

- 1) **Customer and COMET Contract:** A signed Master Service Agreement referencing the current COMET Terms & Conditions, signed Proposals or signed Statements of Work (“Agreement”) regulate the relationship between the Customer and COMET Informatics LLC, a New York-based Limited Liability Corporation (“COMET”). From time to time the Customer and COMET may agree in writing to modify or amend the terms of the Agreement.
- 2) **Licensing, Product and Services:** Subject to the terms of the Agreement, the Customer is granted a non-exclusive, non-transferable license to use the web-based system, which operates using COMET software (the “COMET System”) during the term of the Agreement only for the Customer’s own internal use and processing of the Customer’s own data. The Customer represents and acknowledges that the scope, capabilities, and limitations of the COMET System have been explained to the Customer, and that the Customer fully understands the scope, capabilities and limitations of the COMET System. COMET will deliver all the services described in the Agreement pursuant to the terms of the Agreement.
- 3) **Compensation:** The Customer agrees to pay the amount described in the *Pricing Structure* of the Agreement.
- 4) **Payment Terms:** All payments are due per the terms described in the *Payment Structure and Service Term* section of the Agreement. Should payment not be made when due, the Customer shall pay all of COMET’s costs of collection, including reasonable attorneys’ fees and court costs.
- 5) **Delivery Schedules:** The delivery of products and services shall be as described in the Agreement. The parties agree that some project deliverables may depend upon delivery by the Customer of specific materials, data or resources. In the case of late delivery by the Customer of those materials, data or resources, COMET shall have the right to reasonably alter the delivery schedule and will notify the Customer in writing of such changes.
- 6) **Confidentiality:** All information and materials marked as “confidential” or with similar designation that are received from the Customer by COMET are proprietary information and will be used by COMET only as set forth in the Agreement and as necessary to provide the products or services described in the Agreement and shall be safeguarded and kept against disclosure with reasonable precautions usual for proprietary information of the type. The foregoing shall not apply to information that has been made publicly available by the Customer, that COMET is required to disclose by applicable law, order, subpoena or similar request of a governmental or judicial authority of competent jurisdiction or that COMET has rightfully obtained from a source that is not the Customer, or otherwise developed independently of the Customer’s information or materials. Any such information or materials received by COMET from the Customer shall remain at all times the property of the Customer.
All information and materials marked as “confidential” or with similar designation that are received from COMET by the Customer (including the COMET System and all documentation related thereto) are proprietary information and will be used by the Customer only as necessary to use, in accordance with the terms of the Agreement, the products or services delivered by COMET to the Customer and shall be safeguarded and kept against disclosure with reasonable precautions usual for proprietary information of the type. Additionally, the Agreement shall be considered confidential information, and shall not be disclosed to third parties. The foregoing shall not apply to information that has been made publicly available by COMET, that the Customer is required to disclose by applicable law, order, subpoena or similar request of a governmental or judicial authority of competent jurisdiction or that the Customer has discovered independently of COMET’s information or materials. Any such information or materials received by the Customer from COMET shall remain at all times the property of COMET.
Without limiting the foregoing, the Customer agrees it will not sell, rent, lease, operate, provide access, copy, duplicate or give away all or any portion of the COMET System or COMET’s Intellectual Property (defined below) to or for any other party or entity and agrees that it will not de-compile, disassemble or reverse-engineer the COMET System or COMET’s Intellectual Property and the Customer hereby waives any right it may have to perform such activities.
COMET shall retain all Confidential Information and shall comply with the confidentiality provisions in the Agreement, even upon expiration or termination of the Agreement, unless specifically instructed in writing by Customer to return or destroy the Confidential Information.
- 7) **The Customer’s Data:** The “Customer’s Data” is defined as all data that has been entered or modified in the database by the Customer’s personnel or other authorized users of the Customer. The Customer’s Data is Customer’s proprietary information and shall be used and maintained by COMET in accordance with Section 6 of these Terms & Conditions.
- 8) **COMET’s Intellectual Property:** The “COMET Informatics LLC’s Intellectual Property” is defined as (i) all data (other than the Customer’s Data) that COMET has entered or has caused to enter in the database that describes processes, instruments, assessments, expert system rules, data portraits creation, reports definitions, intervention recommendations rules and more generally all “meta-data” which does not describe directly the Customer’s personnel, students or service providers; (ii) all intellectual property owned or licensed by COMET or its licensors, including without limitation all copyright, trademark, patent and trade secret rights, software, programs, tools, language, methods, algorithms, database architecture, database applications, expert system methods, rules and algorithms, training materials, and other utilities; (iii) all intellectual property generated by COMET for Customer, including work done for or at the request of Customer and improvements thereon; and (iv) all intellectual property Customer contributes during the term of the Agreement which relates to COMET’s Intellectual Property, and any improvements thereon. COMET’s Intellectual Property is proprietary information and shall be used and maintained by the Customer in accordance with Section 6 of these Terms & Conditions.
- 9) **Ownership:**
 - a) As between the Customer and COMET, the Customer retains exclusive ownership rights for all the Customer’s Data. Other than as expressly set forth in the Agreement, COMET does not have any rights in or to the Customer’s Data.
 - b) As between the Customer and COMET, COMET retains exclusive ownership rights for all of COMET’s Intellectual Property. Other than as expressly set forth in the Agreement, the Customer does not have any rights in or to COMET’s Intellectual Property. In the event Customer

