



RHITHM ORDER FORM

Subscriber:	
Institutions:	
Services:	<p>If Campus Purchase:</p> <p>Access protocols for students and teachers to the:</p> <ul style="list-style-type: none"> • Rhithm App™ <p>If District Purchase:</p> <p>Access protocols for school and district admins to the:</p> <ul style="list-style-type: none"> • Rhithm App™ • Rhithm Insights™
Supported Environment:	Hardware with internet connectivity
Limitations on the Use of the Services:	No limitations
Term:	Effective Date – July 31, 2021
Fees and Invoice Schedule:	<p>Campus Purchase \$X,XXX - Due Net30 from Effective Date of this Agreement</p> <p>District Purchase: \$XX,XXX – Due Net30 from Effective Date of this Agreement</p> <p>Please make checks payable to: Rhithm, Inc Please mail checks to: 100 W Oak St., #G106, Denton, TX 76201</p>

This Order Form is by and between Rhithm, Inc (Rhithm) and the entity listed as Subscriber above, and is governed by the Terms and Conditions of Rhithm Services attached hereto (“Terms and Conditions,” along with this Order Form, collectively, the “Agreement”). Except as otherwise defined herein, all capitalized terms used in this Order Form shall have the meanings attributed to them in the Terms and Conditions, which are hereby incorporated by reference into this Order Form.

Rhithm and Subscriber have caused this Agreement to be executed by their duly authorized representatives as of the date of the later signature below (“Effective Date”).

Rhithm, Inc
100 W. Oak St., #G-106
Denton, TX, 76201

District/Campus Name
District/Campus Address Line 1
District/Campus Address Line 2

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

TERMS AND CONDITIONS OF RHITHM SERVICES

This Agreement (i.e., these Terms and Conditions and the Order Form(s) into which these Terms and Conditions are incorporated) is made and entered into as of the Effective Date. In consideration of the mutual promises contained herein, the parties hereby agree to the following:

1. DEFINITIONS. Capitalized terms shall have the meanings set forth in this section, or in the section where they are first used.

1.1 “Access Protocols” means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Subscriber to access the Services.

1.2 “Authorized User” means any individual student of the institutions listed in the Order Form (“Students”), as well as any individual who is an employee or contractor of Subscriber or a school or district listed in the Order Form (“Administrative User”), in each instance, who is authorized by Subscriber to access the Services pursuant to Subscriber’s rights under this Agreement.

1.3 “Confidential Information” means all proprietary or confidential information relating to a Disclosing Party that is disclosed or otherwise supplied in confidence to the Receiving Party under this Agreement. Confidential Information does not include any aggregated data or De-Identified Data covered by Section 8.4, or any other information that the Receiving Party can establish: (a) was known to the Receiving Party prior to receiving the same from the Disclosing Party, free of any restrictions; (b) is independently developed by the Receiving Party without reference to the Disclosing Party’s Confidential Information; (c) is acquired by the Receiving Party from another source without restriction as to use or disclosure; or (d) is or becomes part of the public domain through no fault or action of the Receiving Party.

1.4 “Confidential Student Information” means information that personally identifies a student who is enrolled or was previously enrolled at the Subscriber’s institution(s) as listed on the Order Form. This term includes the student’s name, the student’s (or student’s family’s) address, telephone number, email address, date of birth, place of birth, mother’s maiden name, grades, social security number (or other governmental identification number), biometric information, and other information that alone or in combination would reasonably allow a person or entity to identify the student with reasonable certainty. Confidential Student Information does not include any information regarding persons who do not enroll at the Subscriber’s institution(s).

1.5 “De-Identified Data” means any data, including data derived from Confidential Information (and Confidential Student Information) that has had all

direct and indirect personal identifiers removed. This includes the removal of any names, identification numbers, and dates of birth, address, email address, and telephone number. De-Identified Data does not include any data that alone or in combination would reasonably allow a person or entity to identify a student with reasonable certainty.

1.6 “Directory Information” means the following Confidential Student Information: student’s name, the name of the student’s parents or family members, the student’s (and student family’s) address, telephone number, email address, gender pronoun, course of study, degree(s) awarded, completion date, expected completion date, photographs, and any other information that is considered directory information under the Subscriber’s “Directory Information Policy.”

1.7 “Documentation” means the technical materials provided by Rhithm to Subscriber in hard copy or electronic form describing the use and operation of the Services.

1.8 “Error” means a reproducible failure of the Services (i.e., and not of a user) to substantially conform to the Documentation.

