

## Outdoor Ed LLC – End User License Agreement (EULA)

**PLEASE READ THIS AGREEMENT CAREFULLY.** By installing, accessing, or using the Outdoor Ed LLC (OE LLC) Software (the specific product(s) licensed to you as identified in the applicable Ordering Document), you (the “Customer”) acknowledge that you have read and understood this End User License Agreement and agree to be bound by its terms. If you do not agree to these terms, do not install or use the Software and you must destroy all copies in your possession. The individual accepting this Agreement on behalf of the Customer represents that they have the authority to do so.

### **Definitions:**

**Parties:** This End User License Agreement (“Agreement”) is entered into by and between Outdoor Ed LLC, a New Jersey limited liability company doing business as SystemsAnalytix (“Licensor” or “OE LLC”), and the entity identified in the applicable Ordering Document (“Customer”).

**Software:** For purposes of this Agreement, (the “Software”) means any OE LLC software application(s) specified in the Ordering Document, including its database schema and associated components.

**Ordering Document:** ‘Ordering Document’ means any ordering form, quote, Microsoft Marketplace order, or other agreed written purchase confirmation that references this Agreement and specifies the Software licensed, license term, and applicable fees.

**Effective Date:** This Agreement is effective upon the earlier of: (a) the date of Customer's first purchase of the Software; or (b) the date Customer first downloads, installs, accesses, or receives the Software files for evaluation purposes.

**Customer Data:** “Customer Data” means all data, content, and information that Customer or its users input or store in Customer’s Microsoft tenant through use of the Software.

**Microsoft Commercial Marketplace:** (“Microsoft Commercial Marketplace” or “Marketplace”) is an online Microsoft portal for purchasing software where the Software may be distributed.

### **1. License Grant and Permitted Use**

**1.1 License Grant:** OE LLC grants the Customer a limited, non-exclusive, non-transferable license to install and use the Software specified in the Ordering Document, solely for the Customer’s internal business purposes, during the applicable license term specified in the Ordering Document and/or in Section 9 (which may be perpetual or time-limited). The

Software is licensed, not sold – all rights not expressly granted to the Customer are reserved by OE LLC.

If the Software contains open-source or third-party components, those components are subject to their own licenses. To the extent of any conflict with this Agreement, the third-party license terms will govern for those components.

**1.2 Permitted Installations:** For each individual product purchased, the Customer may install and use the Software and its database on a Microsoft Power Apps environment under the Customer's control as detailed in the Ordering Document. All installations are solely for the Customer's use and may not be partitioned, sublicensed, rented, or otherwise used by any other entity (except as expressly permitted in Section 1.4) without a separate commercial agreement with OE LLC. Should the Customer wish to utilize additional installations beyond those detailed in the Ordering Document, additional licenses must be purchased.

**1.3 Authorized Users:** The Customer's employees or authorized contractors may use the Software as authorized end users, provided their use is on behalf of the Customer and in compliance with this Agreement. The Customer is responsible for all uses of the Software by its end users and shall ensure they adhere to these terms.

**1.4 Affiliates:** The Customer may permit its Affiliates (entities that control, are controlled by, or are under common control with the Customer) to use the Software under this Agreement, provided all such use is for the Customer's benefit and the Customer ensures each Affiliate's compliance with these terms. The Customer remains responsible for any acts or omissions of its Affiliates in connection with use of the Software.

**1.5 Evaluation License (Pre-Purchase Protection):** If the Software is provided to Customer prior to purchase for evaluation or "Proof of Concept" purposes, Licensor grants a revocable, non-exclusive license solely for internal testing. During this Evaluation Period, Customer is strictly prohibited from:

- (a) Reverse engineering, decompiling, or analyzing the database schema for the purpose of creating a competing product;
- (b) Using the Software in a live production environment.

If Customer does not purchase a full license within thirty (30) days of receipt, Customer must permanently delete all copies of the Software and certify destruction.