does have rights in any of COMET's Intellectual Property, Customer hereby assigns and agrees to assign to COMET all of its right, title and interest in and to all COMET Intellectual Property and any improvements thereon.

- 10) **Customer's Data Access:** Notwithstanding anything in the Agreement, COMET may (i) access and use the Customer's Data for problem resolution, internal troubleshooting, product functionality enhancements and fixes, to improve the quality of service or response time or to provide customer support or training services, (ii) access, use and disclose the Customer's Data for research, study or commercial purposes; and (iii) access and use Customer's Data for Mapping purposes in order to store and compile data from various Customer information outlets; provided, however, that COMET shall only disclose the Customer Data as aggregate information, meaning that neither the Customer nor any other individuals or entities will be specifically identified, that COMET comply with all non-disclosure requirements contained in this or any other agreement with Customer, and that any third party given permission by COMET and/or Customer to access Customer's Data complies with such requirements.
- 11) **Warranty:** COMET warrants to the Customer that (i) the COMET System shall perform in all material respects in accordance with the written specifications provided by COMET, and (ii) all services provided to the Customer shall be performed in a competent, diligent, and workmanlike manner in accordance with the terms of the Agreement.

THE WARRANTY SET FORTH IN THIS SECTION 11 IS THE ONLY WARRANTY MADE BY COMET. COMET EXPRESSLY DISCLAIMS, AND THE CUSTOMER EXPRESSLY WAIVES, ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, NONINFRINGEMENT, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. COMET DOES NOT WARRANT AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS THAT THE COMET SYSTEM OR ANY SERVICE WILL MEET THE CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE COMET SYSTEM OR ANY SERVICE AND/OR THEIR RESPECTIVE USE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE COMET SYSTEM OR ANY SERVICE, IF ANY, WILL BE CORRECTED. COMET ALSO EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESSED OR IMPLIED, PERTAINING TO ANY SUGGESTIONS, INTERVENTIONS, RECOMMENDATIONS OR PRESCRIPTIONS MADE BY, THROUGH OR RELATING TO THE COMET SYSTEM. THE CUSTOMER ACKNOWLEDGES AND UNDERSTANDS THAT SUCH SUGGESTIONS, INTERVENTIONS, RECOMMENDATIONS AND PRESCRIPTIONS ARE GENERIC IN NATURE AND THAT THE CUSTOMER, (OR ITS AUTHORIZED USERS, EMPLOYEES, PROFESSIONALS, CONTRACTORS, AGENTS OR AFFILIATES), MUST EXERCISE ITS OWN PROFESSIONAL JUDGMENT IN EACH CASE, AND THE CUSTOMER AGREES TO ASSUME ANY AND ALL LIABILITY ARISING OUT OF OR RELATED TO SUCH SUGGESTIONS, INTERVENTIONS, RECOMMENDATIONS OR PRESCRIPTIONS.