1.9 “Error Corrections” means bug fixes or workarounds intended to correct Errors in the Services.

1.10 “Order Form” means an order form that is signed by both parties and references these Terms and Conditions.

1.11 “Services” means the services ordered by Subscriber through an Order Form.

1.12 “Subscriber Content” means any content and information submitted via or in connection with the Service by on behalf of Subscriber, an Authorized User or any other end user of the Services.

1.13 “Supported Environment” means the minimum hardware, software, and connectivity configuration specified from time to time by Rhithm as required for use of the Services. The current requirements (if any) are described in the Order Form.

2. PROVISION OF SERVICES

2.1 Access. Subject to Subscriber’s payment of the Fees (if any) and compliance with the terms of this Agreement, Rhithm will provide Subscriber with access to the Services. Promptly following the

Effective Date, Rhithm shall provide to Subscriber the necessary passwords, security protocols and policies and network links or connections and Access Protocols to allow Subscriber and its Authorized Users to access the Services in accordance with the Access Protocols.

2.2 Support Services. Rhithm will provide Subscriber with basic technology support services to support continued uptime of the Rhithm application throughout the term of this agreement.

2.3 Hosting. Rhithm shall, at its own expense, provide for the hosting of the Services, provided that nothing herein shall be construed to require Rhithm to provide for, or bear any responsibility with respect to any telecommunications or computer network hardware required by Subscriber, any Authorized User or any other user to provide access from the Internet to the Services.

3. INTELLECTUAL PROPERTY

3.1 License Grant. Subject to the terms and conditions of this Agreement, Rhithm grants to Subscriber a non-exclusive, non-sublicensable, non-transferable license during the Term, solely for Subscriber's internal business purposes and in accordance with the limitations (if any) set forth in the Order Form, (a) to access and use the Services in accordance with the Documentation; and (b) to use and reproduce a reasonable number of copies of the Documentation solely to support Subscriber's use of the Services.

3.2 Restrictions. Subscriber agrees that it will not, nor will Subscriber cause or permit any Authorized User or other party to, (a) allow any third party to access the Services or Documentation, except as expressly allowed herein; (b) modify, adapt, alter or translate the Services or Documentation; (c) sublicense, lease, rent, loan, distribute, transfer or otherwise allow the use of the Services or Documentation for the benefit of any third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Services, except as permitted by law; or (e) create derivative works based on the Services or Documentation.

3.3 Ownership. Except for the licenses granted by Rhithm under this Agreement, Rhithm owns all right, title and interest (including, but not limited to, all copyright, patent, trademark and trade secret rights) in and to the Services and Documentation.

3.4 Open Source Software. Certain items of software used in the Services are subject to "open source" or "free software" licenses ("**Open Source**

Software"). Some of the Open Source Software is owned by third parties. The Open Source Software is not subject to the terms and conditions of Sections 3.1, 3.2 or 10. Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. Nothing in this Agreement limits Subscriber's rights under, or grants Subscriber rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, Rhithm makes such Open Source Software, and Rhithm modifications to that Open Source Software, available by written request at the notice address specified on the Order Form.

4. FEES. Subscriber agrees to pay the fees set forth on the Order Form ("**Fees**"), if any. Such Fees will be paid in accordance with the payment schedule set forth on the Order Form. In the event the Fees are not paid timely when due, Rhithm shall have the right to suspend Services until such Fees are paid in whole.

5. SUBSCRIBER CONTENT AND RESPONSIBILITIES

5.1 License; Ownership. Subscriber hereby grants Rhithm a non-exclusive, worldwide, royalty-free, fully-paid and transferable license (a) to use the Subscriber Content as necessary for purposes of providing the Services; and (b) to use Subscriber's trademarks, service marks, and logos as required to provide the Services. As between the parties, Subscriber owns all right, title and interest in the Subscriber Content.

5.2 Subscriber Warranty. Subscriber represents and warrants that (a) prior to using the Services in connection with any individual end user, Subscriber shall have obtained the consent of such end user to contact such end user via the Services in such form as required to comply with applicable law; (b) that its use of the Services will comply with all applicable requirements of the U.S. Department of Education; and (c) the Subscriber Content shall not (i) infringe any copyright, trademark, or patent right; (ii) misappropriate any trade secret; (iii) be deceptive, libelous, obscene, pornographic or unlawful; (iv) contain any viruses, worms or other malicious computer programming codes intended to damage Rhithm's system or data; or (v) otherwise violate any privacy or other right of any third party.