## **2. Ownership and Intellectual Property Rights**

**2.1 OE LLC Ownership:** The Software (including all copies, components, modifications, and derivative works thereof, except for Customer's own data and customizations as described below) is the exclusive intellectual property of OE LLC. OE LLC retains all rights, title, and interest in and to the Software, including but not limited to all source code, object code, database designs, schemas, layouts, user interface designs, and documentation. No ownership of the Software is transferred to the Customer by this Agreement; the Software is protected by copyright, trade secret, and other intellectual property laws.

**2.2 Customer Modifications:** OE LLC provides the Software to the Customer in a form outlined in the Ordering Document. The Customer is permitted to modify, configure, or extend the Software to suit internal requirements. Any such Customer-created modifications or extensions (for example, adding new fields, forms, or business logic) will be considered the property of the Customer to the extent those modifications consist of the Customer's independent work. However, the Customer's modifications do not convey any ownership in the Software itself and shall not infringe OE LLC's underlying rights in the original Software nor shall such work by the Customer prevent OE LLC from independently implementing similar modifications or extensions. The Software as originally provided, and any portions of the Customer's modifications that derive from or include OE LLC's proprietary design, code or schema, remain the licensed property of OE LLC.

**2.3 No Unauthorized Transfer:** The Customer shall not sell, resell, rent, lease, sublicense, distribute, or transfer the Software or this license to any other party without OE LLC's prior written consent. Any attempt to transfer rights to a third party (for example, by making the Software available to another organization) is a breach of this Agreement. The Software may not be used to provide services to third parties (such as in a service bureau or as part of a hosted service for others) without a separate commercial agreement with OE LLC.

**2.4 License Scope and Restrictions:** Except as expressly allowed in this Agreement, the Customer must not and may not permit any third party to: (a) copy or reproduce the Software, (b) modify, adapt, or create derivative works from the Software (except for authorized modifications noted in Section 2.2), (c) publicly display, publish, or distribute the Software or any portion of it outside the Customer's organization, (d) reverse engineer, decompile, or disassemble the Software except to the limited extent allowed by applicable law notwithstanding this restriction, or (e) use any component of the Software separately from the Software as a whole. The Customer agrees not to remove or obscure any copyright, trademark, or proprietary notices on the Software.

Without limiting the foregoing, the Customer shall not use the Software, any database schema, data model, architectural concepts, or other proprietary design elements embodied in the Software, or any knowledge gained from permitted use of the Software, to

design, build, or assist any third party in designing or building a software product that is directly competitive with the Software, except as expressly permitted in a separate written agreement with OE LLC.

Customer acknowledges that any breach of the license scope or misuse of OE LLC's intellectual property may result in irreparable harm to OE LLC for which monetary damages are insufficient, and that OE LLC is entitled, to the extent permitted by law, to seek immediate injunctive relief in addition to any other available remedies.

**2.5 Feedback:** If the Customer provides OE LLC with any feedback, ideas, concepts, techniques, or suggestions regarding the Software, the Customer grants OE LLC a worldwide, nonexclusive, perpetual, irrevocable, royalty-free, fully sublicensable and transferable license to use, copy, modify, create derivative works of, and otherwise exploit such feedback for any purpose, without any obligation or compensation to the Customer. Any improvements or modifications to the Software made by OE LLC based on Customer feedback remain the property of OE LLC.

**2.6 Reservation of Rights:** OE LLC reserves all rights not expressly granted to the Customer in this Agreement. No implied licenses are given. The Customer's rights to use the Software are limited to those expressly stated in this Agreement.

### **3. Microsoft Platform Requirements and Third-Party Services**

The Software is built on the Microsoft Power Platform and operates within the Customer's own Microsoft Tenant.

Customer acknowledges that the Software requires a valid Microsoft Power Platform environment to function. Customer is solely responsible for procuring and maintaining all necessary Microsoft licenses or subscriptions including all required to host and run the Software. This includes, but may not be limited to, appropriate Power Apps licenses and any add-on services (such as Power BI, Power Automate flows, AI Builder or Copilot services) that the Software might leverage. Licensor is not responsible for any changes to Microsoft's licensing models, API limits, or "multiplexing" determinations that may affect the Customer's costs.

