you grant to Metria and the public (for content posted on public areas of the service), or those authorized users of associated accounts to which you have granted access (for content posted on private areas of the service), free and unlimited worldwide and perpetual permission to:

- Use, modify, copy, distribute, and display the content.
- Publish your name with the content.

9.4 Granting Permissions
You also give the public, or those members of the public to which you have granted access, permission to grant these rights to others. You represent and warrant that you have all the rights necessary for you to grant the rights in this section and that the use and publication of the content does not breach any law. Metria will not pay you for content you post on public areas of the service. This section only applies to legally permissible content and only to the extent that use and publication of the legally permissible content does not breach the law.

9.5 Private Areas of the Service
You understand that certain technical processing of content posted on private areas of the service may be required to:

- Store and retrieve the content.
- Conform to connecting networks' technical requirements.
- Conform to the limitations of the service.

10. PRIVACY

10.1 Access and Disclosure
In order to operate and provide Metria ("service"), we collect certain information about you. We use and protect that information as described in the Privacy Statement. In particular, we may access or disclose information about you, including the content of your communications, in order to:

- Comply with the law or respond to lawful requests or legal process.
- Protect the rights or property of Metria or you or your students, including the enforcement of our agreements or policies governing your use of Metria.
- Act when we believe, in good faith, that such access or disclosure is necessary to protect the personal safety of Metria employees, you, your students or the public.
- You consent to the access and disclosures outlined in this section.

10.2 FERPA
As part of this agreement, you designate Metria as "a person acting for" you in providing institutional service or function in the form of data and reporting services, including data that is considered "education records" under the Family Educational Rights and Privacy Act (FERPA). This designation meets the provisions of §99.31(a)(1)(i)(B)(1) of FERPA that authorize an outside party to maintain education records if this party is performing as a school official with a legitimate education interest, acting for the district to provide data services. Metria will adhere to all requirements of FERPA and will disclose neither personally identifiable information nor any other academic performance data, whether personally identifiable or not.

10.3 Announcements and Communications
Because the service is a hosted, online application, Metria may need to notify users of the service occasionally of important announcements regarding the operation of the service. As a condition

of the service, users may receive marketing and other non-critical service-related communications from Metria from time to time.

11. YOUR PRIVACY PRACTICES

If you collect, store, or otherwise process personal information using Metria, you must (a) comply with all applicable privacy and data protection laws, and (b) obtain sufficient authorization from the persons providing the information to permit the processing of the information by Metria and its affiliates, subsidiaries, and service providers (collectively "Metria Parties") as contemplated by this agreement. This includes (a) transfer of the information to Metria Parties for their processing, and (b) processing of the information outside the jurisdiction in which the information is provided to you, such as storage and other processing in the United States.

12. SOFTWARE

If you receive software from us as part of Metria, your use of that software is under the terms of the license that is presented to you for acceptance for that software. We reserve all other rights to such software. Unless we notify you otherwise, your license to use the software will end on the date that Metria ends and you must promptly uninstall the software. We may disable the software after the date that Metria ends.

13. FEEDBACK

You hereby license to Metria without charge any rights needed under your intellectual property rights to use, share, and commercialize any feedback about Metria you give us in any way and for any purpose. You also license without charge to third parties, under your intellectual property rights, any rights needed for their products, technologies, and services to use or interface with any specific parts of a Metria software or service that includes the feedback. You will not give feedback that is subject to a license that requires Metria to license its software or documentation or provide its services to third parties because we include your feedback in them. These rights survive any termination or expiration of this agreement.

14. INDEMNIFICATION

You agree to indemnify, pay the defense costs of, and hold Metria and its successors, officers, directors, and employees harmless from and against any and all claims, demands, costs, liabilities, judgments, losses, expenses, and damages (including attorneys' fees) arising out of, in connection with, or related to (a) your use of Metria in breach of this agreement or in violation of any applicable law or regulation, or (b) any data, software programs, or services that you use in connection with Metria. This includes without limitation any claim that such data, software programs, or services—or any part thereof—infringe, misappropriate, or otherwise violate any copyright, patent, trade secret, trademark, or other legal right of any third party.

15. DISCLAIMER OF WARRANTIES

METRIA IS LICENSING THE SOFTWARE ON AN "AS IS" BASIS TO YOU. METRIA MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT THE SUITABILITY, RELIABILITY, TIMELINESS, AND ACCURACY, FOR ANY PURPOSE, OF THIS SOFTWARE, OR ITS OPERATION BY ITSELF OR IN CONJUNCTION WITH ANY DEVICE, PLATFORM, NETWORK, FILE TYPE, OR CONTENT. METRIA DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING THE SOFTWARE, ITS OPERATIONS, AND ITS CONTENT AND EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT FOR ANY SOFTWARE CONTAINED IN THE SOFTWARE.

16. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL METRIA BE LIABLE FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOSS OF DATA, OR OTHER INFORMATION, USE, OR GOODWILL) ARISING OUT OF, BASED ON, OR RESULTING FROM THIS AGREEMENT OR YOUR USE OF METRIA OR SUPPORT SERVICES (IF ANY). THIS INCLUDES WITHOUT LIMITATION ANY DAMAGES RESULTING FROM (A) USE OR INABILITY TO USE METRIA OR SUPPORT SERVICES (IF ANY); (B) COST OF PROCUREMENT OF SUBSTITUTE GOODS, DATA, OR SOFTWARE PROGRAMS OR METRIA; (C) UNAUTHORIZED ACCESS TO OR USE OF, OR ANY ALTERATION, CORRUPTION, DELETION, DAMAGE OR LOSS OF YOUR DATA OR ANY OTHER DATA, SOFTWARE PROGRAMS, OR METRIA USED IN CONNECTION WITH METRIA; (D) FAILURE TO PROVIDE ACCURATE INFORMATION; (E) VIRUSES OR OTHER DISABLING FEATURES THAT AFFECT YOUR ACCESS OR USE OF METRIA OR THAT ARE TRANSFERRED TO YOU THROUGH METRIA; (F) INCOMPATIBILITIES BETWEEN METRIA AND OTHER SERVICES, SOFTWARE, OR HARDWARE; AND (G) ANY THIRD-PARTY CONDUCT, TRANSMISSIONS, OR DATA. THIS LIMITATION APPLIES EVEN IF (A) THIS REMEDY DOES NOT FULLY COMPENSATE YOU FOR ANY LOSSES OR FAILS OF ITS ESSENTIAL PURPOSE, AND (B) METRIA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. METRIA SHALL NOT BE RESPONSIBLE FOR ANY INTERRUPTIONS IN METRIA, INCLUDING WITHOUT LIMITATION POWER OUTAGES, SYSTEM FAILURES, OR OTHER INTERRUPTIONS INCLUDING THOSE THAT AFFECT THE RECEIPT, ACCEPTANCE, PROCESSING, COMPLETION, OR SETTLEMENT OF YOUR SYSTEMS. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THEY ALSO MAY NOT APPLY TO YOU BECAUSE YOUR PROVINCE OR COUNTRY MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES.

17. USE RIGHTS AND LIMITATIONS

17.1 SLA: Metria does not offer any guarantee of SLA with Metria Free Version.

17.2 Your Use. In using the service, you will:

- comply with all laws;
- comply with any codes of conduct or other notices provided by Metria;
- comply with Metria Anti-spam Policy,
- keep its password secret, and
- promptly notify Metria if it learns of a security breach or unauthorized access related to the service. You may not:
- use the service in any way that harms Metria or its Affiliates, resellers, distributors and/or vendors (collectively, the "Metria parties"), or the service or other Users;
- engage in, facilitate, or further unlawful conduct;
- damage, disable, overburden or impair the service (or the networks connected to the Service) or interfere with anyone's use and enjoyment of the Service;
- resell or redistribute the service, or any part of the service, unless you have a contract with Metria that permits it to do so;
- use any portion of the Service as a destination linked from any unsolicited bulk messages or unsolicited commercial messages ("spam");
- use any unauthorized automated process or service to access and/or use the service (such as a BOT, a spider, periodic caching of information stored by Metria or "meta-searching"), however, periodic automated access to the service for report creation or scheduling is permitted;
- use any unauthorized means to modify or reroute, or attempt to modify or reroute, the service or work around any of the technical limitations in the service;
- modify, create derivative works from, reverse engineer, decompile or disassemble or otherwise attempt to discover any trade secret contained in the service or in any technology, or system used by Metria in connection with providing the service, except and only to the extent that applicable law expressly permits you to do so despite this limitation;
- create Internet "links" to the service or "frame" or "mirror" any content of the service to give the impression that you is offering all of the functionality of the service as its service located on its own servers;
- build a product or service using similar ideas, features, functions or graphics of the service;
- copy any ideas, features, functions or graphics of the service; or
- access the service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

17.3 Limits on service

Metria may establish limits on the service. For example, it may limit the number of days the service will retain any content that Metria, you or its Users provide, the number and size of email messages that you may send or receive through the service, the maximum storage space on Metria's servers available to you, the number of service accounts to which you may subscribe,

how long Metria retains an inactive service account (one where you does not sign in to the service for an extended period of time; the number of transactions you can conduct through the service, and the number of asynchronous transactions that can be executed with an organization

17.4 Third Party services
Metria may make services from third parties available to you through the service. These third party services are the responsibility of the third party, not Metria. The third party service providers may require you to accept additional terms and conditions and/or pay a fee in order to use their services. Those additional terms and conditions are between you and the third party. Any third party's use of information you provides as part of using their service is subject to the privacy statements and practices of that third party and/or their suppliers. Metria encourages you to review the privacy statement of these third party providers. Metria is not responsible for the privacy statements or privacy practices of these third party providers or their suppliers.