5.3 Authorized User Access. Subscriber may permit any Authorized Users to access and use the features and functions of the Services as contemplated by this Agreement. User IDs cannot be shared or used by more than one Authorized User at a time. Subscriber is solely responsible for maintaining the confidentiality of Access Protocols and Rhithm will not be liable for any activities

undertaken by anyone using Subscriber's Access Protocols. Subscriber will immediately notify Rhithm of any unauthorized use of its Access Protocols or any other breach of security relating to the Services known to Subscriber.

5.4 Subscriber Responsibility for Access, Content and Security. Unless otherwise specified on the Order Form, Rhithm is not obligated to back up any Subscriber Content; the Subscriber is solely responsible for creating backup copies of any Subscriber Content at Subscriber's sole cost and expense. Subscriber shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Subscriber Content. Subscriber must maintain the Supported Environment (if any) described in the Order Form.

6. WARRANTIES AND DISCLAIMERS

6.1 Limited Warranty. Rhithm represents and warrants to Subscriber that the Services will operate free from material Errors during the Term. Provided that Subscriber notifies Rhithm in writing of any breach of the foregoing warranty during the Term, Rhithm shall, as Subscriber's sole and exclusive remedy, provide the support in accordance with Rhithm's then-current support terms.

6.2 Disclaimer. THE LIMITED WARRANTY SET FORTH IN SECTION 6.1 IS MADE FOR THE BENEFIT OF SUBSCRIBER ONLY. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6.1, THE DOCUMENTATION, AND SERVICES ARE PROVIDED "AS IS," AND RHITHM MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER REPRESENTATIONS AND WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. RHITHM DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SERVICES SHALL BE UNINTERRUPTED OR ERROR-FREE. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO SUBSCRIBER.

7. LIMITATION OF LIABILITY. EXCLUDING EACH PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH HEREIN IN RESPECT OF THIRD-PARTY CLAIMS, (A) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR OTHER INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST DATA)

ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ITS PERFORMANCE HEREUNDER AND (B) IN NO EVENT SHALL EITHER PARTY'S LIABILITY TO THE OTHER AS A RESULT OF ANY CLAIM ARISING UNDER THIS AGREEMENT, REGARDLESS OF WHETHER SUCH CLAIM IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY, EXCEED THE GREATER OF: (I) THE AMOUNT PAID BY SUBSCRIBER IN THE TWELVE (12) MONTHS PRIOR TO THE OCCURRENCE OF THE ACT OR OMISSION GIVING RISE TO SUCH CLAIM, AND (II) ONE HUNDRED DOLLARS (\$100). SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO SUBSCRIBER.

8. CONFIDENTIALITY; PRIVACY

8.1 Confidentiality. During the Term, each party ("Disclosing Party") may provide the other party ("Receiving Party") with Confidential Information. The Receiving Party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing Party, except as expressly permitted under this Agreement. The Receiving Party will limit access to the Disclosing Party's Confidential Information to Authorized Users (with respect to Subscriber as Receiving Party) or to those employees who have a need to know such Confidential Information to perform the Receiving Party's obligations or exercise the Receiving Party's rights under this Agreement, and who have been informed of the confidential nature of such information. In addition, the Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing Party's request or upon the expiration or termination of this Agreement, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under this Agreement, and the Receiving Party shall provide to the Disclosing Party a written affidavit certifying compliance with this sentence.

8.2 Privacy. Rhithm agrees that its performance of the Services may involve the disclosure of Confidential Student Information by the Subscriber to Rhithm. Rhithm agrees that it will not use or re-disclose Confidential Student Information except in compliance with the Family Education Rights and Privacy Act ("FERPA") (20 U.S.C. § 1232g; 34 C.F.R. Part 99) and all applicable state and federal laws.

The Subscriber acknowledges that Rhithm is a “school official” with a legitimate educational interest in receiving Confidential Student Information under FERPA and Rhithm agrees that it will comply with the requirements of 34 C.F.R. § 99.33 regarding its use and redisclosure of Confidential Student Information. The Subscriber agrees and consents to Rhithm’s use of Confidential Student Information so long as such use complies with FERPA. The Subscriber acknowledges that it is responsible for notifying Rhithm that a student has opted-out of the Subscriber’s “Confidential Student Information Policy.”