- 12) **Intellectual Property:**
- a) If notified promptly in writing of any claim or action brought against the Customer by a third-party based on a claim that the COMET System infringes any valid United States patent, trademark, copyright or trade secret, COMET shall defend such action at COMET's expense and pay all costs and damages awarded in such action or settlement that are attributable to such claim. COMET shall have sole control of the defense of any such action and all negotiations for its settlement or compromise. At COMET's request, the Customer shall reasonably cooperate with COMET in the defense, settlement or compromise of any such action.
 - b) Should the COMET System infringe any valid United States patent, trademark, copyright or trade secret, in addition to Section 12(a), COMET shall at its sole option and expense: (a) procure for the Customer the right to continue using the COMET System, (b) replace or modify the COMET System to make it non-infringing, or (c) terminate the license of the COMET System and the Agreement and refund the Customer the annual license fee paid by the Customer equal to the Pro-Rata Amount. The term "Pro-Rata Amount" shall mean that portion of the annual license fee paid by the Customer (the "Applicable License Fee") for the year in which the Agreement was terminated (the "Applicable Year"), equal to the amount determined by multiplying the number of calendar days in the Applicable Year beginning on and including the effective date of termination through the end of such Applicable Year, by the quotient resulting from dividing the Applicable License Fee by 365. The Customer agrees and acknowledges that the remedy contained in this Section 12(b) is the Customer's sole remedy in the event of any infringement of any patent, trademark, copyright or trade secret, and the Customer waives any right to any other remedies that it may have under the Agreement or any applicable laws.
 - c) Notwithstanding anything to the contrary contained herein, COMET shall not have any liability to the Customer to the extent that any infringement or claim thereof is based upon (a) use of the COMET System in combination with equipment or software not supplied by COMET where the COMET System would not itself be infringing, (b) compliance with the Customer's designs, specifications or instructions, (c) modifications of the COMET System by anyone other than COMET without COMET's prior written approval, or (d) materials provided by the Customer in violation of Section 12(d) of these Terms & Conditions. Furthermore, the Customer shall not be entitled to any damages from COMET to the extent the Customer failed to take commercially reasonable efforts to mitigate damages in good faith. THE CUSTOMER AGREES THAT THE FOREGOING INDEMNIFICATION PROVISION SETS FORTH COMET'S ENTIRE LIABILITY WITH RESPECT TO INFRINGEMENT OR ALLEGED INFRINGEMENT BY THE COMET SYSTEM OF PATENTS, TRADEMARK, COPYRIGHTS, TRADE SECRETS OR OTHER INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OF THIRD PARTIES AND THE CUSTOMER WAIVES ALL RIGHTS TO BRING ANY OTHER CLAIM FOR SUCH LIABILITY OTHER THAN AS EXPRESSLY SET FORTH IN THIS SECTION 12.
 - d) The Customer warrants to COMET that the specific work defined in the Agreement (if any) and further proposals, proposal revisions or statements of work, and the materials provided by the Customer to COMET do not infringe the copyrights, ownership or intellectual property rights of any third party. If the Customer requests that COMET incorporate additional third party Instruments ("Requested Instruments") in the COMET System, the Customer will be responsible for obtaining any necessary licenses or permissions from such third party to use the Requested Instruments with the COMET System. The Customer shall bear all risks associated with the use of the Requested Instruments and will indemnify and hold COMET harmless from any and all suits arising out of any copyrights, ownership or intellectual property claims related to the Customer's Requested Instruments, or other work or the materials provided by the Customer to COMET, including COMET's reasonable attorney's fees, costs, and expenses.
- 13) **No Agency:** COMET provides services to the Customer as an independent contractor. COMET does not undertake any obligation of the

Customer, whether by regulation or contract. In no way is COMET to be construed as the agent or acting as the agent of the Customer in any respect, all other provisions of the Agreement notwithstanding.