OE LLC does not provide or assume responsibility for any Microsoft licensing. The Customer must comply with all applicable Microsoft terms and licensing requirements for the Power Platform and related services. Any additional costs or fees associated with Microsoft products or services (for example, enabling Power BI Embedded reports or running Power Automate flows that come with the Software) are solely the Customer's responsibility.

**3.1 Third-Party Components:** If the Software includes third-party components (including open-source libraries or Microsoft components), those components may be subject to their own license terms. OE LLC either provides such third-party components under appropriate license or uses components available to the Customer as part of the Microsoft platform. The Customer agrees to comply with any relevant third-party license terms for components included with or utilized by the Software.

**3.2 Example Workflows and Features:** The Software may come with example configurations (such as sample Power Automate flows or demo content) for the Customer's convenience. These are provided as examples only, and enabling or using them may require additional licensing from Microsoft. OE LLC provides no warranty or license for third-party services that such examples might call, and it is the Customer's choice and responsibility to activate and use them in compliance with applicable Microsoft licensing.

#### **4. Installation, Support, and Updates**

**4.1 Installation:** The Software will be delivered in a format to allow the Customer to install in the Customer's Power Platform environment. Installation and deployment of the Software is the sole responsibility of the Customer. OE LLC will provide documentation and guidelines for installation. The Customer is responsible for configuring its Microsoft environment (such as creating a suitable Power Apps environment or database) to deploy the Software. OE LLC is not responsible for any installation or deployment fees charged by Microsoft or third-party consultants assisting the Customer.

**4.2 Maintenance and Support:** This Agreement licenses the Software only. Maintenance services (such as software updates, bug fixes, or technical support) shall be governed under a separate Ordering Document.

**4.3 Upgrades and Customizations:** If OE LLC provides an updated version of the Software or the Customer is entitled to an upgrade under a separate agreement, the upgrade will also be governed by the terms of this Agreement (unless that upgrade comes with a new license agreement). The Customer acknowledges that if they modified the Software, then applying updates or new versions from OE LLC might require merging or reconciling those updates with the Customer's modifications. Any incompatibility, product failure, or required rework due to the Customer's modifications is the Customer's responsibility. OE LLC is not responsible for any issues arising from the Customer applying an OE LLC upgrade to a Customer-modified version of the Software.

#### **5. Customer Data and Privacy Responsibilities**

**5.1 Architecture and Data Sovereignty:** The Software is deployed as a "Solution" entirely within the Customer's own Microsoft Power Platform tenant. Licensor acknowledges that it

does not host, store, process, or have standing access to Customer Data. All data entered into the Software resides solely within the Customer's databases (e.g., Microsoft Dataverse) and is subject to the security and compliance configurations established by the Customer and Microsoft.

## **5.2 Compliance and Regulatory Roles:**

- **(a) No Processor Role:** Because Licensor does not control the Customer's Microsoft tenant, Licensor shall not be deemed a "Data Processor," "Business Associate" (HIPAA), or "School Official" (FERPA) by virtue of providing the Software code.
- **(b) Customer Responsibility:** Customer is solely responsible for configuring role-based access, encryption, and data loss prevention (DLP) policies within its Microsoft tenant to ensure compliance with applicable regulations (including FERPA and HIPAA).
- **(c) Support Access:** If Customer grants Licensor temporary access to their tenant for support purposes, Licensor agrees to access only the minimum data necessary to resolve the issue and shall not retain any Customer Data.

**5.3 Data Protection and Compliance:** The Customer is solely responsible for the lawfulness, reliability, integrity, and accuracy of Customer Data and for ensuring that gathering and processing any personal or sensitive information using the Software complies with applicable laws (such as data protection and privacy laws). This includes, without limitation, taking all necessary steps to comply with laws regarding personal data and personally identifiable information (for example, personal data under GDPR or personally identifiable information (PII) under U.S. law) and other regulated data. The Software is a tool that the Customer can use to track or manage data, but OE LLC does not guarantee that the Software's features meet the requirements of any specific law or regulation related to Customer Data. It is the Customer's responsibility to configure and use the Software in compliance with all applicable laws.