8.3 Data Security. Rhithm agrees that it will store and process Confidential Information, including Confidential Student Information, in accordance with customary industry standards. Rhithm shall implement and maintain commercially reasonable administrative, technical and physical security measures to protect Confidential Information from unauthorized access, disclosure and use. Rhithm will conduct periodic risk assessments and remediate identified material security vulnerabilities in a commercially reasonable manner. Rhithm will have a written data breach response plan and will take commercially reasonable steps to notify the Subscriber once it becomes aware of a data breach known to involve, or likely involving, Subscriber Confidential Information. Rhithm will cooperate with the Subscriber to comply with any applicable data breach notification laws.

8.4 Aggregated and De-Identified Data. Rhithm may use aggregated data and De-Identified Data for product development, research, marketing, and other purposes. Rhithm agrees that it shall not attempt to re-identify any aggregated data or De-Identified Data unless such re-identification complies with the terms of this Agreement. Rhithm further agrees that it shall not transfer De-Identified Data or aggregated data to any other party unless that party agrees not to attempt re-identification; provided, however, that Rhithm may transfer De-Identified Data or aggregated data to its successor pursuant to a merger, consolidation or sale of substantially all of its assets pursuant to Section 11 of this Agreement and its successor may re-identify data to the same extent that Rhithm may do so pursuant to this Agreement.

8.5 Confidential Student Information Return and Destruction. Upon termination or expiration of this Agreement or thereafter, at the Subscriber’s written request, Rhithm shall, in a reasonable period of time, return all Confidential Student Information to Subscriber or shall destroy such Confidential Student Information that Rhithm knows it possesses to the extent that destruction is reasonably practicable. Rhithm shall not be required to return or destroy Directory Information it has received or obtained. Rhithm shall not be required to return or destroy

aggregated data or De-Identified Data. Subscriber acknowledges that some data may remain in archive or other files following Rhithm’s commercially reasonable attempt to return or destroy Confidential Student Information.

9. INDEMNIFICATION

9.1 By Rhithm. Rhithm shall indemnify, defend and hold harmless Subscriber against any third-party claims that the use of the Services as permitted hereunder infringes any copyright, US patent or other intellectual property right of a third party, and Rhithm shall pay any losses, damages, costs, liabilities and expenses (including, but not limited to, reasonable attorneys’ fees) finally awarded by a court to such third party or otherwise agreed to in settlement of such claim by Rhithm. If any portion of the Services becomes, or in Rhithm opinion is likely to become, the subject of a claim of infringement, Rhithm may, at Rhithm’s option, and as Subscriber’s sole and exclusive remedy therefor: (a) procure for Subscriber the right to continue using the Services; (b) replace the Services with non-infringing software or services which do not materially impair the functionality of the Services; (c) modify the Services so that the Services become non-infringing; or (d) terminate this Agreement and refund any fees paid by Subscriber to Rhithm for the remainder of the term then in effect, and upon such termination, Subscriber will immediately cease all use of the Documentation and Services. Notwithstanding the foregoing, Rhithm shall have no obligation under this Section 9.1 or otherwise with respect to any third-party claim based upon (i) any use of the Services not in accordance with this Agreement or as specified in the Documentation; (ii) any use of the Services in combination with other products, equipment, software or data not supplied by Rhithm; or (iii) any modification of the Services by any person other than Rhithm or its authorized agents. This Section 9.1 states the sole and exclusive remedy of Subscriber and the entire liability of Rhithm, and any of the officers, directors, employees, shareholders, contractors or representatives of Rhithm, for claims and actions described in this Section 9.1.

9.2 By Subscriber. To the extent permitted by applicable law, Subscriber shall indemnify defend and hold harmless Rhithm against any third-party claims arising out of (a) any failure by Subscriber or any Authorized User to comply with applicable laws, rules and regulations (including those promulgated by the U.S. Department of Education) in connection with its activities hereunder, including without limitation its provision and Rhithm’s authorized use of Subscriber Content (possibly including student information) hereunder or failure to obtain required consent from end users, (b) Subscriber’s unauthorized use of Services hereunder and/or (c) Subscriber’s breach or

alleged breach of any of its covenants, representations or warranties hereunder, and Subscriber shall pay any losses, damages, costs, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) finally awarded by a court to such third party or otherwise agreed to in settlement of such claim by Subscriber. This Section 9.2 states the sole and exclusive remedy of Rhithm and the entire liability of Subscriber, and any of the officers, directors, employees, shareholders, contractors or representatives of Subscriber, for the claims and actions described in this Section 9.2.