- 14) **Authority/Use:** COMET has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all work to be executed by COMET. Further, COMET reserves the right to exclude from the Customer Data any specific material, images, references or Internet hyperlinks which may be viewed as offensive. The Customer shall use the COMET System in accordance with any written rules, regulations or policies provided by COMET to the Customer from time to time.
- 15) **Limitation of Liability:** THE CUSTOMER AGREES THAT COMET WILL NOT BE LIABLE FOR ANY LOST PROFITS, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING FROM THE COMET SYSTEM OR THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY (INCLUDING CONTRACT, TORT OR WARRANTY). THIS LIMITATION APPLIES EVEN IF COMET HAS OR HAS NOT BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. COMET'S LIABILITY TO THE CUSTOMER FOR DAMAGES RELATING TO THE AGREEMENT AND THE TRANSACTIONS CONTEMPLATED THEREBY, REGARDLESS OF THE FORM OF ACTION, SHALL NOT EXCEED THE FEES AND OTHER CHARGES PAID BY THE CUSTOMER UNDER THE AGREEMENT IN THE ONE (1) YEAR PERIOD PRIOR TO THE DATE THE CLAIM AROSE. THE PARTIES AGREE THAT THIS SECTION 15 SHALL NOT APPLY TO COMET'S BREACH OF SECTION 6, 7, 9(a) or 12.
- 16) **Indemnification:** Unless otherwise provided for in the Agreement, the Customer agrees that to the extent permitted by law it will indemnify, defend, and hold harmless COMET and its officers, directors, employees, and contractors from any third party claims which arise from the Customer's gross negligence, willful misconduct, or breach of the Agreement.
- 17) **Term/Termination of the Agreement:**
 - a) The term of the Agreement shall commence on the "Start Date" and shall continue until the "Expiration Date", both specified in the *Payment Structure and Service Term* section of the Agreement (the "Initial Term"), unless extended or terminated in accordance with the terms of the Agreement.
 - b) The term of the Agreement may be renewed by means of agreed upon Proposals, Proposal Revisions or Statements of Work. Each Renewal Term shall be subject to the terms and conditions of the Initial Term Agreement unless otherwise agreed in writing by the parties. For purposes of the Agreement, "Term" shall refer collectively to the Initial Term and each Renewal Term.
 - c) Each party may terminate the Agreement upon written notice delivered to the other party at least 90 days prior to the intended date of termination. Should COMET so terminate the Agreement it shall refund to the Customer the Pro-Rata Amount as defined in Section 12(b) of these Terms & Conditions. Should the Customer so terminate the Agreement, COMET shall have no obligation to refund, return or reimburse the Customer for any annual license fee or any other fee already paid to COMET.
 - d) Each Party may also terminate the Agreement upon a breach of the Agreement by the other party if such breach remains uncured for a period of ninety (90) days following written notice of the breach to the breaching party from the non-breaching party.
- 18) **General:** The Customer may not transfer, assign, subcontract, or sublicense (whether by operation of law or otherwise) its rights or obligations under the Agreement without the prior written consent of COMET, and any such actual or purported transfer, assignment, subcontract, or sublicense shall be void. All claims or controversies arising out of or relating to the parties' rights and responsibilities under the Agreement and/or the transactions contemplated thereby shall be governed by and construed in accordance with the laws of the State of New York, without regard to its principles of conflicts of laws, and shall be tried and litigated only in the state and federal courts located in the County of Monroe, New York. Each party hereby irrevocably submits to the personal and exclusive jurisdiction of such courts. The Agreement may be amended, or a party's rights waived or modified, only by a written instrument signed by each of the parties hereto. COMET shall not be responsible for failure to fulfill its obligations hereunder due to causes beyond its control, including, without limitation, acts of God, war, insurrection, terrorism, riots or civil disturbances, acts of civil or military authorities or of governments, disease, epidemic, fire, flood, weather, natural disaster, malfunction of communication infrastructure or equipment, loss or disruption of power, labor or material shortages, malfunction or destruction of equipment, changes to laws or any other similar cause or other cause beyond the control COMET. The Agreement is a negotiated document and the terms of the Agreement reflect the informed business decisions of sophisticated parties, and therefore no part of the Agreement should be construed more harshly against one party over the other. The Agreement contains the entire agreement of the parties with respect to its subject matter, supersedes all prior written and oral agreements and may not be explained or supplemented by course of dealing, usage of trade or course of performance. The transactions contemplated by the Agreement are made on the terms and conditions contained herein only, which take precedence over and may not be modified by any terms and conditions of any document or communication, whether verbal or written, sent by a party unless signed by the party to be charged.
- 19) **Definitions:**
 - a) *Business days* are defined as all days except federal holidays and weekends.
 - b) *Business Year* is defined as the Customer's business year or school year, recorded in the COMET System's "schoolyear" records (e.g.: January 1st to December 31st or July 1st to June 30th), defined as a period of time, that will not exceed 12 months, during which the activities provided for under the Agreement occur.
 - c) *Customer Site* is defined as the Customer's location (e.g., schools, facilities, locations at different addresses, etc.) where the activities are provided.