**5.4 Security and Access:** The Customer is responsible for maintaining the security of its Power Platform environments, including managing user access, privileges, and credentials. The Customer will use reasonable efforts to prevent any unauthorized access to the Software. OE LLC is not responsible for any data breach or security incident in the Customer's environment. In the event of any unauthorized access or security breach, the Customer should promptly take steps to remedy the breach and, if assistance from OE LLC is required, contact OE LLC separately (such assistance may be subject to additional fees or agreements).

**5.5 Privacy Policy:** Because OE LLC does not host or collect Customer Data under this Agreement, OE LLC's online privacy policy generally does not apply to Customer Data processed solely within the Customer's own Microsoft environment. Any data collected by the Customer via the Software is under the Customer's control. OE LLC's privacy policy may apply to any limited personal data that OE LLC processes directly (for example, in connection with support or account administration).

**5.6 Compliance with European Data Protection Laws (GDPR):** To the extent applicable, both OE LLC and the Customer will abide by applicable data protection and privacy laws, including the EU General Data Protection Regulation (GDPR), regarding any personal data ("Personal Data") processed in connection with the Software. The Customer remains the "controller" (or equivalent term under applicable law) for any Personal Data it collects and processes using the Software.

As described in Section 5.2, under this Agreement, OE LLC does not act as a "processor," "service provider," or similar regulated role for Customer Data or Personal Data, except to the limited extent that OE LLC may temporarily process such data as described in Section 5.1 (for example, when the Customer voluntarily provides data in screenshots or log files for support).

If, in a future arrangement, OE LLC hosts or otherwise processes Customer Data or Personal Data on its own systems on behalf of Customer (for example, in connection with managed hosting or enhanced support services), such processing will be governed by a separate written data processing or hosted services agreement executed by the parties, which shall control over this Agreement solely with respect to such processing.

## **6. Disclaimer of Warranties**

**6.1 AS-IS Basis:** Licensor warrants that for a period of ninety (90) days from the date the Software is first delivered to Customer under the applicable Ordering Document (excluding any evaluation copies provided under Section 1.5), the Software will materially conform to the documentation. Licensor's sole liability and Customer's exclusive remedy for breach of this warranty shall be to provide a software fix or a refund of fees paid. EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE AND ANY SUPPORT OBLIGATIONS IN A SEPARATE SUPPORT AGREEMENT, THE SOFTWARE IS PROVIDED "AS IS" AND "WITH ALL FAULTS." LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING FITNESS FOR A PARTICULAR PURPOSE.

- **Implied Warranties:** All implied warranties or conditions of merchantability, fitness for a particular purpose, satisfactory quality, title, or non-infringement are expressly

disclaimed. The Customer assumes all responsibility for selecting the Software to achieve its intended results and for the use and results obtained from the Software.

- **No Warranty of Performance:** OE LLC does not warrant that the Software will meet the Customer's requirements or expectations, that the Software will operate in combinations with other software not provided by OE LLC, or that operation of the Software will be uninterrupted or error-free. No oral or written information or advice provided by OE LLC or its representatives shall create any warranty. The Customer is solely responsible for results obtained from the Software and the conclusions drawn from such use.
- **No Responsibility for Microsoft Services:** OE LLC makes no warranty regarding the availability or performance of the underlying Microsoft services. Any downtime, limitations, or issues attributable to Microsoft's services or environment are outside of OE LLC's control and are the responsibility of the Customer to resolve with Microsoft. OE LLC is not responsible for any inability to use the Software due to issues with Microsoft's platform or licensing.

Some jurisdictions do not allow the exclusion of certain warranties. Nothing in this Agreement is intended to limit or exclude any warranty or liability that cannot be excluded by law. If implied warranties cannot be disclaimed in a particular jurisdiction, then to the extent permissible, such warranties are limited in duration to thirty (30) days from first use of the Software or the minimum period allowed by law.