18. AVOIDANCE OF LIABILITY

Metria may determine in its sole discretion to suspend or cancel the availability to you of all or any part of Metria, including without limitation if Metria determines in its sole discretion that doing so is reasonably necessary in order to avoid liability by Metria to any third-party or governmental entity for the infringement of any right or the violation of any law.

19. MODIFYING THE TERMS

Metria may at its sole discretion modify this agreement at any time. If we modify this agreement, we will send you a notice, and you will be prompted to accept those terms at your next login. You can access the most current version of the agreement via the link to the agreement provided in the login screen prompt for Metria. If you do not agree to these changes, you must immediately cancel and stop using Metria. If you do not stop using Metria, your use of Metria will continue under the changed agreement.

20. TERM; TERMINATION

20.1 Term
This agreement is effective on the date you first agree to it and will automatically terminate on the earlier occurrence of (a) the date of first availability of a subsequent release of Metria, or (b) a commercial release of Metria in the United States.

20.2 Termination
Metria may immediately terminate this agreement and exercise any other rights we may have if (a) you breach this agreement, or (b) you terminate your use of the software or any of its successors, or (c) any other reasons we would want to terminate the software license. Upon termination for any reason, you shall either promptly return to Metria all copies of the software

in your possession or control or destroy (that is, uninstall or delete) your copies of the software and certify in writing that all such copies have been destroyed. All sections that may be reasonably interpreted to or are intended to survive this agreement will survive this agreement.

21. NO THIRD-PARTY BENEFICIARIES

This agreement is solely for your and our benefit. It is not for the benefit of any other party, except for permitted successors and assigns under this agreement.

22. NO WAIVER

Any delay or failure by Metria to exercise a right or remedy will not result in a waiver of that, or any other, right or remedy.

23. GOVERNING LAW

This agreement shall be governed by the laws of the State of Washington in the United States, without giving effect to the State of California's choice of law principles and not including the 1980 United Nations Convention on Contracts for International Sale of Goods. Venue for any action under this agreement shall lie in King County, Washington. If any action is brought to enforce, or arises out of, the agreement or any term, clause, or provision hereof, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such action, including without limitation necessary fees, costs, and expenses for services rendered, as well as subsequent to judgment in 2 Assignment. You may not assign this Agreement. Metria may assign this Agreement to its Affiliates.

23.1 Severability.
If a court holds any provision of this Agreement to be illegal, invalid or unenforceable, the rest of the document will remain in effect and this Agreement will be amended to give effect to the eliminated provision to the maximum extent possible.

23.2 Waiver.
A waiver of any breach of this Agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party. *23.3 Applicable law.*
This Agreement is governed by the laws of the State of Washington without regard to its conflict of laws principles, except that (1) if you are an entity of the U.S. Government, this Agreement is governed by the laws of the United States, and (2) if you are an entity of a state or local government in the United States, this Agreement is governed by the laws of that state. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement. The services are protected by copyright and other intellectual property rights laws and international treaties.

23.4 Dispute resolution.
Any action to enforce this Agreement must be brought in the State of Washington, USA. This choice of jurisdiction does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction. If you are an entity of the U.S. Government or an entity of a state or local government, this Section does not apply and jurisdiction and venue will be determined by applicable law.

23.5 This Agreement is not exclusive.
You are free to enter into agreements to license, use or promote non-Metria software or services.

24. ACKNOWLEDGMENT OF UNDERSTANDING: ENTIRE AGREEMENT

You acknowledge that you have read this agreement, understand it, and agree to be bound by its terms and conditions. You also agree that this agreement is the complete and exclusive statement of the agreement between Metria and you and supersedes all proposals, representations, or prior agreements, oral or written, and any other communications between Metria and you relating to the subject matter of this agreement. This agreement may not be amended, except by an agreement in writing that is signed by authorized representatives of Metria and you.

25. SEVERABILITY

You agree that the terms and conditions stated in this agreement are severable. If any paragraph, provision, or clause in this agreement shall be found or held to be invalid or unenforceable in any jurisdiction, the remainder of this agreement shall be valid and enforceable, and the parties shall use good faith to negotiate a substitute, valid, and enforceable provision that most nearly effects the parties' intent in entering into this agreement.

26. ASSIGNMENT

We may assign this agreement, in whole or in part, at any time with or without notice to you. You may not assign this agreement, or any part of it, to any other third party. Any attempt by you to do so is void. You may not transfer to a third party, either temporarily or permanently, any rights to use Metria or any part of them.