for under the Agreement occur.

- d) *Subject* is defined as an object of interest within the COMET System such as students, clients, parents, classrooms, site, etc.
 - e) *Attendance Active Subject* is defined for attendance monitoring as a subject having at least one attendance record during the calendar month considered.
 - f) *Comprehensive Active Subject* is defined as a subject whose status is set to "Active" in the COMET System for the purpose of the comprehensive billing method.
 - g) *Instrument* is defined as any form, questionnaire or survey that is used by the COMET System to record information about a subject and completed by a responder (e.g., teacher, child professional, parent, etc.) at a point of time.
 - h) *Mapping* is defined as the process of identifying records in Customer's Data that describe the same entity, person, or other identifier as another provider of information to the database and associating such records by means of COMET internal pointers. The Mapping process is completed without exchanging data between various client databases or disclosing data to any third parties and is subject to the confidentiality provisions outlined in the Agreement.
- 20) Marketing:
- a) COMET reserves the right to publish a generic profile of the project associated with the Agreement, which will NOT provide any specific information identifying the Customer such as names or addresses, and to distribute that generic profile in its marketing literature, which may be distributed to the public as a hardcopy or electronically, including over the Internet.
 - b) Additionally, Customer hereby authorizes COMET to list Customer's name and logo in its marketing communication material when reaching out to other prospective customers. Such a listing is not an endorsement of the COMET System, merely a list of clients and their respective logo.
- 21) FERPA Compliance Warranty: When Applicable, each party represents and warrants to the other party that it will comply with all applicable provisions of the Family Educational Rights and Privacy Act, as amended ("FERPA"), and other laws with respect to its activities under the Agreement, including without limitation, FERPA's "legitimate educational interests" limitation on use or disclosure of education records. COMET will implement reasonable and typical administrative, technical and physical safeguards to secure its facilities and systems from unauthorized access, and to secure the Customer's Data. COMET agrees: to abide by FERPA's limitations on re-disclosure of personally identifiable information in education records; to not use or disclose education records created or received from, by, or on behalf of Customer or its students for any purpose other than the purpose for which such disclosure is made; and not to use or disclose such education records except as permitted by the Agreement, as required by law, or as authorized by Customer in writing.
- 22) HIPAA Compliance Warranty: When Applicable, each party represents and warrants that it will comply with all applicable provisions of the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), and any other applicable state and federal privacy laws with regard to health information and patient confidentiality. COMET shall, if feasible, promptly upon written notice by Customer return to Customer or its representative all protected health information as defined in HIPAA ("PHI") and shall remove all traces of the PHI on COMET's premises, including but not limited to, data contained on magnetic tapes and disc storage devices, and shall use its reasonable efforts to cooperate with Customer in transferring or returning data to Customer as Customer may direct.
- 23) Consent of Individual: When required by law, Customer represents that it has obtained proper written consent from the individuals whose information is being disclosed as part of the Agreement ("Individuals"). Customer represents that it has physical copies of this written consent. Customer shall present COMET with any and all Individual written consent immediately upon request.