## 7. Limitation of Liability

To the fullest extent permitted by law, OE LLC's liability to the Customer is limited as follows:

- **Direct Damages Cap:** In no event shall OE LLC's total cumulative liability for any and all claims arising out of or relating to this Agreement or the use of the Software exceed the amount of fees actually paid by the Customer to OE LLC for the specific Software license giving rise to the claim under this Agreement (excluding taxes, third-party fees, and amounts paid for separate support or consulting services) (the "Liability Cap"). If the Software was provided at no charge, OE LLC's total liability shall not exceed US \$1,000 (one thousand dollars) or the minimum amount required by applicable law, whichever is greater. These limitations apply regardless of the theory of liability (contract, tort, negligence, strict liability, or otherwise).
- **Exclusion of Certain Damages:** OE LLC will not be liable for any indirect, special, incidental, consequential, punitive, or exemplary damages whatsoever arising out of or in connection with this Agreement or the use or inability to use the Software.

This exclusion includes, without limitation, damages for lost profits or revenues, business interruption, loss of business information or data, costs of recovering data, cost of substitute software or services, or any other pecuniary loss, even if OE LLC has been advised of the possibility of such damages. The limitations and exclusions of liability in this Agreement apply to the fullest extent permitted by law, regardless of the cause of action or theory of liability, and even if any limited remedy fails of its essential purpose.

- **No Liability for Certain Risks:** OE LLC shall not be responsible or liable for any claims or damages arising from: (a) the Customer's combination of the Software with any other products or services not provided by OE LLC, (b) the Customer's modification of the Software (unless under OE LLC's direction), or (c) the Customer's use of the Software in violation of this Agreement or applicable law. The Customer assumes full liability for any decisions made or actions taken based on data or analyses obtained through the Software; OE LLC disclaims any liability for outcomes of the Customer's business decisions. The Customer explicitly agrees that OE LLC is not liable for any injuries, losses, or damages in the Customer's operations, even if such data or analysis from the Software suggested certain conclusions.
- **Data Loss and Security:** OE LLC is not liable for any loss, damage, or corruption of Customer Data or other data that may occur in the Customer's Microsoft environment through use of the Software. The Customer is responsible for backing up all data and for maintaining appropriate security measures to protect data. OE LLC shall not be liable for unauthorized access to Customer Data or for security breaches of the Customer's systems. If a court of competent jurisdiction holds OE LLC liable for data loss or breach notwithstanding this clause, OE LLC's liability shall be limited as provided above.
- **No Limit on Certain Liability (Exceptions):** Nothing in this Agreement is intended to exclude or limit liability for: (i) death or personal injury caused by OE LLC's gross negligence, (ii) willful misconduct or fraud by OE LLC, or (iii) any other liability that cannot be excluded by law. However, to the extent that applicable law allows the limitation of such liability, the limitations in this Section 7 will apply.
- **Additional Liability Limitations:** The limitations of liability and remedies in this Section 7 shall apply regardless of whether a party has been advised of the possibility of such damages and even if any remedy fails of its essential purpose. Furthermore, any claim or cause of action arising out of or related to this Agreement or the Software must be brought within two (2) years after the cause of action

accrues, except for claims for non-payment by the Customer or breach of OE LLC's intellectual property rights, and otherwise such claim or cause of action is hereby agreed to be permanently barred.

**No Liability for Program Outcomes:** The Software does not create, modify, interpret, or analyze Customer Data; all data entered into the Software is created solely by Customer. Any reporting, visualizations, analytics, AI outputs, or insights generated by Customer or by Customer's use of Microsoft Power BI, Microsoft AI, Microsoft Copilot, or any other third-party tools are solely the result of Customer's configuration and use of those services. OE LLC has no responsibility for, and shall not be liable for, any decisions, actions, or omissions taken by Customer based on Customer Data or based on any external reporting or analytical tools that Customer chooses to use.

This Section 7 will survive the termination or expiration of this Agreement.

## **8. Indemnification**

**8.1 Customer Responsibility and Indemnification:** To the fullest extent permitted by the laws applicable to the Customer, Customer agrees to indemnify, defend, and hold harmless OE LLC from any third-party claims arising out of Customer's gross negligence, illegal use of the Software, or violation of third-party rights.