27. FORCE MAJEURE

Neither party will be liable for any failure in performance due to causes beyond either party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber

terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of services)). This Section will not, however, apply to your payment obligations under this Agreement.

28. USER GENERATED CONTENT

28.1 Content

Metria, You, its Users and associated account users and third parties may be able to post or store materials, including data, documents, information, advertisements, communications, messages and links to third party websites ("content") on the service. You may be able to post or provide materials (including feedback) that are part of the service in a publicly accessible or other public area that allows You to communicate with others ("public areas of the service"). It also includes areas of the service to which You can control access by authorized users of associated accounts ("private areas of the service").

28.2 Intellectual property rights

Metria does not sanction or approve the unauthorized use of content protected by copyright and other intellectual property rights. You understand that sharing content that violates others' copyrights and intellectual property rights violates this Agreement. You represent and warrant that the use and publication of the content by You and others does not violate the intellectual property rights of any third party. You understand that Metria may remove content at any time without notice when the content violates this Agreement or an applicable code of conduct, or when Metria has a good faith reason to believe it is necessary to do so.

28.3 Posting Content

You acknowledge that Metria does not control or endorse the content that you and others post or provide on the service. Metria doesn't claim ownership of content that you and others post or provide. By posting or providing content, You grant Metria and the public (for content posted on publicly accessible areas of the service), or those authorized Users of associated accounts to which You have granted access (for content posted on private areas of the Service), free, unlimited worldwide and perpetual permission to use, modify, copy, distribute and display the content and publish your name with the content. You also give the public, or those members of the public to which you have granted access, permission to grant these rights to others. You represent and warrant that you have all the rights necessary to grant the rights in this section and that the use and publication of the content does not breach any law. Metria will not pay you for content posted on public areas of the service. This section only applies to legally permissible content and only to the extent that use and publishing of the legally permissible content does not breach the law.

28.4 Private areas of the service

You acknowledge that certain technical processing of content posted on private areas of the service may be required to store and retrieve the content, conform to connecting networks' technical requirements, or conform to the limitations of the service.

28.5 Links to third-party Web sites
The service may contain links to third-party websites. These third-party websites are not under Metria's control. If Metria has included these links in the service, it provides them as a convenience only. The inclusion of these links is not an endorsement by Metria of any third-party website, service or product. Metria reserves the right to disable links to any third-party website that You posts on the service.

29. ASSOCIATED ACCOUNTS

Only you may use Metria service account. However, Metria may allow you to setup additional member accounts that are dependent on your account (an "associated account"). Metria may limit associated accounts. You are responsible for all activity under Metria service account, associated accounts and passwords. You are solely responsible for monitoring usage of Metria service account and for any use or misuse of Metria service account or the service resulting from any associated account or any third party using any password or user name selected by or issued to you. If you are the authorized User of an associated account, then the person or entity that gave you access to the service (the account holder) has full control over your associated account. This control includes the right to end the service, close or alter your associated account at any time, and, in some cases, request and receive machine and service usage information related to your associated account.

30. PRE-RELEASE SERVICE

Metria reserves the right to not release a subsequent version of, or to change, the version of the service that may or may not work the same way as the previous version at any time without notice to you. Any such version, including its user interface, features and documentation ("Confidential Information"), is confidential and proprietary to Metria and its suppliers. You may disclose Confidential Information only to Metria employees and consultants who need to know the information and who have signed agreements containing restrictions at least as protective of the Confidential Information as those contained herein. Your duty to protect Confidential Information survives this Agreement. Notwithstanding the foregoing, you may disclose confidential information in response to a judicial or governmental order, so long as you first give written notice to Metria to allow it to seek a protective order or otherwise protect the information. Confidential information does not include information that: (1) becomes publicly known through no wrongful act; (2) is received from a third party who did not breach confidentiality obligations to Metria or its suppliers; or (3) is independently developed by You without the use of, or access to, the Confidential Information.

31. CONFIDENTIALITY

Metria and You shall treat the terms and conditions of this Agreement as confidential and shall not disclose them to any third party except in the furtherance of the parties' business relationship with each other.

32. WARRANTIES

32.1 Limited warranty.

Metria warrants that the services and Client Software will conform substantially to the description of them contained in the applicable Metria user documentation. This limited warranty is subject to the following limitations:

- this limited warranty applies only during the Term, including any renewals ("Warranty Period");
- any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last only during the Warranty Period;
- this limited warranty does not cover problems caused by accident, abuse or use of the services in a manner inconsistent with this Agreement, or resulting from events beyond Metria's reasonable control;
- this limited warranty does not apply to problems caused by the failure to meet minimum system requirements; and
- this limited warranty does not apply to downtime or other interruption in access to the services, or any other performance metrics that are addressed in an applicable SLA.

End of Terms of Service Agreement