9.3 Procedure. The indemnifying party's obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified party shall promptly notify the indemnifying party in writing of any threatened or actual claim or suit, provided, however, that failure to give prompt notice will not relieve the indemnifying party of any liability hereunder (except to the extent the indemnifying party has suffered actual material prejudice by such failure); (b) the indemnifying party shall have sole control of the defense or settlement of any claim or suit; and (c) the indemnified party shall (at the indemnifying party's expense) reasonably cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

10. TERM AND TERMINATION

10.1 Term. This Agreement commences on the Effective Date and shall continue until the termination or expiration of all Order Forms ("Term"), unless earlier terminated in accordance with Section 10.2. The term of each Order Form shall commence on the effective date of such Order Form and continue for the period of time specified in the Order Form (the "Initial Term") unless earlier terminated under Section 10.2. Each Order Form shall automatically renew for successive one (1) year terms (each a "Renewal Term") at the same fee and invoice schedule set out in the original Order Form, unless either party provides written notice to the other of its intention not to renew at least thirty (30) days prior to the expiration of the then-current term. The Initial Term and the Renewal Terms (if any) are, collectively, the "Order Form Term."

10.2 Termination. Either party may terminate this Agreement or any Order Form immediately upon written notice to the other party if the other party materially breaches this Agreement and fails to cure such breach within (30) days after its receipt of written notice of such breach.

10.3 Effect of Termination. Immediately upon termination of this Agreement, (a) the licenses granted to either party shall immediately terminate; and (b) Rhithm shall cease to make available and Subscriber shall cease to use the Services. Termination shall not

relieve Subscriber's obligation to pay all charges accrued before the effective date of termination. Sections 3.3, 5.4, 6, 7, 8, 9, 10.3, 11 and 12 will survive the expiration or termination of this Agreement.

11. GOVERNING LAW AND VENUE This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of Texas, without reference to conflicts of laws principles. Both parties expressly agree that any action relating to this Agreement shall exclusively be brought in Travis County, Texas, and both parties irrevocably consent to the jurisdiction of the state and federal courts located in Travis County, Texas. Each party expressly waives any objection that it may have based on improper venue or forum non-conveniens to the conduct of any such suit or action in any such court. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Subscriber shall always comply with all international and domestic laws, ordinances, regulations, and statutes that are applicable to its use of the Services hereunder.

12. MISCELLANEOUS. If requested by Rhithm, Subscriber agrees to cooperate in good faith with Rhithm on a press release following execution of this Agreement and agrees to allow Rhithm to list (using Subscriber's name and/or Subscriber's logo, as determined by Rhithm) Subscriber as a customer on Rhithm website. The parties are independent contractors and nothing in this Agreement shall be deemed to create the relationship of partners, joint venturers, employer-employee, master-servant, or franchisor-franchisee between the parties. Neither party is, or will hold itself out to be, an agent of the other party. Neither party is authorized to enter into any contractual commitment on behalf of the other party. These Terms and Conditions, together with the attached Order Form(s), contain the entire agreement of the parties and supersedes any prior or present understanding or communications regarding its subject matter, and may only be amended in a writing signed by both parties. In the event of a conflict between the terms in the Order Form and the Agreement, the terms contained in this Agreement shall control unless otherwise expressly stated in the Order Form. In the event any provision of this Agreement is held by a court of law or other governmental agency to be void or unenforceable, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions shall remain in full force and effect. Neither party shall assign this Agreement without the other party's prior written consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement to its successor pursuant to a merger, consolidation or

sale of substantially all of its assets related to this Agreement, provided it promptly notifies the non-assigning party in writing of the assignment and the assignee agrees in writing to be bound by the terms of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. Neither party shall be deemed to be in breach of this Agreement for any failure or delay in performance (other than payment of Fees due hereunder) caused by reasons beyond its reasonable control, including, but not limited to, acts of God, war, terrorism, strikes, failure of suppliers,

fires, floods or earthquakes. The use of the Services is subject to U.S. export control laws and may be subject to similar regulations in other countries. Subscriber agrees to comply with all such laws. Any notice given under this Agreement shall be in writing and shall be sent via overnight mail by a nationally recognized express delivery service addressed to the address and the signatory set forth above. There are no third-party beneficiaries to this Agreement. This Agreement may be executed in counterparts, each of which shall be deemed an original and both of which shall be taken together and deemed one instrument.