If Customer is a U.S. government entity or public institution prohibited by law from entering into indemnification obligations, then this indemnification provision shall not apply. Instead, Customer shall be responsible for its own acts and omissions and the acts and omissions of its employees and agents to the extent permitted by applicable law. Nothing in this Agreement shall be construed as a waiver of the Customer's sovereign immunity. Nothing in this Agreement shall be construed as a waiver of the Customer's sovereign immunity.

**8.2 OE LLC Indemnity:** OE LLC shall defend and indemnify the Customer against any claim by a third party that the unmodified Software, as provided by OE LLC and used in accordance with this Agreement, directly infringes a valid U.S. patent or copyright or misappropriates a third party's trade secrets. If such a claim arises, OE LLC may at its option: (a) procure for the Customer the right to continue using the Software, (b) modify or replace the Software so that it becomes non-infringing (while substantially preserving functionality), or (c) if neither (a) nor (b) is commercially feasible, terminate the Customer's license to the affected Software and (if the Customer paid a license fee) refund a pro rata portion of the license fee depreciated over a three-year term. This indemnity does not apply to claims resulting from the combination of the Software with items not provided by OE LLC, the use of the Software in breach of this Agreement, or modifications of the Software

by Customer or a third party. This Section states OE LLC's entire liability for intellectual property infringement claims. The Customer must promptly notify OE LLC of any such claim, allow OE LLC to control the defense and settlement thereof, and provide reasonable cooperation.

Each party's liability under the indemnification provisions is subject to the limitations of liability in this Agreement, and any amounts paid or payable to third parties under a claim for which a party is seeking indemnification will be counted toward the Liability Cap.

## **9. Term and Termination**

**9.1 Term:** This Agreement and the license granted herein are effective from Effective Date and shall remain in effect unless terminated as set forth below. If the Software is provided on a subscription or time-limited basis as specified in the Ordering Document or the applicable Microsoft Marketplace order, the license term will coincide with the subscription or time-limited term, and use of the Software must cease at the end of that term unless renewed.

**9.2 Termination by Customer:** The Customer may terminate this Agreement at any time by uninstalling all copies of the Software and ceasing all use. No refund will be provided by OE LLC for such termination (except as may be allowed under a separate refund policy or under application consumer rights law).

**9.3 Termination for Breach:** OE LLC may terminate this Agreement (including the Customer's license to use the Software) upon written notice to the Customer if the Customer materially breaches any provision of this Agreement and fails to cure the breach within thirty (30) days after receiving written notice describing the breach.

Notwithstanding the foregoing, any of the following will be deemed a material breach that entitles OE LLC to terminate this Agreement immediately upon written notice, without an opportunity to cure: (a) a breach of Section 2 (Ownership and Intellectual Property Rights) or any misuse or misappropriation of OE LLC's intellectual property; or (b) a breach of Section 3 (Microsoft Requirements) or Section 5 (Data Responsibilities) that, in OE LLC's reasonable judgment, exposes OE LLC to potential legal or regulatory liability.

In addition, OE LLC may terminate the Customer's license to use the Software immediately upon written notice if the Customer fails to pay any applicable license fees when due and does not cure such non-payment within thirty (30) days after receiving written notice, or if the Customer becomes insolvent, makes an assignment for the benefit of creditors, is the subject of any bankruptcy or similar proceeding, or seeks protection under bankruptcy or similar laws, to the maximum extent permitted by applicable law.

**9.4 Effect of Termination:** Upon termination or expiration of this Agreement for any reason, the Customer must immediately cease all use of the Software. The Customer shall uninstall and permanently delete (or return to OE LLC, if instructed) all copies of the Software and any confidential or proprietary information of OE LLC in the Customer's possession. Upon OE LLC's request, an officer of the Customer will certify in writing that all copies have been removed and/or destroyed. Termination of this Agreement will not affect any provisions which by their nature should survive, including but not limited to Sections 2 (Ownership), 5 (Data Responsibilities), 6 (Warranty Disclaimer), 7 (Limitation of Liability), 8 (Indemnification), 9.4 (Effects of Termination), and 10 (Governing Law & Dispute Resolution), which shall survive indefinitely.

Termination is not an exclusive remedy, and the exercise by OE LLC of any remedy available to it under this Agreement or at law or in equity for breach shall not be deemed an election of remedies.

## **10. Governing Law and Dispute Resolution**

**10.1 Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, United States, without regard to its conflict of law principles unless the Customer is a U.S. public educational institution or government agency prohibited by law from agreeing to foreign jurisdiction, in which case this Agreement shall be governed by the laws of the state in which the Customer is domiciled.

**10.2 Exclusion of CISG and UCITA.** The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the Uniform Computer Information Transactions Act (UCITA) will not apply to this Agreement, regardless of whether they are enacted in the chosen jurisdiction or any other jurisdiction whose law might otherwise apply.

**10.3 Jurisdiction and Venue:** The parties agree that any dispute, claim, or controversy arising out of or relating to this Agreement or the use of the Software shall be resolved exclusively in the state or federal courts located in the State of New Jersey, U.S.A. The Customer hereby consents to the jurisdiction of such courts and waives any objections to venue in those courts. Notwithstanding the foregoing, OE LLC may seek injunctive or equitable relief in any court of competent jurisdiction to protect its intellectual property or confidential information. If Customer is a U.S. public educational institution or government agency, any dispute shall be resolved in a court of competent jurisdiction within the Customer's home state.

**10.4 Dispute Resolution:** The parties shall attempt in good faith to resolve any dispute relating to this Agreement through negotiations. If a dispute cannot be resolved amicably,

the parties may (by mutual agreement) submit the dispute to mediation or arbitration in New Jersey before pursuing formal litigation. Except to the extent a court or arbitrator determines otherwise and to the extent permitted by applicable law, each party shall bear its own costs and attorneys' fees in any dispute resolution process.

If any proceeding or lawsuit is brought by either party in connection with this Agreement, the court or arbitrator may award costs and attorneys' fees to the prevailing party to the extent permitted by law; provided, however, that nothing in this Section 10.4 shall require a U.S. public educational institution or government agency Customer to indemnify or reimburse OE LLC in a manner prohibited by applicable law.

## **11. Additional Provisions**

**11.1 Entire Agreement:** This Agreement constitutes the entire agreement between OE LLC and the Customer with respect to the licensing and use of the Software and supersedes all prior or contemporaneous communications, proposals, or agreements (whether oral or written) relating to the Software, except that it operates together with any executed Ordering Document and any separate written agreement between the parties that expressly supplements this Agreement (such as a data processing addendum or hosted services agreement).

In the event of a conflict between this Agreement and an executed Ordering Document, the terms of this Agreement will control with respect to the legal and license terms for use of the Software, and the Ordering Document will control with respect to commercial terms such as fees, license or subscription periods, and quantities, to the extent expressly stated in the Ordering Document. If the parties enter into a separate written data processing or hosted services agreement, that agreement will govern OE LLC's processing of Personal Data on behalf of the Customer and will control over any conflicting terms in this Agreement solely with respect to such processing.

If Customer acquires the Software through the Microsoft Commercial Marketplace, then in the event of any conflict between this Agreement and the applicable Microsoft marketplace terms regarding billing, payment, or cancellation, the marketplace terms will control solely with respect to those commercial matters. As between OE LLC and Customer, this Agreement governs the licensing and use of the Software.

**11.2 No Conflicting Customer Documents.** No purchase order, invoice terms, or other pre-printed or standard Customer document will add to or modify the terms of this Agreement, even if OE LLC acknowledges or processes such document, and any such additional or conflicting terms are rejected and will be of no force or effect.

This Agreement may be modified only by: (a) a written amendment or separate written agreement signed by both parties that expressly states it amends this Agreement; (b) an executed Ordering Document that expressly changes commercial terms such as fees, license or subscription periods, or quantities; or (c) the Customer's online acceptance of an updated version of this Agreement issued by OE LLC (which will apply prospectively in accordance with its terms and will not retroactively modify fees or commercial commitments previously agreed in an Ordering Document or applicable Marketplace order unless expressly stated by the parties).

**11.3 Force Majeure:** Neither party will be liable for any failure or delay in performance (excluding payment obligations) due to circumstances beyond its reasonable control, including acts of God, natural disasters, war, terrorism, labor disputes, governmental actions, internet or telecommunication failures not caused by the party, or other force majeure events. The affected party shall promptly notify the other and make reasonable efforts to mitigate the impact. For clarity, unavailability or degradation of Microsoft's online services (including Power Platform, Dataverse, Power BI, and related services) constitutes a force majeure event to the extent it prevents OE LLC from fulfilling its obligations under this Agreement.

**11.4 Severability:** If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, that provision shall be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect. The parties agree to negotiate in good faith a valid, enforceable substitute provision that most nearly effects the parties' intent and the economic effect of the invalid provision.

**11.5 Waiver:** The failure of either party to enforce at any time any of the provisions of this Agreement, or to exercise any option or right hereunder, shall not be construed to be a waiver of such provision, option, or right, nor shall it prevent that party from subsequently enforcing this Agreement in accordance with its terms. Any waiver of a breach or default by either party must be in writing and will not be deemed a waiver of any later breach or default.

**11.6 Assignment:** The Customer may not assign, transfer, or delegate this Agreement or any of its rights or obligations hereunder, in whole or in part, whether by contract, merger, operation of law, or otherwise, without the prior written consent of OE LLC. Any assignment in violation of the foregoing will be null and void. OE LLC may assign this Agreement to its successors or assigns, including, for example, an acquirer of OE LLC's business or assets relating to this Software. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors, and permitted assigns.

**11.7 Export Compliance:** The Customer agrees to comply with all export control and economic sanctions laws applicable to its use of the Software. The Customer represents that it is not located in or a national of any country that is subject to U.S. export restrictions. The Software may not be exported or re-exported into any U.S. embargoed countries or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List.

**11.8 Government End Users:** If the Customer is a U.S. Government end user, the Software is provided with "Restricted Rights." Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraphs (c)(1) and (2) of the Commercial Computer Software clause at FAR 52.227-19 or equivalent provisions of DFARS or other applicable regulations.

**11.9 Notices:** Any notices or communications required or permitted under this Agreement to OE LLC must be in writing and sent to Outdoor Ed LLC at its principal business address (or such other address as OE LLC designates in writing for this purpose). Notices to the Customer may be sent to the mailing or email address specified in the applicable Ordering Document or otherwise on record for the Customer's account. Notices will be deemed given when received, or, in the case of email, when transmitted without a bounce-back or other error message indicating non-delivery.

**11.10 Relationship with Microsoft:** This Agreement is solely between the Customer and OE LLC, as publisher and licensor of the Software. Microsoft is not a party to this Agreement and has no responsibilities, obligations, or liability under it with respect to the Software or its use. The Customer's relationship with Microsoft, including any rights to use Microsoft services such as Microsoft Power Platform, is governed by Microsoft's separate agreements with the Customer. OE LLC is solely responsible for any support, warranties, or claims relating to the Software (if and to the extent any are offered under this Agreement). The Customer further acknowledges that Microsoft and its affiliates are intended third-party beneficiaries of the provisions of this Agreement on disclaimers of warranties, limitations of liability, and intellectual property rights, solely so they may rely on those protections if needed, without creating any additional obligations or liabilities for Microsoft.

**11.11 Confidentiality:** The Customer agrees that the Software (including any source code or documentation provided) is the confidential and proprietary information of OE LLC. The Customer shall not disclose the Software or any performance or security testing results of the Software to any third party without OE LLC's prior written consent. Likewise, if the Customer provides any confidential information to OE LLC in connection with this Agreement, OE LLC will not disclose it to others without authorization. Each party will use the other's confidential information only for purposes of this Agreement and will protect it

with the same degree of care as it uses to safeguard its own similar confidential material (and at least a reasonable degree of care).

**11.12 Relationship of the Parties.** The parties are independent contractors. Nothing in this Agreement creates a partnership, joint venture, agency, fiduciary, or employment relationship between the parties, and neither party has any authority to bind the other in any respect.